

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.431 of 2021

In

Civil Writ Jurisdiction Case No.6910 of 2020

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1. Surendra Mandal son of Late Nunulal Mandal, Resident of Village-Isarain Kalan, Ward No.-3, P.S.-Kumarkhand, District-Madhepura.
 2. Narayan Prasad Yadav, Son of Indeshwari Prasad Yadav, Resident of Village-Korlaha Tola, P.S.-Salkhua, District-Saharsa.
 3. Bikram Thakur, Son of Saryug Thakur, Resident of Village-Bilashpur, P.S.-Raxaul, District-East Champaran.
 4. Bhola Prasad Yadav, son of Rambrit Yadav, Resident of Village-Tadpadh, P.S.-Dipnagar, District-Nalanda.
 5. Ramdhani Sah, Son of Chedi Sah, Resident of Village-Pokharia Sungtia, P.S.-Gopalpur, District-Bhagalpur.
 6. Md. Mustafa Khan, Son of Diwan Jamiluddin Khan, Resident of Village Noghara, P.S.-Chainpur, District-Kaimur.
 7. Arun Kumar, Son of Basudev Prasad Yadav, Resident of Village-Manikpur, P.S. and District-Madhepura.
 8. Birendra Kumar Singh, Son of Kedra Prasad Singh, Resident of Village-Karjan, P.S.-Athmalgola, District-Patna.
 9. Pramod Kumar Yadav, Son of Matvar Yadav, Resident of Village-Balahu, P.S. Darauhi, District-Siwan.
 10. Nirranjan Prasad, Son of Rajdev Ram, Resident of Village-Afzalpur Tola, Mubarakpur, P.S. and District-Jehanabad.
 11. Ramchandra Yadav, Son of Mishrilal Yadav, Resident of Village-Khadipur, Sattar Panchgachiya, P.S.-Bihra, District-Saharsa.
 12. Pramod Kumar Singh, Son of Jatadhari Singh, Resident of Village-Parsawa, Karhata, P.S. and District-Gaya.
 13. Anil Kumar, Son of Anandi Singh, Resident of Village-Sahokhar, Saraia, P.S.-Sohsarai, District-Nalanda.
 14. Manoj Kumar, son of Lalan Singh, Resident of Garhi Rampur, P.S.-Garhi Rampur, District-Munger.
 15. Ashok Kumar Singh, son of Ramdev Singh, Resident of Village-Rajkrishnanagar, Khuthari, P.S.-Kahalgaon, District-Bhagalpur.
 16. Suresh Prasad Yadav, Son of Gulab Prasad Yadav, Resident of Village-Bhaiarpur, P.S. Kumarkhand, District-Madhepura.
 17. Md. Sanif Uddin, Son of Late Md. Oumar Uddin, Resident of Village-Salimpur, Sutturkhana, P.S. Muffasil, District-Munger.
 18. Mahesh Sharma, Son of Mithla Sharma, Resident of Village-Anandpur, P.S. Bihta, District-Patna.
 19. Shiv Chandra Paswan, Son of Devi Paswan, Resident of Village-Chakibrahim, P.S. Bidupur, District-Vaishali.
 20. Dubraj Banra, Son of Soma Banra, Resident of Village-Tilopada, P.S.-



Kharsawa, District-Saraikela Jharkhand.

