

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8506 of 2024

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Sudha Mishra Wife of Late Avadhesh Kishor Misra Resident of Mohalla -
Morsand, Ward No. 12, P.S. Sitamarhi, District - Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department,
Government of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna.
3. The Engineer-in-Chief-cum-Special Secretary, Public Health Engineering
Department, Government of Bihar, Bishweshwaraiya Bhawan, Bailey Road,
Patna.
4. The Chief Engineer, Public Health Engineering Department, Government of
Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Circle,
Muzaffarpur.
6. The Executive Engineer, Public Health Division, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh, Advocate
For the Respondent/s : Mr. Government Pleader (13)

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 13-10-2025

Heard the learned counsel for the petitioner and the

learned counsel for the State.

2. The present writ petition has been filed on behalf of
the petitioner for the following relief(s):

*(I). For issuance of an
appropriate writ in the nature of
certiorari for quashing the order dated
08.04.2020 passed by the Respondent
no.3 and contained in his letter no.581
dated 08.04.2020 whereby and where
under the Respondent no.3 has been
pleaded to hold that Resolution No. 3972
dated 12.05.2016 and Resolution*



No.7577 dated 23.09.2016 are not applicable in the case of those employees whose services has been regularized in the year 2006 or later on from the work charge establishment and they are only entitled for the prescribed pay-scale and financial progression with effect from 01.01.2006. By the said letter, the Respondent no.3 also directed the Authorities concerned to revise the salary of those employees and to take needful action in accordance with law.

(II) For issuance of an appropriate writ in the nature of mandamus, commanding and directing Respondent no.6 to produce on record the office order no.198 contained in memo no.1871 dated 08.11.2023 issued under the signature of the Respondent no.6, so far it relates to the husband of petitioner whereby and where under he has been pleased to direct for recovery of Rs.3.58.329/- from the retiral dues of the husband of the petitioner which was allegedly received by the husband of the petitioner on the basis of earlier fixation made by the Respondents and on production the same may be quashed by issuance of an appropriate writ in the nature of CERTIORARI on the ground that in view of the law settled by the Hon'ble Supreme Court in the case of Rafique Masih, no amount could be recovered from the retrial dues of the 3 and 4" Grade employee.

(III) For issuance of an appropriate writ in the nature of certiorari for quashing the office order no.205 dated 09.11.2023 contained in memo no.1890 dated 09.11.2023 issued under the signature of the Respondent no.6 whereby and where under he



recovered the amount of Rs.3,58,329/- from the earned leave of the husband of the petitioner.

(IV) For issuance of an appropriate writ in the nature of mandamus, commanding and directing Respondent Authorities to not alter the earlier fixation of the husband of the petitioner made by the Respondent no.6 in the light of the Resolution No.3972 dated 12.05.2016 and memo no.7577 dated 23.09.2016 issued by the Finance Department Government of Bihar, Patna.

(V) For issuance of an appropriate writ in the nature of mandamus, commanding and directing the Respondent Authorities to make payment of all kinds of retiral dues to the petitioner on the ground that the husband of the petitioner retired from the service on 31.03.2023 and after his retirement he died in harness on 04.12.2023 without getting his retiral dues and also refund the amount of recovery which was deducted from the earned leave of the husband of the petitioner with interest.

(VI) For issuance of any other appropriate writ/writs order /orders, direction/directions for which the writ petitioner shall be found entitled under the facts and circumstances of the case.

3. The learned counsel for the petitioner submits that the husband of the petitioner was initially engaged/appointed on muster roll/ daily wages as a 4th Grade employee under Public Health Mechanical Division, Dhaka, by the Executive Engineer as per the urgent need of work. Pursuant to the direction of the



department contained in Memo No. 465 dated 25.05.1988 issued under the signature of the Chief Engineer, the services of the husband of the petitioner was taken engaged in the year 1988 as a Key Man-cum-Chaukidar in the pay-scale of Rs.350-425 issued under the signature of the Public Health Division, Dhaka and subsequently his post of Key Man-cum-Chaukidar was converted to the post of Tube Well Khalasi temporarily *vide* Memo No. 422 dated 10.05.1989. He further submits that instead of taking the services of the husband of the petitioner in regular establishment from the work charge establishment, in the year 2002, a general show-cause notices were issued under the signature of the Commissioner-cum-Secretary to employees working under work charge establishment including the husband of the petitioner, by which the husband of the petitioner was asked as to why their services be not reverted as daily wager employees.

