

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10516 of 2022

1. Rajdeo Mehta @ Rajdeo Prasad Mehta son of Late Babuji Mehta, resident of Village-Naunpar, P.S.-Bhaptiyahi, District-Supaul.
2. Mahendra Prasad Yadav, S/o Late Ganga Prasad Yadav, resident of Village-Tulapatti, P.S.-Kisanpur, District-Supaul.
3. Virendra Kumar Yadav, S/o Late Prayag Narayan Yadav, resident of Village-Kusaha, P.S.-Kisanpur, District-Supaul.
4. Shiv Prasad Sah, S/o Late Fatechandra Sah, resident of Village-Kanduan Goriyari, P.S.-Gamhariya, District-Madhepura.
5. Gajendra Prasad, S/o Late Thumay Prasad Yadav, resident of Village-Sikiyaha, P.S.-Kumarkhand, District-Madhepura.
6. Surendra Mandal, S/o Late Sonelal Mandal, resident of Village-Manga Sindol, P.S.-Marauna, District-Supaul.
7. Kameshwar Prasad Yadav, S/o Late Vindeshwari Prasad Yadav, resident of Village-Manga Sindol, P.S.-Marauna, District-Supaul.
8. Nageshwar Thakur, S/o Late Ram Baran Thakur, resident of Village-Kolhua, P.S.-Shankarpur, District-Madhepura.
9. Saryu Mahto, S/o Late Sukhdev Mahto, resident of Village-Chandanpatti, P.S.-Gamhariya, District-Madhepura.
10. Ganga Ram Mahto, S/o Late Domi Mahto, resident of Village-Gidrahi, P.S.-Marauna, District-Supaul.
11. Sukhdev Prasad Yadav, S/o Late Moti Lal Yadav, resident of Village-Parikoch, P.S.-Marauna, District-Supaul.
12. Indra Narayan Jha, S/o Late Nasib Lal Jha, resident of Village-Babhangama, P.S.-Triveniganj, District-Supaul.
13. Ram Babu Yadav, S/o Late Malar Yadav, resident of Village-Parikoch, P.S.-Barhara, District-Supaul.
14. Ganga Prasad, S/o Late Lakshman Sah, resident of Village-Nirmali, P.S.-Pipra, District-Supaul.
15. Deo Narayan Yadav, S/o Late Bhola Yadav, resident of Village-Jhokain, P.S.-Pipra, District-Supaul.
16. Ramavtar Mahto, S/o Late Chandra Narayan Mahto, Resident of Village-Pure, P.S.-Lakhnaur, District-Madhubani.
17. Uday Chandra Sah, S/o Late Ramji Sahu, resident of Village-Tetrahi, P.S.-Pipra, District-Supaul.
18. Sant Lal Yadav, S/o Late Ayodhi Yadav, resident of Village-Khakhai, P.S.-Kisanpur, District-Supaul.
19. Baidyanath Yadav, S/o Late Nagad Lal Yadav, resident of Village-Pachbhinda, P.S.-Marouna, District-Supaul.
20. Shiv Prasad Yadav, S/o Late Bangali Yadav, resident of Village-Surtipatti, P.S.-Supaul, District-Supaul.



