IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5091 of 2022

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Sakaldeo Ram, S/o Late Baijnath Ram, Resident of Village - Ghat Kusumbha, P.S. and District - Sheikhpura.

... ... Petitioner/s

Versus

1. The State of Bihar, Patna.
2. The Secretary, Minor Irrigation Department, Govt. of Bihar, Patna.
3. The Deputy Secretary, Minor Irrigation Department, Govt. of Bihar, Patna.
4. The Superintending Engineer, Minor Irrigation Division, Munger.
5. The Executive Engineer, Minor Irrigation Division, Munger.
6. The Treasury Officer, Sheikhpura.
7. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pankaj Kumar, Advocate
For the Respondent/s	:	Mr. Sitaram Yadav, GP-16
		Mr. Yatindra Narayan, Ac to GP-16

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 30-07-2024

Heard learned Advocate for the petitioner and the learned Advocate for the State.

2. The petitioner is aggrieved by the order dated 28.08.2021 passed by the respondent Accountant General as contained in memo no. 1083 dated 28.08.2021 duly addressed to the respondent Treasury Officer, directing him to recover the excess amount paid to the petitioner against earned leave.

3. The petitioner was initially appointed as Office Attendant in the year 1973 under Minor Irrigation Department, Bihar, Patna. After serving a decade, the service of the petitioner was brought under Work Charge Establishment with effect from 08.12.1984. Subsequent thereto, the petitioner came under the

regular establishment vide order dated 12.01.2015 issued under the signature of Deputy Secretary, Minor Irrigation Department as contained in letter no. 07 dated 12.01.2015, the copy of which is marked as Annexure 1 to the writ petition.

4. Having served the department satisfactorily, the petitioner came to be superannuated on 28.02.2018 and all the admissible retiral benefits have been accorded to him.

5. Adverting to the aforesaid facts, learned Advocate for the petitioner further contended that all of a sudden after three years of his retirement, the respondent Accountant General has issued the impugned letter as contained in memo no. 1083 dated 28.08.2021, directing the respondent Treasury Officer to recover the excess paid amount against the earned leave. The aforenoted letter is put to challenge in the present writ petition.

6. The learned Advocate for the petitioner while assailing the impugned order has primarily submitted that admittedly the petitioner was under the work charge establishment since 08.12.1984 and taking note of the earlier period rendered under the work charge establishment, the petitioner has been accorded the pensionary benefits, including the earned leave. The petitioner had been working as an Office Attendant and thus, neither he was party to the policy decision ror a decision making authority whereby the petitioner has been accorded the pension-

ary benefit as per his admissibility.

7. The impugned order of recovery is in the teeth of the mandate of the Apex Court, where the highest Court of the land has held that any recovery from Class IV employees is not permissible if they have already superannuated, unless there is allegation of any misrepresentation or fraud. The petitioner has never been charged with any allegation of misrepresentation or fraud, rather the respondent authorities by filing the counter affidavit has admitted the fact that because of their own mistake enhanced payment has been made, is the contention of learned Advocate for the petitioner.

8. Heavy reliance has been placed on a judgment rendered by the Apex Court in the case of ***State of Punjab & Ors. vs. Rafiq Masih, (2015) 4 SCC 334***.

9. On the other hand, learned Advocate for the State refuted the contention of the petitioner and submitted with reference to the averments made in the counter affidavit that the Finance Department, vide its resolution no. 10710, dated 17.10.2013, made it clear that the petitioner and similarly situated person shall be entitled for all type of retiral benefits from the date when they came in regular establishment. In case in hand, the petitioner has come under regular establishment on 12.01.2015 and, as such, the petitioner has been paid excess

payment under the head of Leave Encashment.

10. It is also contended that as per the detailed calculation according to Rule 227 of Bihar Service Code, the petitioner is only entitled for 65 days benefit in a form of un-utilized leave and the same is already credited in his account.

11. The learned Advocate for the State fairly admitted that due to slip of pen or inadvertance, the petitioner got the benefit of 235 days of un-utilized leave and thus, a sum of Rs. 3,17,485/- has been paid, though as per the entitlement Rs. 87,815/- was only admissible to him, in view of the resolution of the State Government.

12. Having considered the rival contention of the parties, admittedly the petitioner was superannuated from the post of Office Attendant, Minor Irrigation Department way back on 28.02.2018 unconditionally. There is no allegation of misrepresentation and fraud on the part of the petitioner. Since, the resolution of the Government dated 17.10.2013 to the extent it causes prejudice to the right of the petitioner is not questioned, this Court refrain to make any observation. However, this fact cannot be brushed aside that in view of the Government decision, taking note of the period rendered under the work charge establishment, the services of the petitioner made permissible.

13. Nonetheless, the issue with regard to recovery of

the excess payment from the pensionary benefit has put to quietus by various judgments passed by the Apex Court. It would be worth quoting paragraph no. 18 of the judgment rendered by the Apex Court in the case of ***Rafiq Masih(supra)***:-

> *"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:*
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> *(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."*

14. Further, in the case of ***Thomas Daniel v. State of Kerala and Others [2022 SCC OnLine SC 536]***, the Hon'ble Supreme Court succinctly held that the increments granted to an employee while in service cannot be recovered from him after his retirement on the ground that the said increments were granted on account of an error.

15. Considering the aforesaid facts, circumstances and the position obtaining in law this Court finds the impugned order is unsustainable and accordingly the same is set aside, only on the point that the petitioner is a Class IV employee and has already superannuated way back in 2018 and, as such, any recovery at this stage shall be inequitas and harsh.

16. On this reason alone, the writ petition is allowed.

17. The impugned order dated 28.08.2021 stands quashed.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
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