4. The learned counsel for the petitioner has further submitted that in response to the aforesaid show-cause notice, the husband of the petitioner filed his detailed response, mentioning all the facts in detail and prayed for not to revert him as a daily wager. Even after issuance of the aforesaid show-cause notice, the husband of the petitioner continued on his post



in the work charge establishment, but the Respondent Authorities had arbitrarily paid the salary to the petitioner as daily wager in place of work charge employee. It is further submitted that after filing of show-cause, no order of reversion was issued to the husband of the petitioner from the work charge establishment to daily wager. He further submits that pursuant to the direction of this Court *vide* order dated 13.07.2006 passed in C.WJ.C No.7359 of 2002 and its analogous cases, the State Government constituted a three member Committee to consider the cases of regularization and pursuant to the recommendation of the three member Committee as well as the Memo no. 1125 dated 28.11.2006 issued by the Chief Engineer, Public Health Engineering Department (Respondent no. 4), the services of the similarly situated persons were regularized *vide* Office Order No. 188 dated 30.11.2006 contained in Memo No. 1019 dated 30.11.2006 issued under the signature of the respondent no. 6 whereas the services of the husband of the petitioner was regularized *vide* Office Order No. 68 dated 20.06.2014 issued under the signature of the Respondent no.6 and contained in Memo No. 699 dated 20.06.2014.

5. The learned counsel for the petitioner has further submitted that a Co-ordinate Bench of this Court *vide* order



dated 16.05.2013 passed in C.W.J.C. No.7211 of 2013 and 16 other analogous cases (*Yogendra Prasad Asthana Versus The State of Bihar and others*) directed the Respondent Authorities for payment of differences of arrears of salary for the period 01.06.2002 till the date their regularization to the writ petitioners of the said writ application. This Court also directed the Respondent Authorities to implement the said order in other similar matters.

6. It is further contended by the learned counsel for the petitioner that in the light of the aforesaid order passed by this Court, under the chairmanship of Chief Secretary, a meeting of Bihar State Authorized Committee was convened on 13.11.2013 and a decision was taken for treating the services rendered in between 01.06.2002 till regularization i.e., 30.11.2006 in daily wage as work charge period and pursuant to the said decision, the Respondent no.3 issued a general order contained in Memo No. 925 dated 16.11.2013, by which a general direction was issued to all the Executive Engineers to ensure that the claim of payment of the differences of arrears of salary of the said period are redressed, pursuant to the order dated 16.05.2013 passed by this Court. It has also been directed that the differences of the salary of the reversion period will be



paid according to the Bihar Litigation Policy. Pursuant to the general order of the department, the Respondents had not paid the differences of salary from 01.06.2002 till the regularization admissible to the work charge employees. He further submits that *vide* Memo No. 3058 dated 22.10.1984, the State Government through the Finance Department issued an order by which it was held that for the purposes of grant of pension, gratuity as well as promotion, the period spent in the work charge establishment be counted as qualifying service.

