IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1102 of 2024

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Sushil Kumar Pathak, S/o - Late Hari Nandan Pathak, Resident of Village- Baghla, P.O.- Godhiyari, P.S.- Bisanpur, Block- Hanuman Nagar, District - Darbhanga, State - Bihar, PIN - 846003.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Additional Chief Secretary, Education Department, Bihar, Patna.
3. The Director, Secondary Education, Education Department, Bihar, Patna.
4. The Regional Deputy Director of Education, Darbhanga Division, Darbhanga.
5. The District Education Officer, District- Darbhanga.
6. The District Programme Officer, (Establishment), District- Darbhanga.
7. The D.D.O. -cum- Principal, District Institute of Education and Training (DIET), Darbhanga.
8. The Principal Accountant General (A and E), Bihar, Patna.
9. The Senior Accounts Officer, Principal Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nalin Kumar, Advocate
For the State	:	Mr. Standing Counsel – 24
		Mr. Kumar Manglam, AC to SC-24
For the AG, Bihar	:	Mr. Vivekanand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 13-10-2025

Heard learned Advocate for the respective parties.

2. The petitioner was duly appointed as a clerk on 26.08.1988 at Primary Teachers Training College, Rampur Jajalpur, Dalsingsarai, District Samastipur. Having discharged his duty to the satisfaction of the authorities concerned, finally superannuated from the service on 31.01.2022 on the same post from the District Institute of Education and Training (in short

'DIET'), Darbhanga. After having extended the benefit of ACP/MACP upon completion of 10, 20 and 30 years of service, when the petitioner came to be superannuated and sanctioned all the retiral benefits in his favour, the respondent authorities have come out with letter no. 1050 dated 25.08.2023 and letter no. 1104 dated 05.09.2023 issued under the signature of respondent no.9, as also the consequential letter no. 359 dated 18.09.2023 issued under the signature of respondent no.7 whereby the petitioner has been directed to deposit a total sum of Rs.4,32,896/- in Darbhanga Treasury or in alternative to give consent letter to allow the respondents to recover the same from the payable gratuity amount of the petitioner. Aggrieved with the aforesaid order, the petitioner has preferred the present writ petition.

3. Besides the submission that the petitioner was superannuated from the post of clerk and now any recovery from a retired employee is impermissible in view of the mandate of the Hon'ble Supreme Court in the case of **State of Punjab & Ors. vs. Rafiq Masih (While Washer) [(2015) 4 SCC 334**], it is submitted that identically situated persons, who were also superannuated from the post of Clerk in different offices, they had been allowed identical benefits/pay scale and no order of

recovery has been passed, the particulars of which have duly been disclosed in para.13, but discrimination has been caused and the order for recovery has been passed, in case of the petitioner, as aforenoted. It is not the case of the respondent authorities that the petitioner has played any fraud and misrepresentation at the time of fixation of pay scale or while extending the benefit of ACP/MACP.

4. The petitioner has been allowed 1^{st} and 2^{nd} ACP on 30.09.2016 and 3^{rd} MACP on 30.08.2018. At no point of time, before superannuation of the petitioner, the petitioner has been subjected to any proceeding or even after his superannuation under Section 139 and 43(b) of the Bihar Pension Rules. The recovery from the retiral benefits without there being any statutory rules is also said to be bad in the eye of law that too from the retired employees, is the contention of the learned Advocate for the petitioner.

5. Learned Advocate for the Accountant General, Bihar submitted that the Principal DIET, Kaligahat, Darbhanga vide his letter no. 379 dated 03.10.2023 has sent the service book along with papers for issuing pension authority. On scrutiny, it was found that pensionery benefit has been authorized as per the last pay entitlement in the service book,

which has been intimated vide its No. Pen05/23-24/1407-08 dated 04.12.2023. Based upon the aforesaid sanction order, the payment has been made. It is further submitted that so far the recovery to be done due to excess payment of salary, the same is for the department.

6. A counter affidavit has also been filed on behalf of State respondents and it is submitted that since at the time of fixation of retiral benefit, an objection has been raised by the office of the Accountant General with a remark that the petitioner has been paid excess to his entitlement on account of wrong fixation of the salary from 30.09.2016 to 31.01.2022, hence fresh calculation has been made. On being found the petitioner has been made excess payment, the impugned letter has been issued to deduct the amount of Rs.4,32,895/-. So far the contention of the petitioner raising plea of discrimination, it is submitted that since no such objection has been raised with regard to other identically situated persons, therefore, till date no decision has been taken. However, in case of the petitioner, objection has been raised by the office of Accountant General, hence verification was made and once it is found that the petitioner has been paid excess to his entitlement, the order of recovery has been passed.

