IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8468 of 2024

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Shrawan Kumar, Son of Late Genauri Lal, resident of Mohalla- Mogal Kuan, P.O. and P.S.- Sohsarai, District- Nalanda.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Under Secretary-1 (Management), Water Resources Department, Government of Bihar, Patna
3. The Engineer-in-Chief (Headquarter) Water Resources Department, Government of Bihar, Patna
4. The Chief Engineer, Irrigation Creation, Water Resources Department, Aurangabad.
5. The Executive Engineer, North Koel Canal Division, Navinagar, Aurangabad.
6. Principal Secretary, Department of Finance, Government of Bihar, Patna.
7. The Deputy Secretary, Department of Finance, Government of Bihar, Patna.
8. The Accountant General Bihar

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Suryakant Kumar, Advocate
For the Respondent/s	:	Mrs. Puspanjali Sharma, AC to SC- 20
For the AG, Bihar	:	Mr. Ram Kinker Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 19-03-2025

Heard the parties.

2. The petitioner is aggrieved with the Office order, as contained in Memo No. 114 dated 28.02.2022, issued under the signature of Executive Engineer, North Koel Canal Division, Navinagar, Aurangaband whereby a direction has been accorded to deduct total amount of Rs.3,70,542/- from his earned leave by ascribing the reason that the same has been paid in excess to his

entitlement, during the period 01.01.2009 to 31.07.2017 and further during the period 01.07.2019 to 31.08.2021.

3. Learned Advocate for the petitioner adverting to the facts narrated in the writ petition has contended that the petitioner was duly appointed on the post of Junior Engineer (Civil) on 14.12.1986 on the recommendation of the Bihar Public Service Commission. Having found eligible, the petitioner was promoted to the post of Assistant Engineer along with other similarly circumstanced persons, vide Notification no. 6150 dated 29.11.2016. Having rendered unblemished service, the petitioner has finally superannuated on 31.08.2021 from the office of respondent no.5.

4. It is the contention of the petitioner that before superannuation, the petitioner has handed over the entire charge in the light of Letter no. 443 dated 28.08.2021, which was duly accepted without any objection. Upon being superannuated unconditionally, after six months, the respondent has come out with the impugned Memo No. 114 dated 28.02.2022 directing the concerned authority to deduct an amount of Rs.2,42,460/-, which is said to have been paid allegedly in excess during 01.01.2009 to 31.03.2017 and further Rs.1,28,082/- for the period during 01.07.2019 to 31.08.2021. In this way direction

has been issued to deduct an amount of Rs.3,70,542/- from the unutilized leave of the petitioner.

5. Learned Advocate for the petitioner contended that the petitioner has never been put to any departmental proceeding or even any show-cause has been issued before his superannuation and for the first time the impugned order came to be passed after six months of his superannuation unilaterally without giving any opportunity of hearing to defend his case. It is further contended that it is not the case of the respondents, the alleged excess amount is paid to the petitioner on account of suppression of fact or misrepresentation on the part of the petitioner. Heavy reliance has been placed on the decision rendered by the Hon'ble Supreme Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer)**, reported in **(2015) 4 SCC 334**.

6. A counter affidavit has been filed on behalf of respondent nos. 1 to 5. Referring to the averments made therein, it is contended that after superannuation of the petitioner, the concerned Executive Engineer has sent all the connected records as well as service book of the petitioner before the Accountant General, Bihar, Patna after making the pension fixation. During the fixation of pension, objection has been raised that the

fixation of the pension should be made at the rate of Rs.83,300/-, but it has been wrongly fixed at the rate of Rs.91,100/- vide letter no. 912 dated 09.11.2021. The request has been made at the level of the Accountant General, Bihar to examine the last pay fixation of the petitioner. In the aforesaid premise, the service record of the petitioner was duly examined and re-fixation of pay of the petitioner was done. After re-calculation/fixation, it has been found that excess payment has been made to the petitioner, as noted hereinabove, hence the impugned order came to be passed directing for recovery from the unutilized leave of the petitioner.

7. It is lastly contended that at the time of pay fixation, the petitioner had rendered his undertaking before the Department that at the time of pay fixation or on receipt of the amount after making fresh pay fixation, the excess amount, if any paid, shall be refunded.

8. The aforesaid contention of the respondent State authorities has vehemently refuted by the learned Advocate for the petitioner by filing reply to the counter affidavit. It is contended that at no point of time any undertaking was rendered by the petitioner. Reliance has also been placed on a decision of the learned coordinate Bench of this Court in the case of **Yugal**

Kishore Prasad Vs. The State of Bihar & Ors. (C.W.J.C. No. 8146 of 2020), as also the order passed in the case of **Shyam Bihari Sharma & Ors. Vs. The State of Bihar & Ors.** (C.W.J.C. No. 20160 of 2021).

9. Having considered the submissions advanced by the learned Advocate for the respective parties and after perusing the materials on record, this Court finds that admittedly the impugned order of recovery has been passed after superannuation of the petitioner that too for the period 01.01.2009 to 31.07.2017 and further for the period 01.07.2019 to 31.08.2021, but admittedly without there being any show-cause notice or opportunity of hearing to him. The unilateral decision of the respondent authorities to recover the alleged excess amount, in no circumstances, has any sanction of law. The identical issue has come up for consideration before the Hon'ble Supreme Court in the case of **Thomas Daniel vs State of Kerala & Ors.,** reported in, **AIR 2022 SC 2153**, wherein the Hon'ble Supreme Court has deprecated the action of the authorities concerned to recover the excess amount on account of wrong fixation of increment, which was done prior to five years of the superannuation. Reliance of the petitioner on the decision of the **Rafiq Masih** (supra), which put an embargo on

recovery from the employees in certain situations as well as the decision passed by the learned coordinate Bench of this Court also finds substance, in the facts of this case.

10. On all the aforenoted reasons, the impugned order, as contained in Memo No. 114 dated 28.02.2022, stands set aside. The concerned respondent is hereby directed to refund the amount already recovered from the petitioner from his unutilized leave encahsment, preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

11. The writ petition stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.03.2025
Transmission Date	NA