

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.172 of 2022

In
Civil Writ Jurisdiction Case No.20160 of 2021

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1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
 2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
 3. The Engineer-in-chief, Water Resources Department, Government of Bihar, Patna.
 4. The Under Secretary (Prabandhan), Water Resources Department, Government of Bihar, Patna.
 5. The Superintending Engineer, Water Resources Department, Quality Control (Irrigation Creation) Circle, Patna.
 6. The Executive Engineer, Water Resources Department, Quality Control (Irrigation Creation) Division, Siwan.
 7. The Principal Secretary, Finance Department, Government of Bihar, Patna.
 8. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
 9. The Additional Secretary, Finance Department, Government of Bihar, Patna.

... .. Appellant/s

Versus

1. Shyam Bihari Sharma Son of Late Ram Bachan Sharma Resiednt of Mohalla- Shivpuri, Gali No.4, Ward No.7, Raghunathpur, P.O. Motihari, P.S. Turkaulia, District- East Champaran at Motihari, presently posted as Junior Engineer, Water Resources Department, Quality Control (Irrigation Creation) Division, Siwan.
2. Bhagwan Sharma Son of Late Sitaram Sharma Resident of Mohalla- Chhota Telpa, Rawal Tola, P.O. Chapra, P.S. Chapra Town, District- Saran at Chapra, Presently posted as Junior Engineer, Water Resources Department, Quality Control (Irrigation Creation) Division, Siwan.
3. Shambhu Prasad Gupta Son of Late Ramnagina Prasad Resident of 514, Ambedkar Nagar, Ward No.1, Deoria, P.O. Deoria, P.S. Sadar Kotwali Deoria, District- Deoria (Uttar Pradesh), Presently posted as Junior Engineer, Water Resources Department, Quality Control (Irrigation Creation) Division, Siwan.
4. Sanjay Kumar Singh Son of Ranvijay Bahadur Singh Resident of C124/704, Jatepur North, Near Moti Lal Building, Hydil Colony, Gorakhpur, P.O. and P.S. Forakhpur, District- Gorakhpur (Uttar Pradesh), Presently posted as Junior Engineer, Water Resources Department, Quality Control (Irrigation Creation) Division, Siwan.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, AAG-4 Mr. Alok Kumar Rahi, AC To AAG-4
For the Respondent/s	:	Mr. SBK Manglam, Advocate



Ms. Anita Kr., Advocate

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 26-09-2024

The appellant-State is concerned with the impugned judgment, which directed benefits to be extended as has been extended in CWJC No.8146 of 2020 and connected matters, decided on 22.11.2021.

2. Annexure-A, produced along with the supplementary affidavit, is the judgment passed in CWJC No. 8146 of 2020 and connected matters, wherein the respondents were not parties. Therein, prayers were made for quashing an order dated 31.01.2020 for recovery of excess amounts paid to the petitioners after fixation of their salary, on grant of benefits of second Modified Assured Career Progression and direction was also sought for stay of recovery of the amounts. In the decision at Annexure-A, it was noticed that the petitioners were not given a show-cause notice, hence the impugned communications for recovery, were treated as a show-cause notices and the petitioners were directed to file their reply or explanation to the impugned show-cause notices within a period of eight weeks. The competent authority was also directed to



pass a speaking order. It is admitted that the competent authority has passed a speaking order rejecting their claims.

3. Subsequent to the disposal of Annexure-A, CWJC No. 20160 of 2021 was filed for quashing the order dated 05.12.2017, which was far earlier to the order challenged in Annexure-A decision. The petitioners in the instant CWJC had also filed a representation before the authorities, in the same terms as those filed by the petitioners in CWJC No. 8146 of 2020. This also stood rejected by order dated 26.07.2022, after the disposal of the writ petition. The said rejection has been challenged in CWJC No. 17598 of 2022.

4. We do not think that the order of the learned Single Judge directing extension of benefits in the light of the aforesaid decision can have any application, insofar as directing the recovery to be set aside, *in toto*. If at all the directions have to be extended to the respondents also, it can only be for the purpose of filing a representation, which had to be considered.

5. We are informed that the claim of the respondents are not similar to that of the petitioners in Annexure-A, which is against an order dated 31.01.2020, while the respondents are challenging an order dated 05.12.2017.

6. Be that as it may, the impugned orders sought



refund of the amounts paid to the petitioners under the Modified Assured Career Progression. Since no show-cause notice has been issued prior to recovery, extension of the benefit of the judgment at Annexure-A, produced along with a supplementary affidavit, would only be insofar as filing an objection against the recovery, which has to be considered. As of now, the claim is rejected and the order of rejection is challenged.

7. The respondents have challenged the rejection order in CWJC No. 17598 of 2022. In such circumstances, we set aside the impugned judgment, but leave the contentions open to be agitated in CWJC No. 17598 of 2022.

8. The appeal stands allowed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	N/A
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