7. The learned counsel for the petitioner has further submitted that the State Government through the Finance Department issued a resolution *vide* Resolution No.10710 dated 17.10.2013 wherein in paragraph no.5 (iv), it has been mentioned that for the purposes of grant of benefits of Modified Assured Career Progression Schemes (MACPS), the services rendered in the work charge establishment would be counted. He further submits that the Respondent no.6 granted the benefits of ACP/MACP to the husband of the petitioner counting the services of the husband of the petitioner since the date of his appointment in the work charge establishment as well as revision of salary pursuant to the different circulars of the Finance Department. The Finance Department issued a



Resolution contained in Memo No. 3972 dated 12.05.2016 with respect to amendment of pay-scale of fourth grade employees. By the said resolution, a decision was taken that those Group D employees, who were getting the pay-scale of Rs.2610-3540 with effect from 01.01.1996, they are entitled to get the pay-scale of Rs. 2610-4000 from the said date. On the account of grant of first A.C.P. and the second A.C.P. their pay-scale were converted in the pay-scale of Rs.2750-4400 and Rs.3050-4590 without any fixation. The original pay-scale of Rs.2610-4000 was revised with effect from 01.01.2006 in the scale of PB-1+ 1800 and accordingly first ACP/MACP, second ACP/MACP and third ACP/MACP is sanctioned in Grade Pay 1900, 2000 and 2400 respectively.

8. The learned counsel for the petitioner has further submitted that in clarification of Resolution No. 3972 dated 12.05.2016, the Finance Department issued a Resolution contained in Memo No. 7577 dated 23.09.2016 by which a decision was taken that in the light of Resolution no. 3972 dated 12.05.2016 with effect from 01.01.1996, the Group- D employees getting the pay-scale of Rs.2610-4000 or Rs.2650-4000 will be entitled to get the benefits of fixation in case of entitlement of A.C.P. It has been further decided that with effect



from 01.01.2006 after revision of pay-scale in PB-1+ Grade Pay-1800 the Group-D employees who are getting unrevised pay-scale Rs.2610-4000/2650-4000 are entitled to get three increments whereas those Group- D employees who are getting the pay-scale of Rs.2750-4000, are entitled to get two increments and those employee who are getting the pay-scale of Rs.3050-4590, are entitled to get only one increment. He further submits that pursuant to the decision taken in the meeting of Bihar State Authorized Committee under the chairmanship of Chief Secretary dated 13.11.2013 as well as the subsequent letter issued by the department, the Respondent no.2 was pleased to hold that the services rendered in the work charge establishment would be counted for the purposes of grant of benefits of A.C.P. as also pay protection would be granted. He further submits that in the meeting, all the disputes have been settled and a letter in this regard has been issued by the department *vide* Letter No. 925 dated 16.11.2013 and in the line of the said decision as also the Resolution of the State Authorized Committee No.10710 dated 17.10.2013, the Respondent no. 2 had already issued a letter contained in Memo No.707 dated 22.05.2018 by which it has been decided that for the purposes of benefits of ACP /MACP as also the pay



protection the services rendered by the petitioner in the work charge establishment from 1988 to 2006 was counted but in utter disregard, the Respondent issued the impugned order contained in Letter No. 581 dated 08.04.2020, by which the Respondent no.3 held that Resolution No. 3972 dated 12.05.2016 and Resolution No.7577 dated 23.09.2016 are not applicable in the case of those employees whose services had been regularized in the year 2006 or later on from the work charge establishment and they are only entitled for the prescribed pay-scale and financial progression with effect from 01.01.2006. By the said letter, the Respondent no. 3 also directed the authorities concerned to revise the salary of those employees and to take needful action in accordance with law.

9. The learned counsel for the petitioner has further submitted that pursuant to the aforesaid letter, the Respondent no. 6 was pleased to reduce the salary of the husband of the petitioner and also issued the Office Order No. 198 dated 08.11.2023 contained in Memo No. 1871 dated 08.11.2023, by which he ordered for recovery of Rs.3,58,329/- from the retiral dues of the petitioner but the said order was not served to the petitioner. The Respondent no.6 issued Office Order No. 205 dated 09.11.2023 contained in Memo No. 1890 dated



