

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6616 of 2020

Harendra Prasad Singh Son of Late Jayram Singh Resident of Village
Rasulpur, Post Office Jaitipur, Police Station Lalganj, District Vaishali at
Hazipur.

... .. Petitioner/s

Versus

1. The State of Bihar Through its Principal Secretary, Public Health Engineering Department, Visheshwaraiya Bhawan, Bailey Road, Patna.
2. The Chief Engineer Mechanical, Public Health Engineering Department, Visheshwaraiya Bhawan, Bailey Road, Patna.
3. The Superintending Engineer Public Health Mechanical Circle, Muzaffarpur.
4. The Executive Engineer Public Health Mechanical Division, Muzaffarpur.
5. The Accountant General Bihar, Patna, Veerchand Patel Marg, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Lalan Kumar Singh, Advocate.
For the State : Mr. U. P. Singh, AC to SC-4.
For the Accountant General: Mr. Vivekanand Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 19-06-2023

Heard Mr. Lalan Kumar Singh, learned counsel
appearing on behalf of the petitioner, Mr. U.P. Singh, learned
AC to SC-4 for the State and Mr. Vivekanand Kumar, learned
counsel for the Accountant General.

2. In the present writ petition, the petitioner is
aggrieved by the order of recovery of gratuity amounting to
Rs.52,799/- and Rs. 73,044/- having been recovered from other
retiral benefits unilaterally allegedly on the basis of revised



letter issued by the Executive Engineer, Public Health, Mechanical Division, Muzaffarpur vide Letter No. 523 dated 19.07.2018 (Annexure-5/B) and subsequently by the PPO No. 201411031017 dated 30.08.2018 (Annexure-2) issued by the Accountant General.

3. Learned counsel appearing on behalf of the petitioner submits that the order contained in Annexure-5/B has been brought for the first time by the Accountant General being part of the counter affidavit and no communication was made to the petitioner by the Executive Engineer – respondent no.4 before taking the penal action of recovery against the petitioner. It is further submitted on behalf of the petitioner that both the respondent nos.4 and 5 have acted unilaterally and have penalized the petitioner by recovering total amount of Rs.3,00,282/-. Learned counsel submits that law is well settled that no recovery can be made from Class-III and Class-IV employee. Petitioner had retired from the post of pump operator on 31.10.2012 and the recovery has been made behind his back in the year 2019 by the Bank authorities. The action of the respondent no.4 and the Accountant General is not sustainable in the eye of law. The petitioner must have been afforded with the opportunity of hearing to defend his case. The same has not



been done in the present case.

4. Learned State counsel submits that the order passed by the respondent no.4 is in accordance with law as excess payment which were inadvertently paid to the petitioner has only been recovered, however, he admits that no opportunity of hearing was given to the petitioner. Accountant General has acted upon the revised sanction letter issued vide Annexure-5/B and a communication has been made to the Bank authority for adjusting the total amount Rs.3,00,282/-.

5. Having considered the rival submissions made by the parties as well as the fact that the petitioner was not afforded any opportunity of hearing, he was not served with show cause before a fresh PPO was issued by which a total amount of Rs.3,00,282/- has been recovered and Bank has proceeded with the recovery of the aforesaid amount in installment by reducing from the amount of pension payable to the petitioner every month, the action of the respondents are illegal and is fit to be set aside.

6. Accordingly, communication made unilaterally to the Accountant General, Bihar vide Letter No. 523 dated 19.07.2018 (Annexure-5/B) by respondent no.4 is quashed and as a consequence of the same, the P.P.O. dated 30.08.2018



(Annexure-2) issued by the Accountant General is also quashed.

7. Law is well settled in the case of **State of Punjab and Others Vs. Rafiq Masih (Whiter Washer) and Others** reported in **(2015) 4 SCC 334**, that no recovery can be made after a lapse of more than six years. The recovery if at all was detected must have been recovered within a very short span of time just after the retirement of the petitioner. Paragraph 18 of the judgment is reproduced hereunder:

“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."

8. The State Bank of India, Lalganj Branch, Vaishali is restrained from making further recovery as the order dated 19.07.2018 (Annexure-5/B) has already been quashed by this Court.

9. The Executive Engineer, Public Heath, Mechanical Division, Muzaffarpur is directed to pass a revised order so that the amount which has already been recovered from the account of the petitioner in installment must be paid back to the petitioner with interest within a period of three weeks.

10. It is made clear that the Executive Engineer – respondent no.4 must also take appropriate action by communicating to the Accountant General for issuing fresh P.P.O. by adjusting the amount which has been recovered from the pension of the petitioner along with the statutory interest at the rate of 12.5% by any instrument in the pension account of the petitioner within the aforesaid period. Accountant General is also directed to issue fresh P.P.O.

11. At this stage, it is also made clear that the period for which the petitioner was engaged as a work charge employee must be taken into account in accordance with the judgment passed in C.W.J.C. No. 10063 of 2012 (**Amrika Devi and Ors. Vs. The State of Bihar and Ors.**).



12. The writ petition, accordingly, stands disposed
of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	28.06.2023
Transmission Date	N.A.

