

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8146 of 2020

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Yugal Kishore Prasad Son of Late Ram Karan Prasad, resident of Sector-D, Mitra Mandal Colony, P.O. Anishabad, P.S.- Phulwarisharif, District- Patna, the retired Junior Engineer, Canal Design Division-1, Anishabad, Water Resources Department, Government of Bihar, Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna
3. The Under Secretary (Management), Water Resources Department, Government of Bihar, Patna
4. The Engineer-in-Chief (Headquarter) Water Resources Department, Government of Bihar, Patna
5. The Chief Engineer, Central Design, Research and Quality Control, Water Resources Department, Government of Bihar, Patna
6. The Superintending Engineer, Canal and Canal structure Design Circle, Anishabad, Water Resources Department, Government of Bihar, Patna
7. The Executive Engineer, Canal Design Division-1, Anishabad, Water Resources Department, Government of Bihar, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 411 of 2018

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1. Bairistar Pandey son of Sri Ganga Sagar Pandey Resident of F - 171, P.C. Colony, Kankarbag, P.O. Lohia Nagar, P.S. Kankarbag, District - Patna, presently posted as Junior Engineer, Water Resources Department, Flood Control Design Division - 2, Anishabad, Patna.
 2. Ashok Kumar son of Sri Deo Prayad Singh Resident of 3 A/3, Indrapuri, P.O. Keshri Nagar, P.S. Patliputra, District - Patna, presently posted as Junior Engineer, Water Resources Department, Ganga Sone Flood Protection Division, Digha, Patna.
 3. Brij Kishore Prasad Yadav son of Late Asheshwar Prasad Resident of 3MF - 4/32, Bahadurpur Housing Colony, P.O. Bahadurpur Housing Colony, P.S. Agam Kuan, District - Patna, presently posted as Junior Engineer, Water Resources Department, Punpun Flood Protection Division, Anishabad, Patna.
 4. Vinod Kumar Gupta son of Late Ramdhari Gupta Resident of village and P.O. Bathua Bazar, P.S. Fulwariya, District - Gopalganj, presently posted as Junior Engineer, Water Resources Department, Flood Control Division, Samastipur.
 5. Birendra Prasad son of Late Yogendra Prasad Chaudhary Resident of



- Village, P.O. and P.S. - Mohiouddin Nagar, District - Samastipur, presently posted as Junior Engineer, Water Resources Department, Punpun Flood Protection Division, Anishabad, Patna.
6. Ramesh Kumar son of Late Ram Bishun Singh Resident of Village - Rampur, P.O. Basuhar, P.S. Punpun, District - Patna, presently posted as Junior Engineer, Water Resources Department, Advance Planning Investigation and Project Preparation Division - 2, Patna.
 7. Gajadhar Prasad Yadav son of Late Lal Bihari Yadav Resident of village and P.O. Khutaha, P.S. Lodipur, District - Bhagalpur, presently posted as Junior Engineer, Local Area Engineering Organization, Works Division - 2, Sonepur, District - Saran.
 8. Kedar Prasad son of Late Umesh Chandra Prasad Resident of village - Marar, P.O. Punaura, P.S. Riga, District - Sitamarhi, presently posted as Junior Engineer, Water Resources Department, Punpun Floor Protection Division, Anishabad, Patna.
 9. Kalimullah son of Sheikh Nasiruddin Resident of New Millat Colony Section - 1, Khagaul Road, P.O. and P.S. Khagaul, District - Patna, presently posted as Junior Engineer, Water Resources Department, Hydrology Division - 2, Anishabad, Patna.
 10. Mahabir Prasad son of Late Jagdish Prasad Resident of Village - Lakhochak, P.O. Bitchhway, P.S. Chanan, District - Lakhisarai, presently posted as Junior Engineer, Water Resources Department, Flood Control Division, Naugachhia, District - Bhagalpur.
 11. Yugal Kishore Prasad son of Late Ram Karan Prasad Resident of Mitra Mandal Colony, Sector - D, P.O. Anishabad, P.S. Phulwarisharif, District - Patna, presently posted as Junior Engineer, Water Resources Department, Canal Division - 1, Anishabad, Patna.
 12. Ramashish Amar son of Late Raja Ram Yadav Resident of village - Navtol, P.O. Dhanauja, P.S. Phulparas, District - Madhubani, presently posted as Junior Engineer, Water Resources Department, Research and Training Division - 1, Khagaul, Patna.
 13. Ashok Kumar Purbey son of Late Janardan Purbey Resident of village and P.O. Babhangama, P.S. Bihariganj, District - Madhepura, presently posted as Junior Engineer, Water Resources Department, Hydrology Division - 2, Anishabad, Patna.
 14. Ajit Kumar Dubey son of Sri Janeshwar Dubey Resident of House No. 1, Vishwamitra Marg, North S.K. Puri, P.O. Patliputra, P.S. Sri Krishnapuri, District - Patna, presently posted as Junior Engineer, Ganga Sone Flood Protection Division, Digha, Patna Junior Engineer, Ganga Sone Flood Protection Division, Digha, Patna.
 15. Pramod Jha son of Late Deo Nath Jha Resident of village and P.O. Narendrapur, P.S. Andhramath, District - Madhubani, presently posted as Junior Engineer, Water Resources Department, Sone High Level Canal Division, Aurangabad.
 16. Arun Kumar Singh son of Late Shivdhari Singh Resident of village - Fagu Tola, P.O. Kopwa, District - Buxar, presently posted as Junior Engineer, Local Area Engineering Organization, Work Division - 1, Sasaram, District -



Rohtas.

