

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22614 of 2011

Sita Kumari (Devi) W/O Sri Kamrooch Prasad R/O Village- Kazichak, P.O.-
Khajurar,P.S.- Bhadaur, District-Patna, Presently Serving as an Auxiliary
Nurse Midwife (A.N.M.), Child Development Project, Fatuha, Patna and
Residing at Mohalla- Govindpur, P.O. and P.S.- Fatuha, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Health Department, Bihar, Patna
3. The Secretary, Rajbhasha Department, Bihar, Patna
4. The Director-In-Chief, Health Services, Bihar, Patna
5. The Medical Officer-In-Charge Primary Health Centre, Bakhtiyarpur, Patna
6. The Child Development Project Officer, Fatuha, Patna
7. The Accountant General Audit, Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Shambhu Sharan Singh, Advocate
For the Respondent/s : Mr.Rakesh Prabhat, AC to SC 21
For the AG (Bihar) : Mr.Ram Yash Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 04-10-2024

Heard Mr. Shambhu Sharan Singh, learned counsel
appearing on behalf of the petitioner; Mr. Rakesh Prabhat,
learned AC to SC-21 for the State and Mr. Ram Yash Singh,
learned counsel for the Accountant General(Bihar).

2. The petitioner in paragraph no.1 of the present writ
petition has sought inter alia following relief(s), which is
reproduced hereinafter :-



“(i) For issuance of a writ in the nature of certiorari or any other appropriate writ for quashing the order letter No.332 dated 31.05.2010 written to Child Development Project Officer, Fatuha (Patna) by Medical Officer-in-Charge Primary Health Centre, Bakhtiyarpur (Patna) whereby and whereunder the amount of recovery has, suo moto, without jurisdiction and without obtaining any order from a superior competent authority, been fixed @Rs.7, 920/- p.m. (Seven thousand nine hundred twenty rupees per month) for a total amount of recovery worth Rs.3,08,980 + other allowances for the period of about 15 years from 12.12.1984 to 30.10.2009 owing to non-passing of Hindi Noting and Drafting Examination conducted by Rajbhasha Department, Bihar, Patna as indicated by Senior Audit Officer, the office of Principal Accountant General (Audit), Bihar, Patna in his Audit Report No. 392/09-10 communicated to Medical Officer-in-charge, Primary Health Centre, Bakhtiyarpur (Patna) vide Accountant General office letter No.359 dated 30.10.2009. This action is wrong and bad in law as the petitioner being an Auxiliary Nurse Midwife (A.N.M.) is exempted from passing Hindi Noting & Drafting Examination as per rule. Moreover, the aforementioned Senior Audit Officer in his letter dated 30.10.2009 had only raised an objection to the above effect asking Medical Officer-in-charge (for short, M.O.-in-charge), Primary Health Centre, Bakhtiyarpur for sending a compliance report of the Audit Report with recommendation/opinion of his superior officer which was not done by the said M.O.-in-charge and to the contrary, a final decision of aforesaid recovery was taken by him alone facilitating for the C.D.P.O., Fatuha, Patna to make so heavy monthly recovery of Rs.7,920/- against the total amount of Rs.3,08,980/-+ other allowances from the salary of the poor petitioner without proper scrutiny of the matter and without giving an opportunity of any explanation or show-cause to her (the petitioner).

(ii) For issuance of a writ in the nature of mandamus and any other appropriate writ directing and commanding the State Respondents to stop forthwith any further recovery from petitioner's salary and also to return the amount so recovered,



hitherto, as the order so passed by the M.O.-in-Charge, Bakhtiyarpur as contained in his letter dated 31.05.2009 is arbitrary, without jurisdiction, without the sanction/order of a competent authority and without asking the petitioner to show-cause against such suo moto recovery and hence, is bad in law and also against the principle of natural justice.

(iii) For passing other order(s) or direction(s) for any other relief(s) to the petitioner as this Hon'ble Court may deem fit and proper in view of the facts and circumstances of this case."

