

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 150 of 2022

1. Ashok Kumar S/o Late Ram Bilas Prasad, R/o Meridian Green Apartment, Flat No. 105, Adarsh Vihar Colony, Rukanpura, Patna - 800014 (Retired-Senior Administrative Assistant, I.G.I.M.S., Patna).
2. Shri Awadh Kishor Sharma S/o Tribhuvan Prasad Sharma, R/o Flat No. 202, Bharti Residency, Nasriganj, Mithila Colony, Patna - 800011 (Retired - Senior Administrative Assistant, I.G.I.M.S, Patna)
3. Sushma Kumari R/O B-3/15, I.G.I.M.S Campus, Sheikhpura on behalf of her Husband Late Shri Ashok Kumar Jha, Patna - 800014 (Junior Administrative Assistant, I.G.I.M.S, Patna - 800014).
4. Smt. Sunita Kumari W/o Akhilesh Prasad R/O B-9/15, I.G.I.M.S Campus, Sheikhpura, Patna - 800014 (Senior Administrative Assistant, I.G.I.M.S.)
5. Shri Prabhat Kumar S/o Late Vikramaditya Narayan Verma, R/o Vikram Prabha Kutir, Mahua Bag, Dhanaud Near H.P Gas Godown, Rupaspur, Patna - 801506 (Junior Account Officer, I.G.I.M.S., Patna).
6. Shri Ravindra Pratap Singh, S/o Late Parmeshwar Dayal Singh, R/o Vastu Sarita Duplex Behind St. Karens School, Gola Road, Patna - 801503 (Senior Administrative Assistant, I.G.I.M.S, Patna).
7. Shri Pradeep Kumar Singh S/o Vishwanath Singh, R/o B- 5/18, I.G.I.M.S Campus, Patna - 800014 (Senior Administrative Assistant, I.G.I.M.S, Patna).
8. Shri Rajkumar Singh S/o Kamal Ray, R/O B- 5/9, I.G.I.M.S Campus, Patna - 800014 (Senior Administrative Assistant, I.G.I.M.S, Patna).
9. Shri Sudama Lohra, S/O Sukhu Mistri R/o B- 4/9, I.G.I.M.S Campus, Patna - 800014 (Senior Administrative Assistant, I.G.I.M.S, Patna).
10. Shri Anil Kumar S/o Ram Narayan Chaudhary R/o B-1/11, I.G.I.M.S. Campus Patna - 800014 (Junior Administrative Assistant, I.G.I.M.S, Patna).
11. Shri Rakesh Ranjan S/o Chandeshwar Prasad Singh R/o A/21, Ashiyana Nagar, Ram Nagri, Sector - 2, Patna - 800025. (Senior Administrative Assistant, I.G.I.M.S, Patna).
12. Shri Dileep Kumar S/o Mahendra Pratap Sinha R/o Patel Nagar, Patna - 800029 (Assistant Account Officer, I.G.I.M.S, Patna).
13. Shri Vimal Kumar Tripathi S/o Late Brijanand Tripathi R/O B- 5/15, I.G.I.M.S Campus Patna (Senior Administrative Assistant, I.G.I.M.S. Patna).
14. Shri Shiv Shankar Paswan S/o Late Laxmi Paswan, R/o Balupar, Kurji,



Sadakat Ashram, Patna-801105. (Sr. Administrative Assist., IGIMS, Patna)

15. Shri Virendra XAXA S/o Jowakin XAXA R/o B- 5/14, I.G.I.M.S Campus,
Patna - 800014) (Senior Administrative Assistant, I.G.I.M.S, Patna).

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
2. The Principal Secretary, Ministry of Health and Family Welfare Department,
Government of Bihar.
3. Director, Indira Gandhi Institute of Medical Sciences, Patna - 800014.
4. Deputy Director (Administration), Indira Gandhi Institute of Medical
Sciences, Patna - 800014.
5. Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Sanjeev Kumar, Advocate Mr. Alok Kumar, Advocate Mr. Rajeev Shekhar, Advocate Mr. Rohit Kumar Tripathi, Advocate
For the IGIMS	:	Mr. Sunil Kumar, Advocate
For the Accountant General:	:	Mr. Anand Kumar, Advocate
For the State	:	Mr. Ramadhar Singh, GP-25

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 12-12-2023

1. The present writ petition has been filed for quashing the letter No. 7382/Admin dated 17.12.2021, issued by the Director, Indira Gandhi Institute of Medical Sciences, Patna (herein after referred to as the “IGIMS”) whereby and whereunder a sum of Rs. 44,57,951/- has been ordered to be recovered from 18 Employees, including the petitioners herein, of IGIMS, Patna, in monthly instalments of up to 50%.

2. At the outset, the learned counsel for the petitioners has



limited his prayer to restraining the respondents from making any recovery from the petitioners, on the head of excess salary paid to them on account of upgradation of pay-scale upon re-designation of the posts from LDC to UDC and simultaneously, grant of the due benefits of Assured Career Progression/Modified Assured Career Progression scheme (herein after referred to as the “ACP/MACP scheme”). It is also prayed that in case recovery has already been made, the respondent authorities be directed to refund the same.

3. The learned counsel for the petitioners has further submitted that the respondents have issued the order of recovery on the presumption that the petitioners have wrongly been granted the benefits of ACP/MACP scheme, from the specified dates, inasmuch as they had already been granted financial upgradation of pay-scale at the time of re-designation of the posts from LDC to UDC, hence the respondents have annulled the orders granting the benefits of ACP/MACP scheme to the petitioners, although they are liable to be granted such benefits, after completion of twelve years of service.

4. Though the learned counsels appearing for the respondents have submitted that upon re-designation of the post



of LDC as UDC, the pay-scales of the petitioners were upgraded and thereafter, they were also granted the benefits of ACP/MACP scheme to which they were not entitled, hence the benefits granted to the petitioners under the ACP/MACP scheme have been annulled and recovery has been ordered, but it has nowhere been denied that excess salary was paid to the petitioners on account of fault of the department/IGIMS and not on account of any misrepresentation on the part of the petitioners.

5. 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).**



6. 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 herein below:-

“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.”

7. Having regard to the facts and circumstances of the case and in view of the law laid down by the Hon’ble Apex Court in



a catena of decisions, as aforesaid, as also in view of the fact that the respondents have not denied the fact that there was no misrepresentation on the part of the petitioners leading to payment of excess salary, this Court finds that no recovery can be made from the salary of the petitioners, hence, the letter No. 7382/Admin dated 17.12.2021, issued by the Director, Indira Gandhi Institute of Medical Sciences, Patna is quashed and it is directed that in case any recovery has been made from the salary of the petitioners, the same be refunded back to the petitioners within a period of eight weeks from today.

8. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.12.2023
Transmission Date	NA

