

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5871 of 2024

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Pushpa Kumari, Wife of Vijay Kumar, Resident of Ward No. 15, Mohalla-Shanti Nagar, Police Station- Dumra, District- Sitamarhi, PIN-853301.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Additional Chief Secretary, Department Education, Government of Bihar, Patna.
2. The Director, Primary Education, Education Department, Government of Bihar, Patna.
3. The District Education Officer, Sitamarhi.
4. The district Programme Officer (Establishment), Sitamarhi.
5. The Head Master-cum-Drawing and Disbursing Officer, Middle School, Rampur Patori East, Dumra, District- Sitamarhi.
6. The Treasury Officer, Sitamarhi.
7. The Principal Accountant General (A and E), Bihar at Patna.
8. The Senior Accounts Officer, Office of the accountant General, Bihar at Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dhanendra Chaubey, Adv.
For the Respondent/s	:	Mr. Akash Raj, AC to GA-5
For the A.G.	:	Mrs. Nivedita Nirvikar, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 25-07-2025

Heard the parties.

2. The petitioner before this Court, a retired Head Mistress, who superannuated on 31.01.2022 from Primary School, Rampur Paroti Dumra, District Sitamarhi has approached this Court seeking quashing of the order, directing for recovery of Rs. 6,87,434/- from the death-cum-retiral gratuity, issued under the signature of respondent no. 6 on 20.05.2022.



3. From the materials available on record it appears that the petitioner was duly appointed as a Primary Teacher on 20.05.1988 and subsequently after having found her satisfactory service, she was promoted to the post of Head Mistress vide letter no. 2741 dated 22.10.2016. Finally the petitioner superannuated on 31.01.2022. The services of the petitioner is said to be unblemished and at no point of time she was subjected to any departmental or judicial proceeding. On being superannuated the sanction letter was forwarded, based upon which the pension payment order has also been issued, the copy of which is placed on record as Annexure P/2 to the writ petition dated 21.03.2022.

4. Learned Advocate for the petitioner contended that after the issuance of the P.P.O., all of a sudden the petitioner came to know that the concerned respondent authorities have taken a decision to recover an amount of Rs. 6,87,434/- from the death-cum-retiral gratuity. On being aggrieved, the petitioner has approached this Court.

5. Learned Advocate for the petitioner submitted that apart from the settled proposition of law that no recovery can be made from retired employees as has been held in the case of ***The State of Punjab & Ors. vs. Rafiq Masih (White Washer)***



[(2015) 4 SCC 334] and further in the case of *Thomas Daniel vs. State of Kerala & Ors. [(2022) SCC Online SC 536]*, the very basis upon which the respondent authorities are intending to recover the amount has come to be settled by this Court in C.W.J.C. No. 2783 of 2021, where the Court has held the recovery as unsustainable.

6. In pursuant to the order of this Court the respondent authorities have also come out with office order as contained in memo no. 242 dated 20.01.2023, the copy of which is placed on record as Annexure P/4. A conscious decision has been taken in the light of the order of this Court dated 23.09.2022 in the case of *Chandrakanta & Ors. vs. The State of Bihar & Ors. (C.W.J.C. No. 2783 of 2021)* that no recovery shall be made from the concerned teachers, who has been initially allowed the benefit of Schedule II after making fixation of their pay scale.

7. Learned Advocate for the State submitted that in fact on account of wrong fixation of salary, the petitioner has been extended excess salary to her entitlement and after proper verification, it has been found that an amount to the tune of Rs. 6,87,434/- is found recoverable. A supplementary counter affidavit has been filed on behalf of the respondent no. 6. The position is admitted to the extent of the decision rendered by this



Court in C.W.J.C. No. 2783 of 2021, and consequent upon issuance of the office order as contained in memo no. 242 dated 20.01.2023, however, it has been submitted that since the aforesaid judgment does not state that the recovery which has already been made prior to the judgment, whether the recovered amount is required to be returned back or not.

8. Having heard the learned Advocate for the respective parties, this Court is of the opinion that the decision taken by the concerned authorities to recover the amount is completely in the teeth of the order passed by this Court in C.W.J.C. No. 2783 of 2021. It is made clear that in case any decision is passed by a Constitutional Court, it applied retrospectively meaning thereby they apply to past action and events, unless the decision explicitly ruled that it will only apply otherwise. However, the Courts may choose to apply a decision prospectively to avoid undue hardships or to prevent unsettling settled matter. Recently the Hon'ble Supreme Court in the case of *Kanishk Sinha & Anr. vs. The State of West Bengal & Anr.*, **2025 SCC Online SC 443** clarified that a ruling remains applicable retrospectively, unless expressly stated to have a prospective effect. The Court in no uncertain terms observed that :-



“Now the law of prospective and retrospective operation is absolutely clear. Whereas, the law made by the legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a constitutional Court, or law as it is interpreted by the Court. The judgment of the Court will always be retrospective in nature, unless the judgment itself specifically states that the judgment will operate prospectively. The prospective operation of a judgment is normally done to avoid any unnecessary burden to persons or to avoid undue hardships to those who had bonafidely done something with the understanding of the law as it existed at the relevant point of time. Further, it is done not to unsettle something which has long been settled, as that would cause injustice to many”.

9. Once the issue has already been set at rest by a Bench of this Court in C.W.J.C. No. 2783 of 2021, the recovery made by the respondent cannot be held to be sustainable. Moreover, this Court also finds that in innumerable occasion, the Apex Court has made it clear that the unilateral recovery from the retired employees is not tenable.

10 . On both these grounds, this Court finds that the



amount deducted by the respondent authorities from the death-cum-retiral gratuity is unsustainable.

11. The respondent authorities are directed to restore the amount of Rs. 6,87,434/-, preferably within a period of 8 weeks’ from the date of receipt/production of a copy of this order.

12. The writ petition stands allowed.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.07.2025
Transmission Date	NA

