IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16624 of 2022

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Om Prakash Sinha, Son of Late Jai Govind Prasad, Resident of Mohalla-Madhubagh, Nawada, Ara, P.O. and P.S.- Nawada, District- Bhojpur at Ara.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Public Health Engineering Department, Visheshwaraiya Bhawan, Bailey Road, Patna.
2. The Engineer-in-Chief cum Special Secretary, Public Health Engineering Department, Visheshwaraiya Bhawan, Bailey Road, Patna.
3. The Chief Engineer, (Mechanical), P.H.E.D., Bihar, Patna, Bisheshwaraiya Bhavan, Bailey Road, Patna.
4. The Superintending Engineer (Mechanical) Circle, Patna.
5. The Executive Engineer, Public Health Mechanical Division, Sasaram.
6. The Accountant General, Virchand Patel Marg, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Lalan Kumar Singh, Advocate
		Mr. Amit Anand, Advocate
For the Respondent/s	:	Mr. Vishambhar Prasad, AC to AAG- 5
For the Accountant General	:	Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
Date : 23-02-2024

Heard Mr. Lalan Kumar Singh, learned counsel appearing on behalf of the petitioner, Mr. Vishambhar Prasad, learned AC to AAG-5, for the State and Mr. Bindhyachal Rail, learned counsel for the Accountant General, Bihar.

2. The petitioner by filing the present writ petition under Article 226 of the Constitution of India seeking quashing of the order as contained in Memo no. 348, dated 26.05.2022, passed by the Executive Engineer, Public Health Mechanical Division, Sasaram whereby an amount of Rs.3,82,034/- has

been directed to be recovered from the pensionary benefits of the petitioner. The petitioner further sought a direction commanding upon the respondents to maintain the pay scale of the petitioner, which has been guaranteed in pursuant to the decision of the Pay Revision Committee in the light of the Finance Department letter no. 3972 dated 12.05.2016. The petitioner also sought quashing of letter no. 581 dated 08.04.2020, issued by the Engineer-in-Chief-cum-Special Secretary, Public Health Engineering Department, Bihar that benefit of resolution No. 3972 dated 12.05.2016 shall not be admissible to these work charge employees, whose services were absorbed in the State government only in the year 2006 or thereafter.

3. The short facts, which led to the filing of the present writ petition is that the petitioner was initially appointed as a daily wager on class-IV post and subsequently in view of the decision of the departmental committee dated 11.12.1987, he was taken in the Work Charge Establishment under regular scale of pay of Rs.350-425/- by the competent authority. While the petitioner was discharging his duty under the Work Charge Establishment, as noted hereinabove, in view of the Pay Revision Committee, he had also been allowed the pay scale of

Rs.2550-3200/- w.e.f. 01.01.1996 by the order of the Finance Department, Government of Bihar, as contained in memo no. 4965 dated 07.08.1999. However, all of a sudden in the year 2002, the services of the petitioner and other similarly situated employees have been reverted into daily wages employee leading to filing of C.W.J.C. No. 7359 of 2002 and other analogous cases before the Hon'ble Court.

4. During the pendency of the aforesaid writ petition, the government of Bihar came out with a policy decision and pursuant to the order of this Court dated 13.07.2006 passed in C.W.J.C. No. 7359 of 2002, a three men committee was constituted whereupon the services of the petitioner and other similarly situated persons have been absorbed on 30.11.2006 on the post of *Nalkup Khalasi* in the regular pay scale of Rs.2650-4000/-. While the petitioner was working under the regular establishment, the Finance Department, Government of Bihar has issued Resolution vide its Memo No. 3972 dated 12.05.2016 and further its clarification vide letter no. 7577 dated 23.09.2016 in respect of amendment in the pay scale of Class-IV grade employees and also clarifying the fixation of pay of Group 'D' employees.

5. Later on vide Memo No. 707 dated 22.05.2018

issued under the signature of Secretary, Public Health Engineering Department, (hereinafter referred to as 'the PHED') it was resolved to grant ACP/MACP to the employees, who were engaged under the Work Charge Establishment and whose services have been regularized in the year 2006. In the light of the aforesaid decision, the petitioner has been extended the benefit of ACP w.e.f. 01.02.2000 in the pay scale of Rs.2750-4400/- and further been accorded the 2nd MACP vide Memo No. 576 dated 28.07.2018 w.e.f. 01.01.2009 in the pay scale of Rs.5200-20200, Grade Pay 2000/- and accordingly the pay fixation of the petitioner has been done.