BRIEF FACTS

3. The brief facts of the case are that the petitioner was initially appointed as an Auxiliary Nurse Midwife (Mahila Swasthya Karyakarta), a class III (non-gazetted post) in the then existing Pay Scale of Rs. 580-10-720-15-770-E.B- 15-860/- by an order of the Director-in Chief, Health Services, Bihar, Patna, who was placed at Sl. No. 310/165 of O.O. No. 33(6) Health dated 15.01.1983. The petitioner gave her joining on 12.02.1983 in response to the O.O. memo no. 46 dated 12.02.1983 issued under the signature of Civil-surgeon-cum-Chief-Medical Officer, Bhagalpur. The regular annual increments were granted to the petitioner (**Annexure-2**) and accordingly, the pay scale of the petitioner was fixed and revised from time to time including granting her annual increment and other allowances. Moreover, the petitioner because of her good service was granted First Time Bound Promotion in lieu of which, she joined at the same post in Patna



on 14.03.1993. The petitioner is aggrieved by the alleged illegal action of the respondents, who found that the petitioner had not passed Hindi Noting and Drafting Examination and *suo moto* directed for recovery of incremented amount for the period from 12.12.1984 till 30.10.2009. The alleged recovery has been directed in accordance with the circular bearing no. 394 (4)/Health dated 05.05.2005, wherein it has been clarified that certain categories of employee including Auxiliary Nurse Midwife (hereinafter to be read as 'ANMs') have not been exempted from the Hindi Noting and Drafting Examination, making it essential for the petitioner to pass such examination which is *ultra-vires* the rules of Hindi Noting and Drafting Rules, 1968.

SUBMISSIONS

4. Learned counsel appearing on behalf of the petitioner submitted that the Principle Accountant General (Audit), Bihar, Patna had audited the accounts of the office of Medical Officer-in-charge of Primary Health Centre, Bakhtiyarpur, Patna from 29.09.09 to 05.10.2009 and submitted the Audit Report No. 392/09-10 issued on 30.10.2009, wherein he found excess withdrawal of salary by 10 employees including the petitioner.

5. The learned counsel submitted that the Petitioner



was initially appointed as an Auxiliary Nurse Midwife (Mahila Swasthya Karyakarta), a Class III (non-gazetted post) in the year 1983. The regular increments were granted to the petitioner (**Annexure 2**). The Pay Scale of the petitioner was fixed and revised from time to time including granting her annual increments and other allowances. Moreover, the petitioner because of her good service was granted first time bound promotion in lieu of which, she joined at the same post in Patna on 14.03.1993.

6. The learned counsel for the petitioner further submitted that in the light and spirit of the statutory provisions of Rule 2 and 3 of the Bihar Government Employees (Hindi Examination) Rules, 1968 (**Annexure-3**) and also paragraph Nos. 2 and 4 of the Government decision No.97 issued under Finance Department's letter No. 4048/F(2) dated 03.06.2003 (**Annexure-6 Series**), the petitioner serving as an A.N.M. (Auxiliary Nurse Midwife) is vividly exempted till date from passing Hindi Noting-Drafting Examination as she is a Matriculate with Hindi as one of the subjects (**Annexure- 6 Series**) and also she is not concerned with the work of noting and drafting in course of discharge of her duties. Even then for future promotion etc. she has already passed the said examination (Hindi Noting-Drafting) vide Certificate No. 565



dated 09.05.2011 of the Divisional Rajbhasha Office, Patna Division, Patna. The said examination was held on 11.10.2009 and its result was published vide Memo No. 529 dated 18.06.2010 of Rajbhasha Department, Bihar, Patna (**Annexure-13**).

7. Considering the fact that the petitioner is seeking similar relief as prayed for in the writ petition bearing CWJC No. 12260 of 2010 being aggrieved by the order of recovery of Rs.3,08,980/- and the other allowances for the period of about 15 years from 12.12.1984 to 30.10.2009 owing to non-passing of Hindi Noting and Drafting Examination conducted by Rajbhasha Department, Bihar, Patna as indicated by Senior Audit Officer, the office of Principal Accountant General (Audit), Bihar, Patna in his Audit Report No. 392/09-10 communicated to Medical Officer-in-Charge, Primary Health Centre, Bakhtiyarpur (Patna) vide Accountant General office letter No.359 dated 30.10.2009, directed to be recovered from the petitioner's salary in view of incorrect benefit of increment over a period of time as back as in the year 1983. Accordingly, the petitioner has filed the present writ petition.

