

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19407 of 2021

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1. Ajay Paswan, Son of Late Chandeshwar Ram, Resident of Raza Bazar, Khagri, Salempur Dumra, P.S. - Shastri Nagar, District- Patna.
 2. Pankaj Kumar, Son of Rajendra Prasad, Resident of Mahaveer Nagar, 70 Feet, Bhart Petroleum Road, Anisabad, P.S. - Phulwari, District- Patna.
 3. Sanjay Kumar, Son of Shyam Babu Prasad, Resident of in front of Masjid, Near Pokhar Bhawan, Rajapur, Mainpura, P.S.- Budha Colony, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Chief Engineer (Mechanical), Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Superintending Engineer, Public Health Engineering (Mechanical) Circle, Patna.
4. The Superintending Engineer, Public Health Engineering (Mechanical) Circle, Patna.
5. The Executive Engineer, Public Health Planning and Design Circle - 03, Patna.
6. The Executive Engineer, Public Health (Mechanical) Division, Gaya.
7. The Executive Engineer, Public Health (Mechanical) Division, Sasaram.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Raja Ram Rai, Advocate
For the Respondent/s	:	Mr. S.Raza Ahmad (AAG-5
		Mr. Vishwambhar Prasad, AC to AAG-5

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 22-12-2021

Heard learned counsel for the parties.

2. In the instant petition, the petitioners have prayed for the following reliefs:

“(I) To issue a writ in the nature of Certiorari for quashing of the Office Order No.5 contained in Memo No.55 dated 10.02.2021 issued under the signature of The Superintending Engineer, Public Health



Engineering (Mechanical) Circle, Patna whereby and whereunder the promotion granted to the petitioners vide officer order No.35 contained in Memo No. 632 dated 29.07.2016 has been cancelled and the ACP granted to petitioner No.3 vide Office Order No.4 contained in Memo No. 58 dated 31.03.2013 has been cancelled on erroneous ground.

(II) To issue a writ in the nature of Certiorari for quashing of consequential order contained in Memo No.295 dated 21.10.2021 issued under the signature of the Superintending Engineer, Public Health Engineering (Mechanical) Circle, Patna by which a direction has been issued to excess amount paid to the petitioners from their salary after fixation of the pay of the petitioners.

(III) For issuance of writ in the nature of Mandamus commanding the respondents not to recover any amount from the salary of the petitioners in the light of Memo No.295 dated 21.10.2021 in light of judgment passed by Hon'ble Supreme Court in the case of State of Punjab Versus Rafique Masih reported in (2015) 4 SCC 334.

(IV) For any other relief / reliefs if petitioners found entitle in the facts and circumstances of the present case.”

3. Short question for consideration in the present petition is before cancellation of ACP order granted in favour of petitioners whether the petitioners have been heard in the matter or not?

4. Perusal of order of the order of cancellation of ACP does not reveal whether the petitioners have been issued notice and respondent is in receipt of petitioners' explanation. Therefore, the



petitioners have made out *prima facie* case that they have not been heard before passing of order of cancellation of ACP granted to them.

5. Accordingly, the order of cancellation of ACP against the petitioners dated 10.02.2021 is set aside, reserving liberty to the concerned respondent to proceed in accordance with law.

6. The concerned respondent is hereby directed to issue show-cause notice to the petitioners as to why ACP granted to them should not be cancelled. On receipt of such notice, the petitioners shall submit their explanation within a period of two months from the date of receipt of show-cause notice. Further on receipt of petitioners’ explanation, the concerned respondent is hereby directed to pass speaking order after due consideration of each of the contention to be raised by the petitioners in their explanation.

7. The above exercise must be completed within a period four months from the date of receipt of a copy of this order.

8. The writ petition stands disposed of.

(P. B. Bajanthri, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.01.2022
Transmission Date	NA