6. Taking note of all the aforenoted circulars/letters, the Department of PHED, Patna vide its letter no. 581 dated 08.04.2020 issued letter in respect of pay fixation of Group 'D' employees. By the aforesaid letter, it is made clear that the employees, who were under Work Charge Establishment, whose services were absorbed in the year 2006 or earlier they were working under Work Charge Establishment, they shall be given the benefit of Financial Progression Scheme under departmental resolution no. 3972 dated 12.05.2016 by taking into account their services rendered under Work Charge Establishment. Subsequently, the petitioner came to be superannuated from

service on 31.12.2020 and his pension has been fixed by the order of the competent authority vide order dated 20.01.2021, but later on, the respondent no.5 vide its letter, as contained in Memo No. 348, dated 26.05.2022, directed for recovery of Rs.3,82,034/-, which is impugned herein.

7. While assailing the impugned order of recovery by reducing the pay scale of the petitioner, it is vehemently submitted by the learned counsel for the petitioner that apart from the impugned order, being in complete violation of the principles of natural justice, the same is wholly without jurisdiction and contrary to the Finance Department Memo No. 3972 dated 12.05.2016.

8. It is submitted that the Government of Bihar by taking a policy decision in respect of absorption of services in permanent establishment, the period rendered under the Work Charge Establishment is counted for all other benefits, like pay protection, ACP, MACP and other consequential benefits of service. He next submitted that after absorption of the petitioner on the post of Nalkup Khalasi in the regular regular scale of pay, the competent authority in the light of Memo no. 3972 dated 12.05.2016 and its clarification letter no. 7577 dated 23.09.2016 has revised the pay scale of the petitioner and accordingly

granted 1st ACP in the pay scale of Rs.2750-4400/- w.e.f. 01.02.2000. Further in the light of 6th Pay Revision, the competent authority has revised the said pay scale to Rs.5200-20200/- Grade Pay Rs.1900/- w.e.f. 01.01.2006 and granted 2nd ACP in the same pay scale with Grade Pay 2000/- w.e.f. 01.01.2009.

9. Referring to the aforesaid facts, learned counsel for the petitioner further submits that the impugned order of recovery from the pensionary benefits is not sustainable at all in the eyes of law as well as on facts.

10. On the other hand, learned counsel for the State while refuting the contention of the petitioner has submitted that in the light of the order dated 23.01.2020 passed in C.W.J.C. No. 25682 of 2019 (Amrit Chaudhary Vs. The State of Bihar & Others), the Engineer-in-Chief-cum-Special Secretary sought a report from all the concerned authorities with regard to pay fixation of the Group 'D' employees under resolution no. 3972 dated 12.05.2016 and resolution no. 7577 dated 23.09.2016. In the light of the aforesaid resolution, a fresh verification has been made by the concerned authorities and it was found that several work charge employees, who were appointed before 11.12.1990 and whose services were regularized in the year 2006 and on

wards have also been extended the benefit of aforenoted resolution of Finance Department. Thus, an opinion was sought for from the Finance Department as to whether the benefit of resolution no. 3972 dated 12.05.2016 and resolution no. 7577 dated 23.09.2016 is applicable in the case of Group-D employees, whose services were regularized in the year 2006 and onwards.

11. The finance Department, Government of Bihar opined that the benefit of aforesaid resolutions were only applicable to the employees, who were in regular services on 31.12.1995 and not to the employees, who were working under Work Charge Establishment on 31.12.1995. In the light of the opinion of the Finance Department, the matter of the petitioner and other similarly situated employees have been re-examined and it is found that the petitioner was working as a work charge employee on or before 30.12.1995 and thus the aforesaid circular is not applicable in the case of the petitioner.

12. In pursuant to the aforesaid facts, the Engineer-in-Chief-cum-Special Secretary vide its letter no. 581 dated 08.04.2020 directed all the concerned authorities to extend the benefit of aforesaid resolution of the Finance Department to the employees, who were in regular service on 31.12.1995 and to

re-examine the matter of those employees, who were not entitled to get the benefit of aforesaid resolution and take appropriate action.

13. Accordingly, the excess payment made to the petitioner was calculated for the period 01.04.1997 to 30.11.2020 and found that the petitioner has been paid excess amount of Rs.3,82,034/-. The respondent came out with Memo No. 348 dated 26.05.2022 and requested the Accountant General, Bihar, Patna to adjust the excess amount from the pension of the petitioner. He lastly submitted that so far the submission of the petitioner regarding show-cause notice prior to the issuance of order of recovery is concerned, it does not make any difference in view of the non-applicability of the aforesaid resolution in the case of the petitioner. The benefit of aforesaid resolution has been allowed to the petitioner, since the respondents have misconstrued the applicability of the aforesaid resolution and accordingly wrong fixation in favour of the petitioner has been done.

