IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11465 of 2023

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Gani Ray Son of Ramasharan Ray, Resident of village and P.O. Sadhpur, P.S. Garkha, District - Saran at Chapra.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Minor Water Resources, Government of Bihar, Patna.
3. The Additional Chief Secretary, Department of Finance, Government of Bihar, Patna.
4. The Under Secretary, Department of Minor Water Resources, Government of Bihar, Patna.
5. The Project Coordinator (Minor Irrigation) Department of Minor Water Resources, Government of Bihar, Patna.
6. The Chief Engineer (North), Minor Irrigation Division Department of Minor Water Resources, Muzaffarpur.
7. The Superintending Engineer, Minor Irrigation Circle, Department of Minor Water Resources, Muzaffarpur.
8. The Executive Engineer, Minor Irrigation Division, Saran at Chapra.
9. The Accountant General (A and E), Bihar, Birchand Patel Path, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jeetendra Narayan, Advocate
For the Respondent/s	:	Mr. Kapileshwar Prasad Yadav, GP-11
For the AG	:	Mr. Ram Yash Singh, Advocate
For the State	:	Ms. Dimpal Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 19-09-2023

Heard Mr. Jeetendra Narayan, learned counsel appearing on behalf of the petitioner; Mr. Kapileshwar Prasad Yadav, learned GP-11 appearing on behalf of the respondent; Mr. Ram Yash Singh, learned counsel appearing on behalf of the Accountant General and Ms. Dimpal Kumari, learned counsel appearing on behalf of the State.

2. Learned counsel appearing on behalf of the

petitioner submits that petitioner joined as a work charge employee on 08.03.1969 and was taken in regular establishment on 08.03.1979. Petitioner had filed CWJC No. 5269 of 2012 for grant of financial upgradation, taking into consideration that no promotion was granted to him, wherein the learned Single Judge has allowed the writ. However, the State has preferred a Letters Patent Appeal No. 779 of 2014 against the order passed in CWJC No.5269 of 2012. The Division Bench of this Court, for setting aside the order of the learned Single Judge, clarified the status of the petitioner to be in regular establishment from the date he was appointed in the regular establishment in terms of the government scheme which was operated as on the date with respect to the work charge employee. The petitioner submits that he is entitled for financial upgradation, however, the Authority, even after clarification made by the Division Bench vide order dated 21.03.2017 passed in Letters Patent Appeal No. 779 of 2014, had never objected to stop excess amount being paid to the petitioner during his service period till the date of his retirement on 30.04.2009, and now, after lapse of nearly 6 years from the date of passing of order dated 21.03.2017, the Authorities have proceeded to recover the excess amount paid to the petitioner from the pensionary benefit vide Letter No. 585

dated 01.07.2023, passed by the Executive Engineer, Chapra to the Accountant General, Bihar. Learned counsel further submits that petitioner is a Class-IV employee and the recovery after lapse of nearly 14 years from the date of his retirement and 6 years from the date of order passed by the Division Bench on 21.03.2017, is unwarranted taking into consideration the law laid down by the Apex Court in case of ***State of Punjab v. Rafiq Masih*****, (2015) 4 SCC 334,** as held in paragraph 18 which 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."***

3. The petitioners have further placed reliance upon the judgment of Apex Court in the case of ***Thomas Daniel v. State of Kerala, 2022 SCC OnLine SC 536,*** as held in paragraph no. 9 which is 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."***

4. Ms. Dimpal Kumari, learned counsel appearing on behalf of the State submits that the Executive Engineer has passed a reasoned order of recovery in accordance with law and in compliance of the order dated 21.03.2017 in Letters Patent Appeal No. 779 of 2014 which was passed after hearing the petitioner. Once the order has been passed by this Court, the Executive Engineer has no alternative but to recover the amount which was paid to the petitioner in excess. The petitioner cannot gain out of public money and State cannot suffer for the same financially.

5. Heard the parties.

6. The law as on date is no more *res integra* so far recovery from Class-IV employee is concerned. The fact that the Division Bench of this Court vide order dated 21.03.2017, passed in Letters Patent Appeal No. 779 of 2014, had not proceeded to recover the excess amount from the petitioner which has been determined by the Executive Engineer vide Letter No.585 dated 01.07.2023, as contained in Annexure-7 to the writ petition, whereby direction for recovery of a sum of Rs. 75,499/- was passed, shows that the actions of the State are not justified and therefore, cannot be sustained, in view of the law

laid down by the Apex Court in case of Rafiq Masih *(supra)* and Thomas Daniel *(supra)*.

7. The Division Bench has clarified that entitlement of the petitioner for second time bound promotion will flow from 08.03.1979, however, the issue regarding the recovery of the extra payment which has already been paid to the petitioner on account of incorrect calculation made by the Authorities was not the subject matter of the writ petition.

8. The relief as sought for in the present writ petition by the petitioner is covered by the decision of the law laid down by the Apex Court in case of Rafiq Masih and Thomas Daniel. The order dated 01.07.2023 contained in Letter No. 585 (Annexure 7) is hereby quashed.

9. The respondents are directed not to make recovery of any amount paid to the petitioner from his pensionary benefit.

10. The writ petition is accordingly, disposed of.

(Purnendu Singh, J)

minu/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.09.2023
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