

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7089 of 2023

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Binay Kumar Das S/o Vijay Chandra Das, Resident of Village Naga Tola, P.O.
K. Hat, P.S. K. Hat, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Finance Department, Govt. of Bihar, Patna.
2. The Joint Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Superintending Engineer, Road, Construction Department, National Highway Circle, Purnea.
4. The Executive Engineer, National Highway Purnea, Road Construction Department, Government of Bihar, Patna.
5. The Treasury Officer, Purnea.
6. The Accountant General, Bihar, Birchand Patel Marg, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Harshwardhan Sahay, Adv.
For the Respondent/s	:	Mr.Sushil Kumar, GP-22
		Mr.K.K.Singh, Ac to GP-22
For the Acc. Gen.	:	Mr.Ram Yash Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 28-11-2023

1. The present writ petition has been filed seeking the following relief(s):-

“1. That this writ application is for issuance of writ in the nature of Mandamus or any other appropriate writ for:

- i. Regularising the petitioner in regular establishment on the post of peon from the date of appointment (20.05.1986) on compassionate ground as contained in Annexure-1 of this petition.*
- ii. Quash the letter no.192 dated 13.02.2023, whereby and whereunder a sum of Rs.77,475.00*



has been deducted from the gratuity amount of the petitioner.”

2. At the outset, the learned counsel for the petitioner has submitted that though the petitioner has stood retired, as long back as on 03.06.2022, nonetheless, the respondents are seeking to deduct a sum of Rs.77,475/- from the gratuity amount, vide letter dated 13.02.2023, issued by the Executive Engineer, National Highway Circle, Purnea.

3. The learned counsel for the respondent-State has submitted by referring to paragraph no.10, of the counter affidavit that the petitioner was initially appointed on compassionate ground, temporarily, on 20.05.1986, whereafter he was absorbed in the regular establishment from the work change establishment against the sanctioned post of Peon with effect from 20.02.2001, hence he is not entitled to the benefits granted vide Finance Department Resolution dated 23.09.2016, which has been wrongly granted to him, thus, there is no illegality in making recovery of a sum of Rs.77,475/-.

4. This Court finds that the law regarding recovery is no longer res integra and has been well settled in a catena of decisions reported in **(2009) 3 SCC (Syed Qadir vs. State of Bihar); (1995) Suppl.1 SCC 80 (Sahib Ram vs. State of**



Haryana); (1994) 2 SCC 52 (Shyam Babu Verma vs. Union of India) ; (1997) 6 SCC 139 (B.Ganga Ram vs. Regional Joint Director) ; (2006) 11 SCC 492 (Purshottam Lal Das vs. State of Bihar) ; (2000) 10 SCC 99 (Bihar State Electricity Board vs. Bijay Bhadur); (2006) 11 SCC 7089 (B.J. Akkara vs. Government of India University) and (1995) suppl. 1 SCC 18 (Sahib Ram vs. State of Haryana) and the one reported in (2015) 4 SCC 334 (State of Punjab vs. Rafique Masih).

5. At this juncture, this Court, deems it fit and proper to refer to yet another judgment rendered to by the Hon'ble Apex Court in the case of **Thomas Daniel Vs. State of Kerala and Others**, reported in **(2022) SCC Online SCC 536**, paragraphs no.9, 11 and 14 to 16 whereof, are reproduced hereinbelow:-

“9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud 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, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the



employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.

11. In Col. B.J. Akkara (Retd.) v. Government of India this Court considered an identical question as under:

“27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] and V. Gangaram v. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):



(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) 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.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against



recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made.”

14. Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which



was subsequently pointed out by the Accountant General.

15. Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified.

16. In the result, the appeal succeeds and is accordingly allowed. The Judgment and order of the Division Bench dated 02.03.2009 and also of the learned Single Judge of the High Court dated 05.01.2006 impugned herein, and the order dated 26.06.2000 passed by the Public Redressal Complaint Cell of the Chief Minister of Kerala and the recovery Notice dated 09.10.1997 are hereby set aside. There shall be no order as to costs.”

6. Consequently, this Court finds that the present case is squarely covered, not only by a catena of judgments rendered by the Hon’ble Apex Court, referred to hereinabove, but also by a judgment rendered by the Hon’ble Apex Court in the case of **Rafique Masih (supra)**, paragraph no.18 whereof is reproduced hereinbelow:-

“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. Having regard to the facts and circumstances of the case and considering the law laid down by the Hon'ble Apex Court in a catena of decisions, which postulates that no recovery



can be made from an employee after his superannuation, in case the benefits have been granted to him wrongly, not on account of any mis-representation on the part of the said employee, but on account of the mistake of the concerned department, this Court finds that the order dated 13.02.2023, issued by the Executive Engineer, National Highway Circle, Purnea, is contrary to law, hence is quashed. The respondents are debarred from recovering the aforesaid sum of Rs.77,475/- from the petitioner and in case the same has been recovered, the same is directed to be refunded, within a period of four weeks from today.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.12.2023
Transmission Date	NA

