

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17820 of 2022

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Onkar Nath S/o Late Bishnudhari Prasad Sinha Residing of Near Nalanda Medical College, Old by Pass Road, Kankarbag, Patna- 800026.

... .. Petitioner/s

Versus

1. The State of Bihar Represented through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director-in-Chief, Health Services, Health Department, Govt. of Bihar, Patna.
4. The Principal, Nalanda Medical College, Patna.
5. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Binoy Kumar, Adv.
For the Respondent/s	:	Mr.Ajay Bihari Sinha, GA- 8 Mr.Seema Ghayala, AC to GA-8

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 23-11-2023

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

“1. That this writ application is being filed for setting aside the impugned order dated 21.11.2022 issued by the Principal, Nalanda Medical College, Patna vide Memo No.- 3648 Patna dated 21.11.2022 or any other related order/letters whereby 2nd A.C.P. (M.A.C.P.) granted to the petitioner has been cancelled and further ordered that yearly increment given to him has also been cancelled from 01.07.2011. Further ordered to recover the excess amount of salary which has been paid to the



petitioner from 01.07.10 to 31.03.17 and also from 01.04.17 to till date. The said order has been passed without giving any opportunity of hearing which is against the Principle of natural justice. The same has been issued in arbitrary manner and without following due process of law.”

2. At the outset, the learned counsel for the petitioner has submitted that since there was no mis-representation on the part of the petitioner, leading to grant of the benefits of 2nd M.A.C.P. to him, no recovery, as sought to be made by the impugned order dated 21.11.2022, issued by the Principal, Nalanda Medical College, Patna, can be made from the petitioner.

3. Per contra, though the learned counsel for the respondent-State has submitted that in the meeting of the Screening Committee, held on 30.07.2022, it was found that the petitioner has been granted the benefits of 2nd M.A.C.P. without passing the Computer Eligibility Examination, hence the Committee had recommended for cancellation of the benefits of 2nd M.A.C.P., granted to the petitioner, with effect from 01.02.2012, however, it has not been denied that there has been no mis-representation on the part of the petitioner, leading to grant of the benefits of 2nd M.A.C.P. to the petitioner, hence,



admittedly, no recovery can be made.

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.”

5. 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, I deem it fit and proper to hold that as a consequence of cancellation of the benefits of 2nd M.A.C.P., granted to the petitioner, with effect from 01.02.2012, no recovery can be made from the petitioner



and in case any recovery has been made from the salary of the petitioner, the same is directed to be refunded, within a period of four weeks from today.

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

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.11.2023
Transmission Date	NA

