

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.7046 of 2023**

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Laxman Paswan Son of Late Sita Ram Paswan Resident of Village/Mohalla-Bela, Police Station Lalbagh, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department, Government of Bihar, 5th Floor Vishveshvaraiya Bhawan , Bailey Road, Patna.
4. The Superintending Engineer, Rural Works Department, Works Division, Darbhanga, District- Darbhanga.
5. The Executive Engineer, Rural Works Department, Rural Works Division, Biraul, District- Darbhanga.
6. The Accountant General (A and E), Bihar, Patna.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|---------------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Shankar Kumar Thakur, Advocate<br>Mr. Amitesh Jha, Advocate<br>Mr. Mukund Mohan Jha, Advocate |
| For the State        | : | Mr. Kumar Alok ( SC- 7 )                                                                          |
| For the A.G.         | : | Mr. Chaitanya Swaroop, Advocate                                                                   |

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**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH**  
**ORAL JUDGMENT**

**Date : 13-10-2023**

Heard Mr. Shankar Kumar Thakur, learned counsel appearing on behalf of the petitioner, Mr. Kumar Alok, learned SC-7 appearing on behalf of the State and Mr. Chaitanya Swaroop, learned counsel for the Accountant General, Bihar.

2. Petitioner, who was appointed in work charge establishment of Rural Works Department, Works Division, Benipur, Darbhanga, on 01.10.1986 in pay scale of Rs. 380-400/-, thereafter, his services were taken into regular



establishment in terms of the Government Resolution No. 137 dated 10.02.2014 on the post of Road Roller Khalasi in pay scale of Rs. 5200-20,200/-. The petitioner after attaining age of 60 years of superannuation on 31.10.2021 was given pension treating his services to be pensionable in light of the formula adopted by the State Government and also in light of the Full Bench Judgment of this Court passed in *Arvind Kumar Singh vs. the State of Bihar (CWJC No. 15328 of 2016)*.

3. The petitioner, who is a Class-IV employee being Road Roller Khalasi is aggrieved by the order contained in letter no. 1615 dated 08.10.2022 issued under the signature of Executive Engineer, Rural Works Department, Work Division Biraul, Darbhanga, contained in 'Annexure-9' to the writ petition.

4. Learned counsel appearing on behalf of the petitioner submitted that the order of recovery of Rs. 3,63,976/- is on account of excess payment of salary, which was given by the respondents allegedly as a result of incorrect fixation of pay scale and the same has resulted into non fixation of pension and non-payment of other retiral benefits. Learned counsel submitted that the respondents have admitted the fact that in case of *Uday Pratap Thakur & Anr. v. the State of Bihar* in



***Civil Appeal No. 3155 of 2023 (@ SLP (C) No. 10653 of 2018)***, they have rendered the services of the said writ petitioner in light of observation made by the Apex Court in paragraph no. 5, 6 and 7, however, they have committed mistake by relying on a judgment passed by the Apex Court in case of ***High Court of Punjab and Haryana & Ors. v. Jagdev Singh*** in ***Civil Appeal No. 3500 of 2006***. Learned counsel in support of the claim that no recovery can be made on account of incorrect fixation of pay with respect to Class-III and Class-IV employees, who have not misappropriated or misrepresented in any manner, in light of ***State of Punjab & Ors. Vrs. Rafiq Masih (White Washer) & Ors.*** reported in ***(2015) 4 SCC 334*** and ***Thomas Daniel Vrs. State of Kerala & Ors.*** reported in ***2022 LiveLaw (SC) 438***.

5. He further clarified that in Jagdev Singh (*supra*) an undertaking was given by a judicial officer who is not a Class-III or IV employee and he had acknowledged the consequences of the undertaking given by him with respect to the recovery in a situation where mistakenly the employer pays any excess amount which is recoverable once it is detected in terms of the clarification made by the Apex Court relating to gazetted employees. Learned counsel further submitted that in paragraph no. 10 of the said judgment, the Apex Court has taken



note of law laid down in case of *State of Punjab & Ors. Vrs. Rafiq Masih (White Washer) & Ors.* reported in (2015) 4 SCC 334 and applying the said proposition in paragraph no. 11 has made following observations:

***“11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”***

6. In these background, learned counsel submitted that the law laid down in Jagdev Singh (*supra*) is differentiated so far as the facts of the present case is concerned. Learned counsel further refers to the case relied by this Court in *CWJC No. 3703 of 2023 (Krishna Kumar Jha vs. the State of Bihar & Ors.)*, in which vide order judgment/order dated 21.08.2023, this Court while considering the case of “Kosh Rakshak”, which is a Class-III or Class-IV post from whom excess amount was recovered in terms of the undertaking given by the said petitioner was deposited by the petitioner on his own without any protest, as such, the facts are not similar to the present writ petition.



