

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 17248 of 2018

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Ramesh Thakur S/o Late Bhup Narain Thakur, Resident of Village-
Kharagpur, P.S.- Desari, District- Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Finance,
Government of Bihar, Patna
2. The Additional Secretary, Department of Water Resources, Government of
Bihar, Patna.
3. The Engineer-in-Chief (Headquarter), Department of Water Resources,
Bihar, Patna.
4. The Accountant General (A and E), Bihar, Patna.
5. The Treasury Officer, Secretariat Treasury, Sichai Bhawan, Bailey Road,
Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Suneil Kumar Thakur, Advocate

For the S t a t e : Mr Anjani Kumar, AC to AAG IV

For Accountant General : Mr Arun Kumar Arun, Advocate

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 11-07-2022

Heard learned counsel for the petitioner and the
respondents.

2 The petitioner was granted scale of Rs 5,500 – 9,000/-
with effect from 20.12.2000 as benefit of first Assured Career



Progression (for brevity, *ACP*). The same is sought to be withdrawn by the impugned Office Order dated 10.07.2018 by assigning a reason that in view of the Finance Department Circular dated 04.08.2016 bearing Memo No 6200, the petitioner's entitlement has been modified and instead of the pay scale of Rs 5,500 – 9,000/-, he has been placed in the pay scale of Rs 4,500 – 7,000/- with effect from 20.12.2000. The impugned office order also directs for recovery of the financial benefits which now appear to be excess in view of the re-fixation.

3 The petitioner is a Clerk and reliance is placed on a decision in the case of *State of Punjab & Others -Versus- Rafiq Masih (White Washer) & Others*, since reported in (2015) 4 *Supreme Court Cases* 334 wherein the Apex Court has postulated all situations of hardship which would govern employees on the issue of recovery where payments have mistakenly been made by the employer and sought to be rectified after a long time.

4 In the instant case, the ACP, granted to the petitioner with effect from 20.12.2000, is sought to be recovered 18 years later, as if all along the petitioner has kept the said amount aside waiting for the authorities to realize that excess was paid, and thereafter proceed to recover the same. The facts are glaring and if recovery is permitted, the same would cause severe hardship to the



petitioner, in light of the decision in the case of *Rafiq Masih (White Washer) (supra)*. The Apex Court has laid down that recovery would be impermissible in certain circumstances of hardship, which read as follows:

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

(ii) Recovery from the retired employees, or the 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.”

5 This Court is inclined to set aside the Office Order dated 10.07.2018, in so far as it directs recovery from the petitioner. To that limited extent, the Office Order dated 10.07.2018 is quashed.



6 The petitioner shall not be subjected to recovery on account of the Office Order dated 10.07.2018.

7 However, for the purposes of fixation, the same shall stand.

8 Writ petition stands allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.07.2022
Transmission Date	NA