8. *Per Contra*, the learned counsel for the respondents submitted that according to the provisions stipulated in the Bihar Government Notification No. 361 dated 15.06.1968, all



the government employees except the class-IV employees, who is in discharge of their official duties, have to do some correspondence and have to prepare some reports etc. and have to pass the Hindi Noting and Drafting Examination within a period of one year of their joining, failing which the next annual increment shall not be allowed in view of specific statement made in paragraph no.5 of the counter affidavit filed on behalf of the Child Development Project Officer, Fatuha, Patna (hereinafter to be referred as the 'CDPO') wherein it is stated that the petitioner is aggrieved with letter no.332 dated 31.05.2010 (**Annexure 11** of the writ petition) sent by the Incharge Medical Officer, Primary Health Center, Bakhtiyarpur, whereby in view of Audit Report No.392/09-3 communicated to the Medical Officer In-Charge, Primary Health Centre, Bakhtiyarpur vide letter no.359, dated 30.10.2009 issued by the office of the Accountant General (Audit), Bihar as she had received excess amount of Rs.3,08,980/- + other Allowances which is to be adjusted @ 7,920/- per month.

9. Heard the parties.

10. The law is well settled that in case of any incorrect calculation having been made in salary or any benefit which has been granted to an employee during his service period incorrectly, the same should have been deducted within a very



short span of time. The Apex Court in the case of **State of Punjab & Ors. Vs. Rafique Masih & Ors.** reported in (2015) 4 SCC 334 has laid down the principles of recoveries, which is re-produced hereinafter as follows :

“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:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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.”

11. The Hon'ble Division Bench of this Court in the case of **Bihar State Electricity Board v. Madan Mohan Prasad** (2001) 1 PLJR 409 has also held as follows, which is re-produced hereinafter :



“Law is well settled that money benefit paid to an employee in excess of his entitlement should not normally be recovered from him after a long lapse of time, particularly after his superannuation from service. It is, however, subject to two exceptions, namely, if the order granting the money benefit itself stipulates that the same is liable to be recovered if found erroneous at a later stage or is subject to approval by authorities. The second exception is that such a money benefit can be recovered if it is found at any later stage that the same had flowed to the employee on account of fraud, misrepresentation or the like attributable to him”.

12. Furthermore, in the light of the order passed in the case of **Ram Binod Singh Vs. Bihar State Electricity Board and Ors.** reported in 2007 Vol.-III PLJR 398, the Hon’ble Full Bench of this Court has established the parameters under which such recovery can be effected, which is re-produced hereinafter as follows :

" 26. ... on reinterpretation or adjudication the earlier view permitting the grant of monetary benefits is found to be by a competent authority and bonafide but wrong, mistaken or erroneous, then ordinarily no recovery should be made unless the excess payment already made is covered by the two exceptions pointed out in the case of Madan Mohan Prasad (supra). But if the grant was by way of undue favour, arbitrary, malafide, ultra vires and/or void ab initio, recovery of public money should be the normal course. In such cases of clear disobedience of policy or rules by ministerial action or clear dishonest decision causing undue loss to public money, action against the concerned authority may also be justified to prevent and discourage plunder of public money by sheer disregard of clear law. The constitutional schemes of rule of law and fairness in public action support recovery in such cases unless law of limitation or



waiver etc. are successfully invoked to show that they prevent such a course in the facts of any particular case.”

13. Also, the Hon'ble Apex Court in the case of **Syed Abdul Qudir & Ors Vs. State of Bihar & Ors.**, reported in **(2009) 3 SCC 475** has held that no recovery shall be made in case there is no fraud or misrepresentation on the part of a government employee as the petitioner had no knowledge that such amount being paid was more than what the petitioner was entitled to.

14. Furthermore, examining a similar proposition, the the learned Apex Court in the case of **Col. B.J Akkara v. Government of India**, reported in **(2006) 11 SCC 709** has observed as under, which is re-produced hereinafter :

"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."