21. Raj Kumar Paswan, son of Late Shaho Paswan, Resident of Village-Jhamtapar jana, P.s. and District-Nalanda.
22. Bir Singh Tiu, Son of Kundiya Tiu, Resident of Village-Nakahasa kanki, P.S.-Chaibas, District-West Singhbhum, Jharkhand.
23. Subodh Kumar, Son of Late Chandeshwar Singh, Resident of Village-Piariya, P.s. Gaurichak, District-Patna.
24. Lakshman Prasad Yadav, Son of Late Dukhi Prasad Yadav, Resident of Village-Gadhiya, P.S. Bangaon, District-Saharsa.
25. Bharat Prasad Yadav, Son of Baliram Yadav, Resident of Village-Banahin, P.S.-Banahin, District-Bhojpur.
26. Radheshyam Ray, son of Ramaashre Ray, Resident of Village-Bhagvanpur Vaini, P.S. Tajpur, District-Samastipur.
27. Nakul Kumar Rai, Son of Vashisth Rai, Resident of Village-Kalodehari, P.S. Chauri, District-Bhojpur.
28. Madhusudan Sharma, son of Sajjandhari Singh, Resident of Village-Ijarata, P.S.-Paliganj, District-Patna.
29. Suresh Kumar Mishra, Son of Umakant Mishra, Resident of Village Dhurlakh, P.S.-Samastipur Muffasil, District-Samastipur.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Govt. of Bihar, Patna.
2. The Director General of Police, Patel Bhawan, Bailey Road, Patna, Bihar.
3. The Director General, Bihar Military Police, Patel Bhawan, Bailey Road, Patna, Bihar-cum-Chairman of the Committee.
4. The Inspector General of Police, Budget/Appeal/Welfare, Bihar, Patna.
5. The Inspector General of Police (Head Quarter), Patel Bhawan, Bailey Road, Patna, Bihar.
6. The Deputy Inspector General of Police, Bihar Military Police, Central Range, Patna.
7. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
8. The Commandant, Bihar Military Police-12, Saharsa, IRB-2 Camp, Katihar.
9. Md. Haidar Ali, son of Md. Abdul Gaffar, Resident of Village-Phensaha, Ghordaur, P.S. Salkhua, District-Saharsa.
10. Vijay Kumar Kisku, son of Shaligram Kisku, Resident of Village-Pipradih, P.S. Belha, District Banka.
11. Simon Soreng, son of Famcis Soreng, Resident of Village-Tukupani Gurgurchuan, P.s. Tupudega, District-Simdega.
12. Venkatesh Kumar, son of Mukeshwar Singh, Resident of Village-



Raghunathpur, P.S. Khiri More, District-Patna.

13. Shambhu Kumar Gupta, Son of Jaynarayan Gupta, Resident of Jayprakash Nagar, Ward No. -6, P.S. and District Madhepura.
14. Shyam Kumar Chhetry, son of Late Nandraj Singh, Resident of Village-Bishardah, P.S. Mithanpura, District Muzaffarpur.
15. Nand Kumar Singh, son of Mahanand Singh, Resident of Village Mirganj Chatar, P.S.-Babhangawan, District-Bhojpur.
16. Rama Shankar Mishra, son of Raghu Nandan Mishra, Resident of Village Kabela, P.S.-Parbata, District-Khagaria.
17. Brahamdeo Paswan, sonof Siglas Paswan, Resident of Village-Raiyam, P.S. Jhanjharpur, District-Madhubani.
18. Bigu Singh Yadav, son of Hardev Singh Yadav, Resident of Village-Bhokhri, P.S. Mohania, District-Kaimur.
19. Suresh Bhagat, Son of Sukhdeo Bhagat, Resident of Village-Pakauli, P.S. Hajipur, District-Vaishali.
20. Kaptan Singh Yadav, son of Shivmuni Singh Yadav, Resident of Village-Sherpur, P.S. Mohammadabad, District-Ghazipur, U.P.
21. Maldev Singh, son of Amiraka Singh, Resident of Village-Chando, P.S. Chainpur, District-Palamu, Jharkhand.
22. Janmejaya Pandey, Son of Chandrama Pandey, Resident of Village Mohaniya Shiusagar, P.S.-Shivsagar, District Rohtas.
23. Krishna Kumar Singh, son of Awadhesh Singh, Resident of Village-Alawalpur, P.S.-Gaurichak, District-Patna.

... ... Respondent/s

Appearance :

For the Appellant/s : Mr. Abhay Shankar Singh, Advocate
For the State : Mr. Saroj Kumar Sharma, AC to AAG 3

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 18-10-2022

In the instant appeal, appellants have assailed the order of the learned Single Judge dated 16.04.2021 passed in C.W.J.C. No. 6910 of 2020.



