

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12055 of 2017

- 1.1. Sumitra Devi Wife of late Bihari Kamti, Resident of Village - Gamail, Police Station - Bihariganj, District- Saharsa.
- 1.2. Dinesh Kamti Son of Late Bihari Kamti, Resident of Village - Gamail, Police Station - Bihariganj, District- Saharsa.
- 1.3. Naresh Kamti Son of late Bihari Kamti, Resident of Village - Gamail, Police Station - Bihariganj, District- Saharsa.
- 1.4. Naval Kishore Son of late Bihari Kamti, Resident of Village - Gamail, Police Station - Bihariganj, District- Saharsa.

... .. Petitioners

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Director, Higher Education, Human Resources Development Department, Government of Bihar, Patna.
4. The Regional Deputy Director Education, Purnea Division, Purnea.
5. The District Education Officer, Purnea.
6. The District Programme Officer Establishment, Purnea.
7. The Head Master, Maturam Girls High School, Banmankhi, District- Purnea.
8. The Accountant General, Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioners :	Mr. Satish Chandra Jha-3, Advocate
For the Respondent State:	Mr. Umesh Narayan Dubey, AC to GP-27
For the Accountant General:	Mr. Viveka Nand Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
ORAL JUDGMENT

Date : 05-12-2025

Heard learned counsel appearing for the petitioners,
learned counsel appearing for the respondent State and learned
appearing for the respondent Accountant General.

2. The petitioners in the present writ application have
prayed for the grant of following relief(s): -



“(i) To quash the letter no 82 dated 16.05.2017 (Annexure-1) issued under the signature of Respondent no 7 whereby and whereunder petitioner has been directed to ensure deposit of Rs 8,33,537-00 in the State Bank of India, Purnea Branch, which was paid to him by way of increment during the period 1.4.1981 to 31.8.2012 without passing of Hindi Noting and Drafting examination Aforesaid order is bad in law as well as on facts, because same has been issued in complete violation of principle of natural justice, that too after superannuation of the petitioner. Aforesaid order is further bad in law because there was/ is no misrepresentation of facts on the part of the petitioner in getting the increments.

(ii) To direct the respondents to fix the pensionary benefit of the petitioner on the basis of last pay drawn by him and make payment all consequential monetary benefits along with interest thereon because there was/ is no laches on the part of the petitioner.

(iii) That the Hon'ble Court may be pleased to grant any other relief or reliefs to the petitioner as this Hon'ble Court may think it proper in the present facts and circumstances of this case.”



3. Learned counsel appearing for the petitioners submits that the husband of petitioner No.1(i) and the father of petitioners No. 1(ii) to 1(iv) was initially appointed as a Clerk (Class-III employee) and he joined the service on 01.04.1975 in Maturam Girls High School, Banmankhi, Purnea, and retired from service on 31.08.2012. He further submits that after retirement, the husband of petitioner No. 1(i) submitted all relevant papers including pension form before respondent No.7 and accordingly the deceased employee was paid leave encashment, group insurance amount and G.P.F. amount, but was not paid provisional pension and gratuity. It is further submitted that belatedly the In-charge Headmaster, Maturam Girls High School, Banmankhi, Purnea, vide letter No. 58 dated 31.05.2014 (Annexure-2 series) submitted pension form and the service-book of the husband of the petitioner No.1(i) before District Programme Officer (Establishment) Purnea. Accordingly, after verifying the entire service-book, certificate dated 31.05.2014 was granted by respondent No.7. After having received the pension form and the service-book of the husband of petitioner No.1(i), respondent No. 6 sent the same to the Accountant General, Bihar, Patna, who was the competent authority to sanction the pension and gratuity. The



Accountant General, Bihar, Patna, having found some defects in the service-book of the husband of petitioner No.1(i), vide letter No. 955 dated 29.09.2014, returned the same with certain objection to respondent No.6, who in turn vide letter No. 3986 dated 08.11.2014 returned the service-book and pension form to respondent No.7 with a direction to remove the objections raised by the Accountant General immediately and make available the service-book and the pension form. He further submits that from the perusal of the said letter dated 08.11.2014, it would reveal that the Accountant General, Bihar, Patna, has pointed out the objection to the effect that for a Clerk passing of Hindi Noting and Drafting Examination was necessary, so that he could get entire increments. However, in the service-book of the husband of petitioner No.1(i), certificate regarding passing of said examination was not mentioned and despite the same, he was allowed increments, which as per Accountant General, Bihar, Patna, was not legal. It is further submitted by learned counsel appearing for the petitioners that during the entire service period, several times, the pay fixation of the husband of the petitioner No.1(i) was approved by the competent authority and at no point of time, any objection was raised with respect to passing of Hindi Noting and Drafting Examination. Further, after retirement of the



husband of petitioner No.1(i), first time, the Accountant General, Bihar, Patna, made objection in this regard, which ought not to have been done as it was not legally tenable because there was no misrepresentation on the part of the husband of the petitioner No.1(i).