14. This Court has anxiously heard the learned counsel for the respective parties and also perused the materials available on record, especially resolution no. 3972 dated 12.05.2016 and resolution no. 7577 dated 23.09.2016 issued by

the Finance Department, government of Bihar.

15. Before coming to the point of recovery of the excess amount paid to the petitioner more than his entitlement, it would be necessary to deal with the issue of entitlement of the petitioner as to whether the petitioner was entitled to get the benefit under the aforenoted resolution despite being his services were taken from work charge establishment to regular establishment in the year 2006 or not.

16. From bare reading of the Government resolution no. 3972 dated 12.05.2016 and its clarification vide resolution no. 7577 dated 23.09.2016, there is not an iota of confusion that while taking a decision in the matter of amendment of Pay Scale of 4th Grade employee, a conscious decision was taken to extend the benefit of financial progression to Class-IV employees and the petitioner being Nalkup Khalasi was holding the post of Class-IV employees, the date on which the resolutions have come into effect. Further, the Government of Bihar in the Department of PHED vide resolution, as contained in Memo No. 707 dated 22.05.2018 (Annexure-4 to the writ petition) specifically resolved that those who were earlier working under work charge establishment and later on reverted to daily wager and thereafter their services were

absorbed under the regular establishment in the year 2006, in such cases, their services rendered as daily wager shall be treated under Work Charge Establishment and they shall be allowed pay protection, ACP/MACP, pensionary benefit and other consequential benefits. However, the benefit of pension and gratuity shall be counted in the light of Clause-5(v) of the Departmental Resolution No. 10710 dated 17.10.2013.

17. Thus, by extending the benefit(s) of the Resolution No. 3972 dated 12.05.2016 and Resolution No. 7577 dated 23.09.2016 to Group 'D' employees and to exclude the petitioner and other similarly situated person, who were absorbed in the year 2006 in Group 'D' employees shall be created two different cadres in Group 'D', which were inconsistent to the resolution issued by the PHED, as contained in Memo No. 707 dated 22.05.2018, in terms thereof the petitioner and other similarly situated persons have been extended the benefit of 1st and 2nd ACPs.

18. It is pertinent to note here that the resolution no. 707 dated 22.05.2018 has been issued in the light of order passed in C.W.J.C. No. 14959 of 2013 and other analogous cases and in the aforesaid premise, the committee headed by the Chief Secretary had taken a decision to treat the period of

services as daily wager with effect from 01.06.2002 till the date of absorption, as under work charge establishment and thereupon to extend all the benefits disclosed therein.

19. Furthermore, the decision of the Engineer-in-Chief-cum-Special Secretary, Public Health Engineering Department, basing upon the order passed by this Court in C.W.J.C. No. 25682 of 2019 (Amrit Chaudhary Vs. The State of Bihar & Others), which is still pending adjudication before this Court and the Court only taking note of the callousness on the part of the respondents, compelling the Class IV employees to approach this Court seeking extraordinary remedy under Article 226 of the Constitution of India, raising such grievances, which could have been resolved at the department level or at the level of the officer under the department, thus, directed as follows:

> *"The Principle Secretary will be required to inform this Court as to what effective steps he intends to take to ensure that all similarly situated persons are allowed benefits of the resolution dated 23.09.2016 in accordance with resolution."*

20. Now coming to the opinion of the Finance Department, time without number, it has been held that the notings in a notes file do not have behind them the sanction of law as an effective order. It is only an expression of a feeling by

the officer concerned on the subject under review. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. No formal order modifying the decision as was taken at the level of the Secretary, PHED contained in Memo No. 707 dated 22.05.2018 was ever made. Until such an order is drawn up at the level of the State Government, any interpretation by the respondent no.2 nullifying the effect of the order issued by the Government is wholly without jurisdiction and on this score alone the same is not sustainable.

21. It is also observe that any adverse order causing adverse consequence in respect of any person cannot be passed without affording any opportunity of hearing to the person concerned. It is trite law that any order prejudicially affects the right of a person must be in consonance with the principles of natural justice. Admittedly before passing the impugned order that too after superannuation of the petitioner without any show-cause notice or opportunity of hearing cannot be held sustainable in the eyes of law and accordingly on all the counts this Court finds the impugned orders, as contained in letter no.

581 dated 08.04.2020 and Memo no. 348, dated 26.05.2022 to the extent it disentitled and defeat the claims of the petitioner is/are wholly unjustified and illegal and accordingly the same is fit to be quashed and cancelled.

22. The respondents are directed to ensure the consequential benefits by restoring the adjusted/recovered amount to the petitioner preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

23. Accordingly, the present writ petition stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	05.02.2024
Uploading Date	23.02.2024
Transmission Date	NA