21. Bhuvneshwari Prasad Yadav, S/o Late Bhukhan Prasad Yadav, resident of Village-Sukhasani, P.S.-Pipra, District-Supaul.
22. Basudeo Sah, S/o Late Rameshwar Sah, resident of Village-Thumha, P.S.-Pipra, District-Supaul.
23. Laxman Mandal, S/o Late Asharfi Mandal, resident of Village-Basha, P.S.-Pipra, District-Supaul.
24. Mahendra Prasad Choudhary, S/o Late Kishori Choudhary, resident of Village-Singyon, P.S.-Kishanpur, District-Supaul.
25. Ramchandra Rai, S/o Late Jibachh Rai, resident of Village-Lachhminiya, P.S.-Kishanpur, District-Supaul.
26. Vindeshwari Prasad Yadav, S/o Late Lila Prasad Yadav, resident of Village-Baluwa, P.S.-Supaul, District-Supaul.
27. Khushi Lal Mandal, S/o Late Sundar Mandal, resident of Village-Parsoni, P.S.-Murauna, District-Supaul.
28. Parmeshwar Mishra, S/o Late Chakradhar Mishra, resident of Village-Malhad, P.S.-Supaul, District-Supaul.
29. Gauri Kant Jha, S/o Late Shrinarayan Jha, resident of Village-Bina Babhangama, P.S.-Supaul, District-Supaul.
30. Shankar Nath Jha, S/o Late Digambar Jha, resident of Village-Bina Babhangama, P.S.-Supaul, District-Supaul.
31. Dina Nath Jha, S/o Late Dhananand Jha, resident of Village-Bina Babhangama, P.S.-Supaul, District-Supaul.
32. Jhawar Mandal, S/o Late Dharmi Mandal, resident of Village-Parsa, P.S.-Kishanpur, District-Supaul.
33. Tej Narayan Yadav, S/o Late Rami Yadav, resident of Village-Tulapatri, P.S.-Kishanpur, District-Supaul.
34. Sita Ram Choudhary, S/o Late Gosai Choudhary, resident of Village-Lokaha, P.S.-Supaul, District-Supaul.
35. Upendra Prasad Yadav, S/o Late Sita Ram Yadav, resident of Village-Moujaha, P.S.-Kishanpur, District-Supaul.
36. Ajit Kumar Jha, S/o Late Kaladhar Jha, resident of Village-Veena, P.S.-Supaul, District-Supaul.
37. Rajendra Prasad Yadav, S/o Late Bouku Prasad Yadav, resident of Village-Baidnathpur, P.S.-Kishanpur, District-Supaul.
38. Jageshwar Sahu, S/o Late Mangli Ram Sahu, resident of Village-Nagar Parishad, P.S.-Supaul, District-Supaul.
39. Chandrakant Mehta, S/o Late Jay Nath Mehta, resident of Village-Domahan, P.S.-Nirmali, District-Supaul.
40. Vishwanath Prasad Yadav, S/o Late Khushi Lal Yadav, resident of Village-Kataiya, P.S.-Singheshwar, District-Supaul.
41. Bhola Prasad Singh, S/o Late Raghu Singh, resident of Village-Rajpur, P.S.-Karjaain Bazar, District-Supaul.
42. Md. Mohiuddin, S/o Late Lal Mohammad, resident of Village-Chakla, P.S.-



Chhatapur, District-Supaul.

43. Randhir Prasad Singh, S/o Late Baleshwar Prasad Singh, resident of Village-Sukhanagar, P.S.-Pratapganj, District-Supaul.
44. Jagarnath Prasad Singh, S/o Late Nagendra Narayan Singh, resident of Village-Sukhanagar, P.S.-Pratapganj, District-Supaul.
45. Vidyanand Jha, S/o Late Baldeo Jha, resident of Village-Dumari, P.S.-Raghopur, District-Supaul.
46. Punita Mishra, W/o Vijay Kumar Mishra, resident of Village-Veena, P.S.-Supaul, District-Supaul.
47. Sita Ram Yadav, S/o Late Sevi Lal Madal, resident of Village-Tulapatti, P.S.-Kishanpur, District-Supaul.
48. Mosmat Tara Devi, W/o Late Maheshwari Yadav, resident of Village-Jhokain, P.S.-Pipra, District-Supaul.
49. Ram Lagan Singh, S/o Late Saryug Prasad Singh, resident of Village-Karheya, P.S.-Kisanpur, District-Supaul.
50. Lal Singh @ Lal Prasad Singh S/o Late Balbhadar Singh, resident of Village-Ratouli, P.S.-Pipra, District-Supaul.
51. Mithilesh Kumar, S/o Late Bhagwat Yadav, resident of Village-Kataiya, P.S.-Pipra, District-Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The District Education Officer, Supaul.
5. The District Programme Officer (Establishment), Supaul.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Adv.
For the Respondent/s : Mr. Kameshwar Kumar, G.P.-17

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

9 20-01-2025 Heard learned counsel for the petitioners and learned counsel for the State.