4. It is further submitted by learned counsel appearing for the petitioners that in response to the letter No. 1079 dated 19.03.2016, issued by the District Programme Officer (Establishment), Purnea, the In-charge Headmaster vide his letter No. 45 dated 07.04.2016 requested the husband of the petitioner No.1(i) to return the service-book along with the certificate regarding passing of Hindi Noting and Drafting Examination. The son of the deceased employee petitioner No.1(ii) approached respondent No.7 several times, but he refused to receive the service-book and pension form and ultimately finding no option, he sent the same through registered post, which was made available to him by respondent No.6. It is further submitted that vide letter No. 320 dated 14.02.2017 (Annexure-6), respondent No. 6 requested respondent No.7 to calculate the excess amount paid to the husband of petitioner No.1(i) and ensure recovery. Thereafter, respondent No. 7 having received the said letter (Annexure-6), issued by respondent No.6, calculated the excess



amount, which was paid to the husband of petitioner No.1(i), for no fault on the part of the husband of petitioner No.1(i), vide impugned letter No. 82 dated 16.05.2017 (Annexure-1) directed the husband of petitioner No.1(i) to ensure deposit of excess amount to the tune of Rs.8,33,537.00 in the State Bank of India, Purnea Branch, through challan so that further action can be taken.

5. Learned counsel for the petitioners submits that the order for recovery of the amount could not have been made from the husband of petitioner No. 1(i) for two reasons. The first being, that prior to passing of order for recovery as contained in Annexure-1 no opportunity of hearing was granted to the husband of petitioner No.1(i); and secondly, when the amount had been paid to the husband of petitioner No. 1(i) for no fault of his, then the recovery was not permissible in law in view of the law settled by the Hon'ble Supreme Court in the case of ***State of Punjab vs. Rafiq Masih (White Washer)*** reported in **2015(1) PLJR (SC) 261**. Learned counsel for the petitioners particularly relies upon paragraph 12 of the said judgment, which is quoted hereinbelow for needful: -

“12. 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.”

6. In view of the above lego-factual position, learned counsel for the petitioners prays that the impugned order for



recovery of the amount from the petitioners be set aside and appropriate direction be issued to the respondents to fix the pensionary benefits on the basis of last pay drawn by the husband of the petitioner No.1(i) and to make payment of all consequential monetary benefits along with interest thereon.

7. *Per contra*, learned counsel appearing for the State defends the order of recovery passed by the respondent authorities and submits that the payment, which had been made in excess to the husband of petitioner No.1(i) was liable to be recovered as the deceased employee was not entitled to the extra payment which had been made to him. Learned counsel appearing for the State, however, struggles to meet the law which has been settled by the Hon'ble Supreme Court in the aforesaid judgment (*supra*).

8. Having heard both the parties at length, this Court is of the view that the impugned order contained in letter No.82 dated 16.05.2017 (Annexure-1) is completely illegal and is in teeth of law settled by the Hon'ble Supreme Court in the case of ***Rafiq Masih (White Washer)*** (*supra*) and, therefore, it is accordingly set aside.

9. It is pertinent to highlight that the husband of petitioner No. 1(i) was a Class-III employee and the order for recovery of the amount has been made after the husband of the



petitioner No.1(i) had retired from service. For these circumstances, the Hon’ble Supreme Court in the aforesaid judgment has made it clear that no recovery is permissible in law.

10. After setting aside the impugned letter No, 82 dated 16.05.2017 (Annexure-1) by which the petitioners have been directed to ensure deposit of Rs.8,33,537.00, this Court further considers it appropriate to direct the respondents to fix the pensionary benefits on the basis of last pay drawn by the husband of petitioner No.1(i) and to make payments of all consequential monetary benefits along with 6 *per cent* interest from the date it became due. The payments must be made within a period of three months from the date of passing of this order.

11. With the aforesaid observations and direction, the present writ application is allowed in the aforesaid terms.

(Alok Kumar Sinha, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

