

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.160 of 2022

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Bijay Kumar Singh Son of Late Ambika Prasad Singh Resident of Flat No. 301, Kamla Apartment, Vishweshwaraiya Nagar, West of Nahar, Bailey Road, P.S.- Rupaspur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through its Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Secretary, Public Health Engineering Department, Government of Bihar, Patna.
4. The Special Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
5. The Joint Secretary, Public Health Engineering Department, Government of Bihar, Patna.
6. The Bihar Urban Infrastructure and Development Corporation Ltd. through its Managing Director.
7. The Regional Chief Engineer, Public Health Engineering Department, Patna Zone, Patna.
8. The Treasury Officer, Gaya, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Brisketu Sharan Pandey
For the Respondent/s : Mr.Kinkar Kumar (Sc9)
Mr. Yogesh Kumar, AC to SC-9

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

Date : 08-02-2022

The matter is heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. In the instant petition, petitioner has prayed for following reliefs:

“1. That the petitioner seeks to invoke the extra ordinary writ jurisdiction of this Hon’ble Court under Article 226 of the Constitution of India for the following relief(s):-



A) For issuing writ of certiorari and thereby quashing office order dated 10.12.2021 issued by Respondent No. 7, i.e. Chief Engineer, Public Health Engineering Department, Patna Zone, Patna whereby and whereunder direction for recovery of Rs. 5,96,359/- (Rupees Five Lakhs Ninety Six Thousand Three Hundred Fifty Nine Only) and Rs. 54,685/- (Rupees Fifty Four Thousand Six Hundred Eighty Five Only) has been directed against the petitioner on the pretext that owing to clerical mistake the petitioner has wrongly been granted arrears of revised 1st ACP and arrears towards the deputation at Patna pursuant to approval order dated 13.11.2021 and 19.11.2021 respectively.

B) For issuing writ of mandamus directing the respondents to pay the petitioner remaining arrears of revised 1st ACP and arrears towards the deputation at Patna which has not been granted to the petitioner till date.

C) For issuing writ of mandamus directing the Respondents not to recover and give effect to order dated 10.12.2021 issued by Respondent No. 7, i.e. Chief Engineer, Public Health Engineering Department, Patna whereby and whereunder direction for recovery of Rs. 5,96,359/- (Rupees Five Lakhs Ninety Six Thousand Three Hundred Fifty Nine Only) and Rs. 54,685/- (Rupees Fifty Four Thousand Six Hundred Eighty Five Only) has been directed against the petitioner on the pretext that owing to clerical mistake the petitioner has wrongly been granted arrears of revised 1st ACP and arrears towards the deputation at Patna pursuant to approval order dated 13.11.2021 and 19.11.2021 respectively.

D) For issuing writ of mandamus directing the Respondents to bring on record the entire proceedings and the file in relation to the decision making process for arriving at decision and issuance of impugned order dated 10.12.2021 whereby and whereunder direction for recovery of Rs. 5,96,359/- (Rupees Five Lakhs Ninety Six Thousand



Three Hundred Fifty Nine Only) and Rs. 54,685/- (Rupees Fifty Four Thousand Six Hundred Eighty Five Only) has been directed against the petitioner on the pretext that owing to clerical mistake the petitioner has wrongly been granted arrears of revised 1st ACP and arrears towards the deputation at Patna pursuant to approval order dated 13.11.2021 and 19.11.2021 respectively.

E) For holding that it is illegal on part of the Respondent No. 7 to have issued the impugned order dated 10.12.2021 (Annexure-P/1) a couple of months before the retirement of the petitioner.

F) The Hon'ble Court may pass any other order/orders which it may deem fit in the facts and circumstances of the case and within the ends of equity, justice and good conscience.”

3. Petitioner has also filed Interlocutory Application No. 1 of 2022 questioning the consequential order dated 29.12.2021 (Annexure-P/7). Perusal of Annexure-P/1 it is evident that no notice has been ordered before re-fixation of pay and order of recovery on the score that ACP benefit has been extended to the petitioner inadvertently/wrongly.

4. Whenever any order is passed by a competent authority if it has civil consequences like affecting service or monetary benefit, in that event it is mandatory to issue show cause notice and seeking explanation of the concerned person. Petitioner has not been provided opportunity of furnishing explanation for re-fixation of pay and recovery with reference to ACP benefit. Thus, petitioner has made out a *prima facie* case so as to interfere with the Annexure- P/1 and P/7 series dated 10.12.2021 and 29.12.2021



respectively. Accordingly, they are treated as show cause notice to the petitioner. In the meanwhile, official respondents are hereby directed to not to give effect to recovery pursuant to Annexure- P/1 and P/7 till process of explanation to be submitted by the petitioner. On receipt of such explanation, competent authority is hereby directed to pass speaking order after due consideration of each of the contention to be raised by the petitioner in his explanation.

5. Petitioner is hereby directed to furnish his explanation to Annexure- P/1 and P/7 series with any material information that extending ACP benefit to him is in order with reference to his service particulars read with the ACP Rules/Criteria within a period of one month from today.

6. With these material information, the competent authority is hereby directed to proceed to pass speaking order within a period of three months from the date of receipt of petitioner’s explanation.

7. With the aforesaid observations, the instant petition stands disposed of.

(P. B. Bajanthri, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