2. By filing the present writ application, the petitioners have prayed for issuance of a direction to set aside the order



bearing letter no. 92 dated 22.01.2019 as well as letter no. 1201 dated 29.10.2021 both issued by the Director, Primary Education, Bihar Patna by which the direction has been issued to the DEO, Supaul to take appropriate legal action including lodging FIR against the then DPO (Establishment) and others including petitioners who were superannuated earlier but illegally reinstated in service and have received salary for intervening period without any judicial order and further for setting aside the consequential letters dated 17.11.2021 contained in different memo numbers issued by the DPO (Establishment), Supaul directing the petitioners to refund amount received by them during intervening non-working period forthwith in Treasury Office, Supaul failing which departmental proceedings would be initiated by way of lodging certificate case against them and further to stay the operation of aforesaid orders contained in Annexure-2(series).

3. Learned counsel for the petitioners submits that the petitioners have not received any excess amount from the department rather the amount which they have been paid/received as salary which is their hard earned money and to which they were entitled against discharging of their services. It is further submitted that the petitioners retired from their



services after completion of 60 years of age from their date of birth and the entries are clearly mentioned in their service books, which clearly speaks that no any irregularity has been committed by the petitioners. They have not defalcated any amount of the government money nor any evidence was brought on the record of this case which shows that they have caused wrongful loss to the government, despite that the respondent Director issued the impugned order/letters as contained in Annexure-1 & 1/1 and prior to issuance of the impugned orders/letters, even neither any show cause notice was ever served upon the petitioners nor opportunity of hearing was given.

4. The petitioners' case stands on similar footing to that of the petitioners of CWJC No. 17008 of 2015, which was allowed on 31.01.2017 by a co-ordinate Bench of this Court. Hence, in view of the Bihar Litigation Policy, 2022, the petitioners are entitled for the same relief.

5. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.***[(2015) 4 SCC 334} in which it is held that such recovery would be impermissible in law. In paragraph no. 18 of the aforesaid



judgment, the Hon'ble Supreme Court held as under:

“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 Class IV 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. Per contra, learned counsel for the State has submitted that this writ petition is fit to be dismissed on the ground that initial appointment of the petitioner was bad in the eye of law. He stated that they were initially appointed by the Managing Committee during 1969 to 1972, while they were under age i.e. below age of 18 years and their services were taken over by the State Government in the year 1980-81 in the light of Bihar Non-Government Elementary Schools (Taking over & Control) Act, 1976.

7. Learned counsel for the State further submits that by taking advantage of the judgments of this Court, the petitioners and other teachers without seeking judgment from this Court and without seeking permission of the Department, in collusion of the then District Programme Officer (Establishment), Supaul succeed in getting order of their reinstatement in service and they got payment of entire salary for the period during which they were out of their services and caused loss to the Department to the tune of Rs. 3,55,96,917/- In the aforesaid background, when the entire matter was examined at the Directorate level, several irregularities have been found and



therefore, by the orders of the Director Primary Education contained in letter no. 1201 dated 29.10.2021 and the order of the District Education Officer, Supaul bearing letter no. 915 dated 05.11.2021, this deponent vide his letter no. 1637 dated 20.11.2021 lodged an FIR before SHO, Supaul Police Station which has been registered as Supaul P.S. Case No. 800/21 dated 22.11.2021 against the then DPO (Est.), the then Head Clerk, then Assistant and 72 beneficiary teachers including the petitioners.

8. Considering the arguments of the parties and the order dated 31.01.2017 passed in C.W.J.C. No. 17008 of 2015 and the law laid down by the Supreme Court in *State of Punjab & Ors. vs. Rafiq Masih (supra)*, this Court is of the considered opinion that the order dated 22.01.2019 as contained in letter no. 92 as well as letter no. 1201 dated 29.10.2021, and the letters dated 17.11.2021 (Annexure-2 (series)) cannot be sustained and are accordingly set aside.

9. Accordingly, the writ application stands allowed.

(Anjani Kumar Sharan, J)

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