IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No 6869 of 2023

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Arun Kumar Pandey Son of Late Chandrika Pandey, Resident of At-E-29, Gandak Colony, Srinagar, Siwan, P.O.-Siwan, Police Station-Siwan, District-Saran, PIN-841226.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Chief Engineer, Sinchai Srijan, Water Resources Department, Siwan.
3. The District Magistrate, Siwan.
4. The Superintendent Engineer, Saran Canal Circle, Siwan.
5. The Treasury Officer, Siwan.
6. The Accountant General (A and E) Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : M/s Alok Kumar, Pranaw Kumar, Advocates

For the Respondent/s : Mr.Vikash Kumar (Sc11)

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CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 29-04-2025

This petition has been preferred by the petitioner for quashing and setting aside the office order bearing Memo No 931 dated 22.12.2022 (Annexure 4) whereby and where under just a week before retirement of the petitioner from the post of Steno-Typist, the annual increments already granted and paid to him with effect from 24.05.2011 has been withdrawn/withheld and the amount already paid to him by way of annual increment with effect from 24.05.2011 has been directed to be recovered and the pension of the petitioner has been fixed on reduced scale. Further challenge is to the order bearing Letter No 569 dated 13.05.2023 issued by respondent No 4 (Annexure 9) whereby the amount of Rs 12,95,753/- has been directed to be recovered from the pensionary benefits of the petitioner.

2 Brief facts of the case are that the petitioner was Group C employee of State Government and has joined his services in the year, 1984 and retired on 31.12.2022. He passed the Hindi Noting and Drafting Examination in the year, 1986 and also passed the Departmental Accounts Examination in the year, 2010. He was granted the first time bound promotion in the year, 1995 and also was granted the benefits of first, second and the third ACP by the competent authority with regular annual increments. Before retirement of the petitioner, fixation of his pay was done but immediately before one week from retirement on the basis of objection raised by the Accountant General, Bihar, respondent No 4 issued the impugned order dated 22.12.2022 (Annexure P/4). During pendency of this writ petition, respondent No 4 has also passed an order of recovery of Rs 12,95,753/- vide Annexure P/9. Hence, this petition.

3 Learned counsel for the petitioner would submit that since the petitioner was a Group C employee and the impugned order (Annexure P/4) has been passed just a week before the retirement of the petitioner and order impugned (Annexure P/9) has been passed after his retirement, therefore, in the light of the observations made by the Supreme Court in the case of ***State of Punjab & Others -Versus- Rafiq Masih (While Washer) & Others (2015) 4 SCC 334,*** the recovery of excess payment cannot be permitted. Further, reliance has been placed by the counsel on the case of ***Thomas Daniel -Versus- State of Kerala, AIR 2022 Supreme Court 2153.***

4 Learned counsel for the respondent-State opposes the argument raised by the learned counsel for the petitioner and submits that since the petitioner did not pass the computer proficiency test, therefore, the increment was wrongly given to him. Thus, on the basis of the objection raised by the office of Accountant General, both the orders impugned were passed.

5 I have heard learned counsel for the parties and perused the material available on record.

6 Undisputedly, the petitioner retired from Group C services. It is also not in dispute on the point that before one week of retirement, the impugned order (Annexure 4) has been passed and another order (Annexure 9) has been passed after his retirement. There is also no dispute on the point that the excess payment due to wrong fixation of his pay was made to the petitioner with effect from 2011, i e, 11 years prior to the passing of the impugned order (Annexure 4).

7 Dealing with the issue, the Supreme Court, in the case of ***Rafiq Masih (supra)*** observed and held in paragraph 18 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, 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 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."***

8 In the case of ***Thomas Daniel (supra)*** also the Supreme Cdourt observed at paragraph 13 as under:

> ***"13. In State of Punjab and Others v Rafiq Masih (White Washer) and Others wherein this Court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:***
>
> ***8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover. … … ..."***

9 In the light of above observations made by the Supreme Court, on examination of the facts of this case, it is quite clear that there was no fault on the part of the petitioner of wrong fixation of his salary in the year, 2011. Since the petitioner is a Group C employee and stood retired from the services, the impugned order (Annexure P/9) dated 13.05.2023 has been passed after his retirement and the order (Annexure P/4) daed 22.12.2022 has been passed just one week prior to his retirement, in the light of the decision in the case of ***Rafiq Masih (supra),*** both the orders are not sustainable.

10 Accordingly, both the orders are liable to be and are hereby set aside.

11 The respondents are directed to clear the entire admissible dues of the petitioner as early as possible preferably within one month from the date of receipt of a copy of this order with applicable interest.

12 The writ petition is allowed.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.05.2025
Transmission Date	NA