

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13470 of 2024

1. Sarveshwar Kumar Son of Sri Chandrika Chowdhary Resident of Village-Mauna P.S. Nasariganj, District-Rohtas, At Present Posted as Health Educator, At Additional Primary Health Centre, Katari, Sheikhpura.
2. Pramod Kumar Son of Deonath Prasad Resident of Mohalla-Rajendra Nagar, Nawada, P.S. Nawada Sadar, Town and District-Nawada, At Present Posted as Health Educator, At Additional Primary Health Centre, Gagri, Sheikhpura.
3. Md. Jahangir Alam Son of Late Md. Muslehuddin Resident of Mohalla-New Yehyapur, P.S. Sheikhpura District-Sheikhpura, At Present Posted as Health Educator, Additional Primary Health Centre, Kasard (Block Ariari), Sheikhpura.
4. Dinesh Prasad Son of Sri Ram Ishwar Prasad Resident of Village-Malbigha, P.S. Chandi, Town and District-Nalanda. At Present Posted as Health Educator, Additional Primary Health Centre, Sasbahana (Ariari Block) Sheikhpura,
5. Munna Prasad Son of Late Bipin Singh Resident of Village-Surumpur, P.S. Silao, District-Nalanda, At Present Posted as Health Educator, Additional Primary Health Centre, Hatiwana, Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Health Family Welfare, Government of Bihar, Patna.
2. The Director-in-Chief, (Disease Control Public Health and Para-Medical) Department of Health Services, Government of Bihar, Patna.
3. The Civil Surgeon Cum Chief Medical Officer, Nalanda.
4. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Akhilesh Dutta Verma, Advocate
For the Respondent/s : Ms.Anukriti Jaipuriya, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 09-09-2024 Heard Mr. Akhilesh Dutta Verma, learned counsel

 appearing on behalf of the petitioners and Ms. Anukriti

 Jaipuriya, learned counsel appearing on behalf of the

 Respondents/ State.



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

“That this application is for issuance of the writ in the nature of certiorari for quashing the letter vide memo no.1128 dated 13.08.2024 issued under the signature of Civil Surgeon cum Chief Medical Officer, Sheikhpura (Annexure P/3) whereby and whereunder the recovery of excess amount of salary was sought from the petitioners and for any other relief/reliefs for which the petitioners may be found entitled.”

3. Mr. Akhilesh Dutta Verma, learned counsel appearing on behalf of the petitioners submitted that a policy decision has been taken by the State Government not to recover the excess amount from the salary unless and until the criteria as contained in letter No.1128 of 2024 in respect of one similarly situated Trained Health Educator, Md. Shahid Ahmad Siddiqui has been communicated, which is supported by the law laid down in case of ***Amresh Kumar Sinha & Ors. v. The State of Bihar & Ors.*** (SLP (C) Nos. 8219-8226 of 2016) and later on clarified by the Full Bench of this Court in the case of ***Kamlanand Thakur vs.State of Bihar & Ors.*** (C.W.J.C. No. 18727 of 2017) are fulfilled. He submitted that by misinterpreting the said communication the petitioners may face action of recovery, who are class III employee.



4. Learned counsel further submitted that the petitioners seek to file their individual representation before the appropriate authority giving their service particulars and the date on which they became entitled for the first ACP and the second ACP, as has been claimed in the present writ petition for proper consideration of their case.

5. Ms. Anukriti Jaipuriya, learned counsel has tendered her appearance on behalf of the State and she has no objection if the petitioners file their detail representation giving their service particulars before the appropriate authority to consider their case in the light of the law laid down by the Apex Court, however, with a condition that the petitioners must clarify in their representation that they have not suffered any penalty order or are facing any disciplinary action.

6. Considering the rival submissions made on behalf of the parties, the petitioners are seeking that their case be considered in the light of the conditions as contained in Memo No.1128 dated 13.08.2024 and the Civil Surgeon, Sheikhpura may be restrained from taking action without considering their case, if he is contemplating to recover.

7. The petitioners have desired that they seek to file their detail individual representation before the appropriate



authority giving their service particulars and their date of entitlement of the first ACP and the second ACP, as their case may be, to be considered in the light of law laid down by the Apex Court in case of **Amresh Kumar Sinha** (Supra) subject to condition after verifying the service particulars of the petitioners.

8. It is, however, worth to be noted that unless and until the authorities are satisfied that the petitioners have faced any disciplinary action or any penalty order has been passed, no action can be taken against the petitioners considering the fact that the ACP scheme is a financial progression given to an employee, which is time-bound scheme as a result of stagnation of government servant on the same post.

9. With the above observation/direction, the present writ petition stands disposed of.

(Purnendu Singh, J)

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