

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8214 of 2022

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1. Satyendra Lal, son of Yadunandan Lal, Resident of Village-Salempur, P.O. and P.S.-Tekari, District-Gaya (Bihar).
 2. Varun Kishon, son of Late Sarhul Kishon, Resident of Village-Salempur, P.O. and P.S.-Tekari, District-Gaya (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Chief Engineer, Sone Higher Level, Canal Division, Kurtha, District-Arwal.
3. The Executive Engineer, Sone Higher Level, Canal Division, Kurtha, District-Arwal.
4. The Senior Treasury Officer, Arwal, District-Arwal.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dinu Kumar, Advocate Mrs. Ritika Rani, Advocate Mr. Vardaan Mangalam, Advocate
For the Respondent/s	:	Mr. Vikash Kumar (SC- 11)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 13-02-2024

The present writ petition has been filed for quashing the order dated 20.01.2022, passed by the Executive Engineer, Sone Higher Level Canal Division, Kurtha, District-Arwal i.e. the respondent no. 2, whereby and whereunder recovery of a sum of Rs. 7,00,387/- has been sought to be made from the petitioner no. 1 while a sum of Rs. 8,18,037/- has been sought to be



recovered from the petitioner 2.

2. The learned counsel for the petitioners has submitted that merely on account of certain discrepancy/anomaly in fixation of pay-scale of the petitioners long back in the year 2008 and that too, without any misrepresentation on the part of the petitioners, now at a belated stage, recovery is sought to be made by correcting the pay anomaly. It is fairly submitted that the pay anomaly can be rectified by fixing the correct pay-scale of the petitioners, however, no recovery can be made inasmuch as there has been no misrepresentation on the part of the petitioners.

3. *Per contra*, the learned counsel for the respondent-State has, though admitted that there was no misrepresentation on the part of the petitioners leading to wrong fixation of pay-scale but then, he has submitted, by referring to the counter affidavit filed in the present case, that admittedly on account of certain clerical mistake, the pay of the petitioners was wrongly fixed, however, the same has now been rectified and the



petitioners are getting the correct pay-scale.

4. At this juncture, the learned counsel for the petitioners submits that according to the petitioners, the pay-scale granted to them earlier is correct, hence the respondent authorities may take a fresh decision regarding the pay-scale to be granted to the petitioners, for which the petitioners be granted liberty to approach the respondents by filing appropriate representation.

5. I have heard the learned counsel for the parties and perused the materials on record, from which it is clear that admittedly there has been no misrepresentation on the part of the petitioners and wrong pay fixation, if any, is on account of clerical mistake on the part of the staff of the respondents. The law in this regard is no longer *res integra* and the Hon'ble Apex Court has decided in a catena of judgments that no recovery can be effected from the incumbents in case no misrepresentation or fraud has been committed by them leading to payment of excess amount of salary. Reference in this connection be had to the



judgments rendered by the Hon'ble Apex Court in a catena of cases, 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. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above as also taking into account the law laid down by the Hon'ble Apex Court in the judgments referred to herein-above in the preceding paragraphs, I deem it fit and proper to quash the order dated 20.01.2022 passed by the Executive Engineer, Sone Higher Level Canal



Division, Kurtha, District-Arwal, whereby and whereunder recovery has been sought to be made from the petitioners. The petitioners are granted liberty to approach the respondents by filing appropriate representation within a period of six weeks from today, for the purposes of determination of their correct pay-scale, which shall be decided by the Executive Engineer, Sone Higher Level Canal Division, Kurtha, District-Arwal, within a period of six weeks, thereafter.

7. The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.03.2024
Transmission Date	N/A