17. Arun Kumar Singh son of Late Raghulal Singh Resident of Flat No. A/31, Capital Residency Apartment, Sri Nath Nagar, P.O. Ashiana Nagar, P.S. Rajiv Nagar, District - Patna, presently posted as Junior Engineer, Water Resources Department, Ganga Sone Flood Protection Division, Digha, Patna.
18. Manoj Kumar Srivastava son of Late Paras Nath Srivastava Resident of village - Sitalpura, P.O. Langarpura, P.S. Mairwa, District - Siwan, presently posted as Junior Engineer, Water Resources Department, Sone Floor Protection Division, Khagaul, Patna.
19. Krishna Prasad son of Late Somari Mahto Resident of village and P.O. Ajaipur, P.S. Noorsarai, District - Nalanda, Junior Engineer, Water Resources Department, Sone Flood Protection Division, Khagaul, Patna.
20. Satya Narayan Singh son of Late Baijnath Singh Resident of village - Chargoria, P.O. Marojhia, P.S. Nasariganj, District - Rohtas at Sasaram, presently posted as Junior Engineer, Water Resources Department, Hydrology Division - 1, Anishabad, Patna.
21. Bhullan Yadav son of Sri Binnar Yadav Resident of village and P.O. Aswaniya, P.S. Bardah, District - Azamgarh U.P., presently posted as Junior Engineer, Local Engineering Organization, Works Division, Buxar.
22. Sunil Kumar Sinha son of Late Rajnandan Sinha Resident of Mohalla - Sipara, Near Gandhi Murti, P.O. Dhelwan, P.S. Beur, District - Patna, presently posted as Junior Engineer, Water Resources Department, Flood Control Drainage Division, Lalganj, District - Vaishali.
23. Rajendra Kumar Singh son of Sri Ramashish Singh Resident of village and P.O. - Baraon, P.S. Nokha, District - Rohtas at Sasaram, presently posted as Junior Engineer, Water Resources Department, Flood Control Division, Naugachia, District - Bhagalpur.
24. Dadan Tripathi son of Late Ramji Tripathi Resident of village - Amahi Mishra, P.O. Jigna Dubey, P.S. Bhore, District - Gopalganj, presently posted as Junior Engineer, Water Resources Department, Irrigation Division, Bhagalpur.
25. Sushil Kumar Roy son of Late Jagdish Roy Resident of Mohalla - Bhauara Goa Pokhar, P.O. Bhauara, P.S. Madhubani, District - Madhubani, presently posted as Junior Engineer, Water Resources Department, Tirhut Canal Division, Ratwara, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Water Resources Department, Government of Bihar, Patna.
4. The Under Secretary Prabandhan, Water Resources Department, Government of Bihar, Patna.



5. The Principal Secretary, Finance Department, Government of Bihar, Patna.
6. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
7. The Additional Secretary, Finance Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 8146 of 2020)

For the Petitioner/s : Mr. Shashi Bhushan Kumar Manglam, Advocate

For the Respondent/s : Mr. Harish Kumar, GP-8

(In Civil Writ Jurisdiction Case No. 411 of 2018)

For the Petitioner/s : Ms. Anita Kumari, Advocate

For the Respondent/s : Mr. Anjani Kumar-AAG-4

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

Date : 22-11-2021

Heard the learned counsels for the parties.

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

“(I) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the letter dated 31.01.2020 issued under the signature of the Respondent no. 3 and contained in his letter no. 310 dated 31.01.2020 which was forwarded to the petitioner by the Respondent no. 7 vide his letter no. 31 dated 13.02.2020 whereby and where under direction has been issued for recovery of excess amount paid to the petitioner after fixation of his salary on grant of benefits of second Modified Assured Career Progression (hereinafter referred to as MACP).

(II) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the letter dated 18.02.2020 issued under the signature of the Respondent no. 7 and contained in his letter no. 35 dated 18.02.2020 whereby and where under the Respondent no. 7 has been pleased to direct for recovery of a sum of Rs. 7,23,956/- from the total amount of unutilized leave payable to the petitioner.

(III) For issuance of an appropriate writ



in the nature of **CERTIORARI** for quashing the order dated 11.11.2019 issued under the signature of the Respondent no. 7 and contained in his letter no. 243 dated 11.11.2019 whereby and where under he has been pleased to direct for stay of previous order dated 20.01.2018 whereby he had stayed any further recovery from salary of the petitioner.

(IV) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Authorities for payment of all the retirement benefits of the petitioner without any recovery as directed by the impugned order in view of the law laid down by the Hon'ble Supreme Court in the case of State of Punjab Vs. Rafique Masih (Washerman).

(V) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.”

3. One of the contention in support of the aforesaid prayer is that the petitioners have not been provided notice or opportunity of hearing before re-fixation of pay and recovery. Therefore, the impugned communications are treated as a show cause notice to the respective petitioners. The petitioners are hereby directed to file their reply/explanation to the impugned show cause notice within a period of eight weeks from today. On receipt of petitioners' explanation to the show cause notice, the competent authority is hereby directed to pass a speaking order considering each of the contention to be raised by the petitioners in their explanations. Such final order be communicated to the petitioners within three months from the



date of explanation.

4. At this juncture, learned counsel for the petitioners submits that one of the petitioner has attained the age of superannuation and retired from service. His retiral benefits has not been settled. In this regard, he is permitted to present necessary representation within a period of eight weeks from the date of receipt of this order. Such representation shall be considered within a period of three months from the date of filing of representation by the concerned petitioner. Till passing of final order by the competent authority, recovery shall not be made.

5. With aforesaid observations, the instant writ petitions stand disposed of. Impugned orders are treated as show cause notice to the concerned petitioners.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.11.2021
Transmission Date	