15. Perusal of the aforesaid observations made in the case of **Col. B.J Akkara** (supra) reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, inasmuch as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. This Hon'ble Court also recorded, that recovery from employees in lower rung of service, would result in extreme hardship to them. The apparent explanation for the aforesaid conclusion is that employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them for more hardship, than the reciprocal gains to the employer. We are, therefore, satisfied in concluding that such recovery from employees belonging to the lower rungs (i.e. Class-III and Class-IV - sometimes denoted as Group 'C' and Group 'D') of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India.

16. Considering the law laid down by the Apex Court,



as well as, the pleadings made in the writ petition and the counter affidavit filed on behalf of respondent 6, I find that the respondents are responsible for playing with the vital right of the petitioner by their action insofar as they have proceeded to recover from the incremented salary on account of excess payment made in spite of the fact that the petitioner had not cleared the Hindi Noting and Drafting Examination and no reason as such has been assigned as to whether their action is in accordance with law. At the same time, I find that the deliberate action of the CDPO for recovery is not in accordance with law and the same process of recovery has been initiated without providing her proper opportunity of hearing before passing such order of recovery.

17. I find that the deliberate action has been taken on the part of the District Programme Officer (Establishment) in spite of the law laid down by the Apex Court and the Co-ordinate Bench in the case of **Anju Kumari & Ors. Vs. The State of Bihar & Ors)** passed in **CWJC No.12260 of 2010 vide order date 05.05.2011**. The deliberate specific statement has also been made in Paragraph no.5 that the letter no.332 dated 31.05.2010 was communicated to the petitioner by the Incharge Medical Officer, Primary Health Centre, Bakhtiyarpur on the basis of Audit Report No.392/09-30, which was



communicated to the Medical Officer-in-charge, Primary Health Centre, Bakhtiyarpur issued by the office of the Accountant General (Audit) informing the petitioner that she has received the excess amount of Rs.3,08,980/- + other allowances, which is to be adjusted @ Rs.7,920/- per month, which calls for an action on the CDPO concerned for the reason that instead of taking action in accordance with law he has shifted the liability upon the Accountant General (Audit), Bihar and has sought to file further reply/supplementary affidavit as and when required, with an intention to deprive the petitioner from the amount which was so paid to her after giving benefit of increment on the basic salary from time to time.

18. Considering the above facts and circumstances of the case, this Court finds it proper to impose a cost of Rs.5 lacs to be paid from the pocket of the CDPO, Daniyawa (Fatuha) for unnecessarily harassing the petitioner and overloading the Court with writ petitions arising on account of their illegal action and not following the settled law laid down by the Apex Court. This Court deprecates the manner in which the Accountant General (Audit) (respondent no.7) has given misleading statement in paragraph no.10 that “**Recovery of pay and allowances were not suggested by the audit**”. In the similar way, the respondent no.5, the Medical Officer-cum-Incharge Primary Health Centre,



Bakhtiyarpur has shown his complete disregard to the law laid down by the Apex Court and has informed this Court in paragraph no.11 that **“deduction has been made in compliance of the objection raised by the Principal Accountant General (Audit)”**.

19. In view of the deliberate, willful misleading and incorrect statements made on behalf of the respondent nos.5 & 6 and respondent no.7, would only call for initiating a proceeding of contempt against them, however, considering the delay caused inasmuch as the writ petition is pending since the year, 2011 and during its pendency the law in respect of recovery as on date has been settled by the Apex Court and later on clarified by the Hon'ble Full Bench of this Court, this Court has no alternative than to quash the impugned order contained in letter no.332 dated 01.05.2010 whereby and whereunder the respondents have proceeded to recover an amount of Rs.3,08,980/- + other allowances at the rate of Rs.7,920/- per month till the entire amount is recovered. Accordingly, the order contained in letter no. 332 dated 01.05.2010 is hereby set aside and quashed.

20. I further direct that in case, the competent authorities have not recovered any amount from the petitioner, in view of the fact that I have already quashed the letter no.332



dated 01.05.2010, no further action is required to be taken on the part of the respondents to recover such amount from the petitioner. And in case, any recovery of the afore-mentioned amount has been made from the petitioner, the same is directed to be refunded back to the petitioner well within a period of three months from the date of communication of this order.

21. The present writ petition is accordingly disposed of.

durgesh/chn

(Purnendu Singh, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.10.2024
Transmission Date	NA