7. *Per contra*, learned counsel appearing on behalf of the State submitted that the case of the petitioner is squarely covered by the decision of this Court rendered in ***CWJC No. 3703 of 2023 (Krishna Kumar Jha vs. the State of Bihar & Ors.)***. He further submitted that the “Kosh Rakshak” in Rural Works Department, Work Division Benipur, Darbhanga, is also a Class-IV post and the law laid down by the Apex Court in case of Rafiq Masih (*supra*) will not hold good to govern the case of the writ petitioner as admittedly the petitioner had given his undertaking and in terms of the order passed in CWJC No. 3703 of 2023. The recovery from the petitioner is justified.

8. Having considered the rival submission made on behalf of the parties, as well as, from perusal of the records it appears that petitioner is a Class-IV employee, who was taken into regular establishment on the post of “Road Roller Khalasi” on the pay scale of Rs. 5200-20,200/- and superannuated on 31.10.2021 after attaining age of 60 years. The question with respect to determination of his services rendered as a work charge employee from 01.10.1986 till he was taken into regular establishment on 31.01.2014 has been determined by the respondent to be pensionable in nature after having rendered qualifying period of services in terms of the law laid down by



the Apex Court in case of Uday Pratap Thakur (*supra*), as well as, Full Bench of this Court in case of Arvind Kumar Singh (*supra*). The petitioner is aggrieved with the order of recovery of Rs. 3,63,976/- an order contained in letter no. 1615 dated 08.10.2022 issued under the signature of Executive Engineer, Rural Works Department, Work Division Biraul, Darbhanga, contained in 'Annexure-9' to the writ petition in light of CWJC No. 37023 of 2023. In the said case, in paragraph no. 4, the petitioner of the said writ petition chose to deposit the recovery amount on his own choice without any resistance or taking into account the law laid down by the Apex Court in case of Rafiq Masih (*supra*).

9. According to this Court, no recovery can be made from a Class-IV employee, who has not misappropriated or misrepresented the government fund and incorrect fixation is on the part of the Department. The incorrect fixation on the part of the State Government is admitted by the respondents and on account of incorrect fixation of pay scale of the petitioner, I am of the opinion that the amount which has been paid in excess cannot be recovered or adjusted from the pensionary benefits of the petitioner. The objection raised by the Accountant General, Bihar vide Memo No. 1836 dated 23.10.2021, which has lead to



the non-payment of pensionary benefits including pension to the petitioner who had retired on 31.10.2021 is misconceived and is fit to be set aside and quashed.

10. The two circulars respectively, contained in Memo No. 10710 dated 17.10.2013 and Memo No. 1247 dated 31.01.2014 of the Finance Department, Government of Bihar, are also set aside and quashed.

11. The respondent-Executive Engineer, Rural Works Department, Rural Works Division, Biraul, Darbhanga, is directed to sanction the pay scale on the basis of last pay drawn by the petitioner and the Accountant General, Bihar is accordingly, directed to fix the pension of the petitioner and communicate the same to the Treasury Officer, Darbhanga, within a period of six weeks from the date of communication of this order.

12. The respective authorities must not further delay and proceed to act in their own way by giving effect to the order of recovery contained in letter no. 1615 dated 08.10.2022 communicated by the Executive Engineer, Rural Works Department, Work Division Biraul, Darbhanga, contained in 'Annexure-9' to the writ petition to the petitioner is also set aside and quashed.



13. The officers of the State Government time and again commit mistake in passing order of recovery by not applying the law laid down by the Apex Court in case of *State of Punjab & Ors. Vrs. Rafiq Masih (White Washer) & Ors.* reported in *(2015) 4 SCC 334* and *Thomas Daniel Vrs. State of Kerala & Ors.* reported in *2022 LiveLaw (SC) 438* in which all the circumstances have been categorised under which no recovery can be made from a Class-III and Class-IV employees on account of incorrect calculation of pay scale which results into excess payment during the service period of Class-III and Class-IV employees by the State Government.

14. Accordingly, the present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/-

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