

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1443 of 2020

1. Ramchandra Singh Son of Late Ram Balak Singh Resident of Vuillage-Sousa, Police Station-Hisua, District-Nawada.
2. Ashwani Kumar Son of Late Lakhan Prasad Resident of Village-Deobigha, Police Station-Bena, District-Nalanda.
3. Umesh Kumar Sinha Son of Late Basant Prasad Sinha Resident of Village-Chandara Police Station-Kako District-Jehanabad.
4. Md. Anwar Son of Late Md. Abdul Majeed Resident of Village-Shoswari, Police Station-Bakhtiarpur, District-Patna.
5. Akhileshwar Prasad Singh @ Akhilesh Prasad Singh Son of Late Ram Swaroop Singh Resident of Village- Parthu, Police Station-Pipra Punpun, District-Patna.
6. Jai Prakash Singh Son of Sheogovind Singh Resident of Village- Debibigha, Police Station-Daudnagar, District-Aurangabad.
7. Mahesh Prasad Son of Late Bhola Prasad Resident of Village-Teghra, Police Station-Bihia District-Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal secretary, Public Health Engineering Department, Governement of Bihar, Patna.
2. The Engineer-in-Chief Cum Special Secretary, Public Health Engineering Department, Governemnt of Bihar, Patna
3. The Chief Engineer (Mechanical) Public Health Engineering Department, Government of Bihar, Patna.
4. The Executive Engineer, Public Health Engineering Division, Patna East Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Gyanand Roy, Advocate
For the Respondent/s : None.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

7 14-09-2023 Heard Mr. Gyanand Roy, learned Counsel for the
petitioners. The State is unrepresented.

2. The present petition has been preferred for the
following reliefs:-



(i) for quashing the impugned Office Order Nos. 141, 142, 143, 144, 145, 147 and 148 all dated 14/12/2019 passed by the Executive Engineer, Public Health Engineering Division, Patna by which the pay of the petitioners have been reduced drastically without giving any notice and opportunity of hearing to them and further fixation of their pay has wrongly and illegally been made with effect from 20/6/2014, ignoring their past service and earlier and fixations of pay time to time made and approved by the District Accounts Officer, Patna.

(ii) for holding that the impugned orders of reduction in the pay of petitioners are fit to be quashed because the order has been passed in complete violation of the principles of Natural Justice as no notice or opportunity of hearing has been provided to the petitioners before passing of the impugned orders dated 14/12/2019 as contained in Annexure- P/1 series and the said orders have visited the petitioners with evil and civil consequences.

3. It is the case of the petitioners that their journey with the Public Health Engineering Department (henceforth for short 'the Department') started in the year 1988 when they were



taken in, went out, again taken in, went out and finally pursuant to the last decision of the Government, vide memo no. 899 dated 20.06.2014 issued by the Principal Secretary, they were absorbed on the post they were working.

4. Subsequently, five years later, the orders in question were issued under the signature of the respondent no. 4, the Executive Engineer, Public Health Engineering Division, Patna East, Patna by which their pay scale was reduced and direction given to realize the excess amount paid. This according to learned Counsel for the petitioners was/were done without any notice at any point of time.

5. It is his submission that the same is directly in teeth of the order of the Hon'ble Apex Court in the case of **State of Punjab and Ors. vs Rafiq Masih and Ors.** reported in (2015) 4 SCC 334.

6. A perusal of paragraph 18 of the said judgment read as follows:-

“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 hereinabove, we may, as a ready reference,



summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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.”

7. Though, the State is unrepresented, a counter affidavit is on record detailing out the fact that they were absorbed on 20.06.2014 and later it came to light that they have



been paid excess amount, order in question was passed.

8. However, there is no answer to the statement of the petitioners that the order was passed behind their back and further whether they being Class IV employee, in the light of the Hon'ble Apex Court order in State of Punjab and Ors. vs Rafiq Masih (supra) the respondents could have realized the amount.

9. In view of the said categorical un rebutted statement of the petitioners, the decision has presently been taken by the Executive Engineer; to have uniformity in the case, as number of such persons may have been inducted pursuant to the order passed on 20.06.2014 and will be ultimately affected, it would be appropriate that the case is finally decided at the highest level by the Principal Secretary of 'the Department'.

10. In that background, the petitioners shall be filing representation before the respondent no. 1, the Principal Secretary of 'the said Department' individually/jointly within a period of four weeks from today.

11. If such representation is/are filed, respondent no. 2 shall take up the matter and pass a reasoned order under his own signature within a period of three months from the date of receipt of the copy of the representation.

12. The decision so taken must discuss the points



mentioned by the Hon'ble Apex Court in the State of Punjab & Ors. Vs Rafiq Masih (supra), as incorporated in the present order summarizing the situations under which recovery has been held to be impermissible.

13. Till a decision is taken by the Principal Secretary, so far as the order numbers 141, 142, 143, 144, 145, 147 and 148 dated 14.12.2019 (Annexure - P/1 series) passed by the Executive Engineer, Public Health Engineering Division, Patna as also any consequential orders is/are concerned, status quo as existing today shall be maintained.

14. The writ petition stands disposed of with the aforesaid observations.

(Rajiv Roy, J)

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