7. Learned Advocate for the State referring to Annexure-P/2 submitted that while extending the benefit of 3rd MACP, it was made clear that in case, in future, it shall be found that the petitioner is not entitled to get such benefit or any excess amount has been paid, the same shall be recovered from the employee concerned. The petitioner was also directed to submit a bond in this regard.

8. Before parting with the present writ petition, it would be relevant to take note of the decision rendered by the Apex court in the case of ***Rafiq Masih*** (supra), the Court succinctly held that it is not possible to postulate all situations of hardship which would govern the employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Based on the decisions rendered by the Apex Court in earlier cases, the Hon'ble Court summarized the following situations, whereas recovery by the employer would be held impermissible in law.

> *“"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, summarize the following few situations, wherein recoveries by the*

employers, would be impermissible in law:-

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

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

(iii) Recovery from the 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".

"(A) If it is from employees belonging from Class III and Class IV services (or Group C and Group D service);
(B) If it is from retired employees or the employees who are due to retire within one year, of the order of recovery;
(C) If it is from the employees, when the excess payment has been made for a period in excess of five years before the order of recovery is issued;

(D) From employees who were wrongfully made to discharge duties of higher post and have been paid accordingly even though they should have rightfully been required to work against an inferior post."

9. Admittedly, in the case in hand, the question and the dispute as to whether the amount was paid in excess to the entitlement to the petitioner or could not be adjusted by the erstwhile employee, but it is obvious that the order has been issued to recover the same from the pension of the employee, that too, without following any due process of law.

10. In the case of ***Rafiq Masih*** (supra), the Court while summarizing the situation where the recovery by the employer from the employees belonging to Class-III and Class-IV service would be made impermissible, it has further claimed made clear in para-18(v) of the said judgment that 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 decision afore noted has been passed after reiterating the decision passed by the Hon'ble Supreme Court in catena of decisions reported in **Syed Abdul Qadir & Ors. vs State Of Bihar & Ors. [(2009) 3 SCC 475]; Sahib Ram vs.**

State of Haryana [(1995) Suppl.1 SCC 18]; Shyam Babu Verma vs. Union of India [(1994) 2 SCC 521]; V. Ganga Ram vs. Regional Joint Director & Ors.[(1997) 6 SCC 139]; Purshottam Lal Das vs. State of Bihar [(2006) 11 SCC 492]; Bihar State Electricity Board vs. Bijay Bhadur [(2000) 10 SCC 99]; B.J. Akkara vs. Government of India & Ors. [(2006) 11 SCC 709].

12. In the aforenoted settled position, now coming to the facts of the case. Even as per the stand of the State, it is admittedly the petitioner is said to have been paid excess to his entitlement from 30.09.2016 and the petitioner superannuated on 31.01.2022, but till date of his retirement, no action has been taken with regard to any wrongful fixation of the salary of the petitioner. It is not the case of the respondent State and the Accountant General that there is misrepresentation on the part of the petitioner, rather salary of the petitioner was fixed by the authorities of the State Government and the petitioner was holding class-III post, hence in any view of the matter he was not in a position to influence the decision of the authorities.

13. So far the submission of the State to the extent that an undertaking was taken from the petitioner, no such bond has been produced, as executed by the petitioner in the counter

affidavit.

14. The submission of the petitioner with respect to other identically situated persons, who have been allowed identical pay scale, like the petitioner, but they have been left untouched and no action has been taken, has also not been properly answered by the concerned respondent; only submission has been made that since objection was raised by the Accountant General, Bihar, only with respect to petitioner, order of recovery has been passed. So far other is concerned, since no objection has been raised, therefore, the Department has not proceeded against them. This action of the respondents also finds actuated with discrimination.

15. In view of the aforesaid discussions and the position of law, as discussed hereinabove, this Court finds that the impugned orders are unsustainable and accordingly, order as contained in letter no. 1050 dated 25.08.2023 and letter no. 1104 dated 05.09.2023 issued under the signature of respondent no.9, as also the consequential letter no. 359 dated 18.09.2023 are hereby set aside. The authorities are directed to ensure payment of remaining pensionary/due amount preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

16. The writ petition stands allowed.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.10.2025
Transmission Date	NA