IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.698 of 2021

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Surendra Kumar Pandey Son of Late Dharamdeo Panday Resident of Mohalla- Surbhi Bihar, Post- Dhelwan, P.S.- Ram Krishna Nagar, District- Patna, Bihar- 800020.

... ... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary to the Government, P.H.E.D., Bihar, Patna, Visheshwaraiya Bhavan, Bailey Road, Patna.
2. The Engineer-in- Chief-cum Special Secretary, Public Health Engineering Department, Visheshwaraiya Bhavan, Bailey Road, Patna.
3. The Chief Engineer, (Mechanical), P.H.E.D., Bihar, Patna, Bisheshwaraiya Bhavan, Bailey Road, Patna.
4. The Superintending Engineer, P.H. Mechanical Circle, Vetenary College, Patna, District- Patna.
5. The Executive Engineer, Public Health Mechanical Division, Vetenary College, Patna.
6. The Accountant General, Bihar, Veerchand Patel Marg, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Lalan Kumar Singh, Advocate.
For the Respondent/s	:	Mr. S. Raza Ahmad, AAG-5 with
		Mr. Vishambhar Prasad, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 06-12-2022

Heard Mr. Lalan Kumar Singh, learned counsel for the petitioner and Mr. Vishambhar Prasad, learned AC to AAG-5 for the State.

The present writ petition has been filed seeking a direction upon the respondents to ensure the payment of pension, Gratuity, and all other retiral benefits along with other consequential benefits of service as has been granted to other similarly situated persons.

It is submitted that the petitioner was duly appointed as daily wager as Class IV grade on 24.05.1981. On the decision of the Departmental Establishment Committed held on 11.12.1987, the service of the petitioner was absorbed in regular establishment under the pay scale of Rs. 350-425/- with all admissible allowance in the work charge establishment and continued on the sanction post. It is next submitted that after serving more than 22 years of satisfactory service, all of a sudden the absorption of the service of the petitioner had been converted, which was assailed by the petitioner along with other similarly situated employees by filing CWJC no. 19195 of 2011 and the Hon'ble Court vide its order dated 12.04.2012 has been pleased to direct the respondents to consider the earlier services of the petitioner for the purposes of counting the benefit of ACP. It is further submitted that earlier services rendered by the petitioner under the work charge establishment has been counted for the purposes of ACP and the benefit of financial progression under the ACP/MACP and the pension was accorded. The petitioner superannuated on 31.05.2020, however, when the retiral benefits have not been allowed to the petitioner, he left with no option but to approach this court by filing the present writ application.

During the pendency of the present writ application the respondent authorities came out with letter contained in memo no. 480 dated 15.03.2021, memo no. 445 dated 12.03.2021 and letter dated 18.02.2021 whereby a huge amount of recovery has been made from the retiral benefits of the petitioner, total amounting to Rs. 6,34,787/-, which is brought on record by way of annexure 7 series to the Interlocutory Application. The aforesaid orders of recovery has been challenged by filing I.A. No. 1 of 2021 and the same stands allowed, vide order of this Court dated 16.08.2021.

It is further contended on behalf of the learned counsel for the petitioner that admittedly the petitioner is a Class IV employee, who superannuated on 31.05.2020 and prior to the issuance of the order of recovery at no point of time any show cause notice or any opportunity of hearing has been afforded to him.

He next submits that the impugned order of recovery is a unilateral decision without following the principles of natural justice. Reliance has also been made upon the judgement of the

Apex Court rendered in the case of ***State of Punjab & Ors. Vs Rafiq Masih (White Washer) & Ors. 2015 (4) SCC 334.***

On the other hand, learned counsel for the State while confronting the submissions made on behalf of the learned counsel for the petitioner submits that the circular on the basis of which the service benefit/pay fixation was granted to the petitioner was not applicable in the case of petitioner as the same is meant for the employees who were appointed in the regular establishment in the year 1995. It is further submitted that the matter with regard to the fixation of the pension also went to the Finance Department and pursuant to the order passed by the Finance Department, the impugned order of recovery has been passed as the petitioner has been paid in excess to the amount for which he was entitled

Having heard the learned counsels for the parties and considering the materials available on record, it is relevant to observe that time without number, the Apex Court in catena of judgments has held that if excess amount was not paid on account of any misrepresentation or fraud on the part of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, no recovery can be made in such a situation.

The issue involved in the present writ application had been considered by the Apex Court in various cases and one of the important judgment rendered by the Apex Court in the case of ***Syed Abdul Qadir Vs. The State of Bihar & Ors.,*** *reported in* ***(2009) 3 SCC 475***, would be relevant for consideration of the issue involved in the present case. For proper appreciation of the issue, it would be proper to quote paragraph 27 and 28 of the judgment.

> 27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts

may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99.

28. Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the

> beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made."

Further, the Apex Court having taken note of various judgments in this point. In the case of ***State of Punjab and Ors. Vs. Rafiq Masih (White Washer) & Ors.*** reported in ***(2015) 4 SCC 334*** has been pleased to postulate certain situations and hardships governing the employees on the issue of recovery, where payments have mistakenly been made by the employer in excess of their entitlement. For the proper appreciation, para 10 and 18 of the said judgment are quoted, herein below.

> "10. In view of the aforestated constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise

of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

18. 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 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."

Further it would not be out of place to observe that principles of natural justice require an administrative authority to record reasons. Generally, principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. The application of principles of natural justice, and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory provisions. Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. Reliance may be taken on the judgment rendered by the Hon'ble Supreme Court in the case of **Union of India & Ors vs E.G. Nambudiri**, reported in, **AIR 1991 SC 1216**.

It is well settled that any adverse order causing adverse consequences in respect of person cannot be passed without affording any opportunity of hearing to the person concern. It is cardinal principle of administrative law that any order prejudicialy affects the right of a person must be in consonance with the principles of natural justice admittedly before passing the impugned order at no point of time any show cause notice or opportunity of hearing has been given to the petitioner. Apart from the aforesaid aspect, it is also admitted fact that the issue involved in the present writ application has already been considered by catena of judgement passed by this court as no recovery is permissible from the Class III or Class IV employees in certain situations of hardships as discussed by the Apex Court and especially when it is not the case of the respondent that any misrepresentation and fraud has committed on the part of the employees concerned. It is also not the case of the respondent that at any point of time the petitioner was instrumental in fixation of the pay scale and moreover, the fixation was made way back in the year 2017 itself that too in the light of the order of this Court.

Considering the settled legal proposition, this court finds substance in the submission of the writ petitioner and as such the impugned orders as contained in memo no. 480 dated 15.03.2021, memo no. 445 dated 12.03.2021 and letter dated 18.02.2021 are hereby set aside. The respondent authorities are directed to ensure all the retiral benefits of the petitioner preferably within a period of eight weeks from the date of receipt/production of a copy of this order, failing which the petitioner would be entitled to 8% interest over the due amount till the actual payment is made.

(Harish Kumar, J)

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