2. Short question for consideration is whether L.P.A. Bench could interfere with the order of the learned Single Judge to the following effect:

“the benefit of second A.C.P. granted to the petitioners may be recovered by the respondents in easy installments.”

3. Learned counsel for the appellants submitted that the appellants are not on merits insofar as entitlement of first and second A.C.P. is concerned. They are concerned only in respect of recovery of certain amount pursuant to grant to second A.C.P. It is submitted that Apex Court in the case of *State of Panjab and Others vs. Rafiq Masih (White Washer) and Others* reported in **2015 (1) PLJR (SC) 261** in paragraph No. 12, it is held that recovery is impermissible. He has also relied on Apex Court's decision in the case of *Thomas Denial vs. State of Kerala and Others*, **2022 Live Law (SC) 438** decided on 02.05.2022.

4. Per contra, learned counsel for the respondents resisted the aforesaid contentions and submitted that illegal monetary benefit which have been extended to the appellants, therefore rightly the learned Single Judge has ordered for recovery. He has also cited Apex Court decisions namely *High Court of Punjab and Haryana vs. Jagdev Singh* reported in **(2016) 4 PLJR (SC)**



78 and *Syed Abdul Qadir and others vs. State of Bihar and others* reported in (2009) 3 SCC 475.

5. Question for consideration is whether recovery could be ordered by the learned Single Judge in respect of illegally granted second A.C.P. to the appellants or not? Extract of the order of learned Single Judge reads as under:

“In the result, these writ applications are partly allowed to the extent that so far as benefit of first ACP is concerned, benefit of first ACP should be reduced but there shall not be any recovery of amount paid to the petitioners. The benefit of second ACP granted to the petitioners may be recovered by the respondents in easy installments and the respondents are directed to fix entitlement of the petitioners in the first ACP and second ACP as constable and not literate constable in the pay scale of Havildar and ASI from the respective date of their entitlements. Corrective measures may be taken by the respondents at the earliest preferably within a period of three months from the date of receipt /production of a copy of this judgment.

With the aforesaid, all these writ applications are partly allowed and disposed of in the manner indicated above.”

Underline Supplied

6. The appellants’ contention is that illegal benefit extended to the appellants cannot be ordered to be recovered in the light of the Apex Court’s decisions in *State of Panjab and Others vs.*



Rafiq Masih (White Washer) and Others reported in **2015 (1) PLJR (SC) 261** and ***Thomas Denial vs. State of Kerala and Others***, **2022 Live Law (SC) 438**. Paragraph No. 12 of the ***State of Panjab and Others vs. Rafiq Masih (White Washer) and Others*** reported in **2015 (1) PLJR (SC) 261** reads as under:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even



though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

7. Even, the latest decision in the case of ***Thomas Denial vs. State of Kerala and Others***, 2022 Live Law (SC) 438, Apex Court has held that recovery cannot be ordered. Learned counsel for the respondents cited decisions namely ***High Court of Punjab and Haryana vs. Jagdev Singh*** reported in (2016) 4 PLJR (SC) 78 and ***Syed Abdul Qadir and others vs. State of Bihar and others*** reported in (2009) 3 SCC 475, the same are not attracted in the present case. In the light of decision passed in L.P.A. No. 270 of 2021 wherein we have considered: (i) ***High Court of Punjab & Haryana Vs. Jagdev Singh*** reported in 2016 (4) PLJR (SC) 78 (ii) ***Chandi Prasad Uniyal and Others vs. State of Uttrakhand and Others*** reported in 2012(8) SCC417 (iii) ***Union of India Vs. Sri Bijoy Kumar*** reported in 2022 (1) PLJR (182) with reference to ***Thomas Denial's*** case cited *supra*. In view of these facts and circumstances, the learned Single Judge has committed error in ordering recovery in easy installments while re-assigning first and



second A.C.P. to the appellant. If any amount is already recovered from the appellant during the pendency of the litigation, same shall be refunded to the concerned appellant within a period of two months from the date of receipt of this order.

8. Accordingly, L.P.A. is allowed in part.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	20.10.2022
Transmission Date	