09.11.2023 by which he sanctioned the amount of earned leave of Rs.5,02,165/- to the husband of the petitioner however, he deducted the amount of Rs.3,58,329/- from the earned leave of the petitioner and ordered for payment of only Rs.1,43,836/- against the earned leave of the husband of the petitioner. After attaining the age of superannuation, the husband of the petitioner had superannuated from the post of Khalasi on 31.03.2023 pursuant to the office order contained in Memo No. 626 dated 28.03.2023 but nothing has been paid to the husband of petitioner against his retrial dues save and except the amount of Group Insurance and General Provident Fund. He further submits that after the retirement, the husband of the petitioner died in harness on 04.12.2023 without getting his retrial dues. With respect to death of her husband, a death certificate was issued by the competent authority on 10.12.2023. He further submits that the impugned order of recovery was issued after eight months of the retirement of the petitioner without asking any show cause notice or opportunity of hearing to the petitioner.

10. The learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in the case of *State of Punjab & Ors v/s Rafiq Masih, (2015) 4 SCC 334* and



the case of *Thomas Daniel v/s State of Kerala and Others*,
2022 SCC OnLine SC 536.

11. The learned counsel for the State relying on the statement made in the counter affidavit has vehemently opposed the prayer of the petitioner.

12. I have heard and considered the submissions of the parties and have also gone through the records of the case.

13. The Hon'ble Supreme Court in the case of *Thomas Daniel V/s State of Kerala & Ors.*, reported as *(2022) SCC OnLine SC 536*, referring to the summarized postulation of law expounded in *Rafiq Masih (supra)* regarding situations wherein recoveries would not be permissible had held as under:-

10. In *Sahib Ram v. State of Haryana*, this Court restrained recovery of payment which was given under the upgraded pay scale on account of wrong construction of relevant order by the authority concerned, without any misrepresentation on part of the employees. It was held thus:

“5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation, the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale



was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.”

11. In *Col. B.J. Akkara (Retd.) v. Government of India* this Court considered an identical question as under:

“**27.** The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide *Sahib Ram v. State of Haryana* [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], *Shyam Babu Verma v. Union of India* [(1994) 2 SCC 521 : 1994 SCC (L&S) 683; (1994) 27 ATC 121], *Union of India v. M. Bhaskar* (1996) 4 SCC 416 : 1996 SCC (L&S) 967] and *V. Gangaram v. Regional Jt. Director* [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the



pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to



the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made.”

12. In *Syed Abdul Qadir v. State of Bihar* excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/understanding of a



Rule or Order. It was held thus:

“**59.** Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”

13. In *State of Punjab v. Rafiq Masih (White Washer)* 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.

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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, summarise 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.”

14. From the afore-quoted judgments, it is patently clear that the recovery of excess payment, which is not having been made by fraud or misrepresentation, from a Class-IV employee is impermissible. The recovery of excess payments made to employees due to administrative errors must be governed by equity, fairness, and natural justice. Recovery cannot be mechanically enforced, especially against a retired Class-IV employee, particularly when such excess payment could not be attributable to the fraudulent act on the part of the employee concerned.

15. Considering the law laid down by the Hon’ble Supreme Court in paragraph-18 of *Rafiq Masih (Supra)*, which is reiterated in *Thomas Daniel (Supra)* squarely apply to the facts of the present case and it is clear that recovery of excess payments cannot be enforced against a Class-IV employee in the



absence of any fraud or misrepresentation.

16. The recovery made from the deceased husband of the petitioner is held to be illegal and, therefore, the order dated 08.04.2020 passed by the Respondent no.3 contained in Letter No. 581 dated 08.04.2020 and the Office Order No. 205 dated 09.11.2023 contained in Memo No.1890 dated 09.11.2023 issued under the signature of the Respondent no. 6 are hereby quashed.

17. The respondents are directed to ensure the consequential benefits by restoring the adjusted/recovered amount to the petitioner within a period of 12 weeks from the date of receipt/communication of a copy of this order.

18. With the aforesaid observation and direction, this application is allowed.

(Sandeep Kumar, J)

Shishir/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.10.2025.
Transmission Date	

