

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11890 of 2022

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Mohan Mandal Son of Sukeshwar Mandal, Resident of Village- Makhanaha,
P.S.- Belsand, District Sitamarhi (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Govt. of Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The District Education Officer, Sitamarhi.
4. The District Programme Officer, Establishment, Sitamarhi.
5. The Block Education Officer, Sitamarhi.
6. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tejendra Sinha, Advocate

For the Respondent/s : Mrs. Binita Singh (SC-28)

For A.G. Bihar : Mr. C. Swaroop, Advocate

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CORAM: HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
Date : 03-07-2025

Heard learned counsel for the parties.

2. The petitioner has filed this writ petition with the
following relief(s):

*“1. That, the petitioner seeks the following
reliefs:-*



(i) For issuance of an appropriate Writ/Writs in the nature of Mandamus Commanding and directing the Respondent to quash the letter No.-1960 dated-22-06-2022 issued by respondent District Programme Officer(Establishment), Sitamarhi by which Rs.5,52,789/= has been ordered to recovered from the petitioner and deduced from Gratuity amount.

(ii) Further for direction to the respondent to fix salary Rs. 72,100/-and accordingly with all pensionary benefit and monthly pension on treating last pay drawn by the petitioner Rs. 72,100/-in place of 66,000/=

(iii) Further for direction to the respondent to revise the pension paper order in PPO No.202211131392Po, dated-28-03-2022 by which pension of the petitioner has been fixed Rs.33,000/-in place of Rs.36050/= and pay arrears of monthly pension w.e.f. February, 2022.

Petitioners last pay scale on the date of retirement was Rs. 72100/= and as such he is entitled to get all pensionary benefit on that very pay scale.

Without any rhyme and reason and without any Notice, the respondent has recovered Rs.5,52,789/=and reduced the pension against the Principle of Natural Justice.

(iv) For any other relief/reliefs for which the petitioner is entitled to receive in the facts and circumstances mentioned above.”

3. The petitioner, who retired on 31.01.2022 from the



post of Assistant Teacher from Middle School Makhnaha, Belsand, has filed this writ petition challenging letter no. 1960 dated 22.06.2022 (Annexure-4), issued by the District Programme Officer, Sitamarhi, whereby ₹5,52,789/- has been ordered to be recovered from the petitioner by deducting the same from the gratuity amount.

4. The petitioner contends that the impugned letter dated 22.06.2022, directing for recovery of ₹5,52,789/- from the petitioner on the ground that the amount mentioned is the excess amount paid to the petitioner, has been issued without affording opportunity of hearing to the petitioner. The petitioner further contends that the aforesaid amount mentioned in the impugned letter dated 22.06.2022, cannot be recovered from the petitioner, as the petitioner had not played any fraud or made any misrepresentation for payment of the aforesaid amount by the authorities concerned, which is the law laid down by Hon'ble the Supreme Court in the case of **Jogeswar Sahoo & Ors. Vs. District Judge, Cuttak & Ors. [2025 (3) BLJ SC 139]**.

5. Respondent no.4/the District Programme Officer, Establishment, Sitamarhi has contested the case by filing a counter affidavit, wherein it has been stated that the excess amount as mentioned in the impugned letter dated 22.06.2022



was paid to the petitioner due to wrong fixation of the last pay drawn by him at ₹72,100/- instead of ₹66,000/- and accordingly, as the excess amount was paid to the petitioner because of erroneous fixation of the last pay drawn by the petitioner, the said amount was ordered to be recovered from the petitioner as indicated in the impugned letter dated 22.06.2022.

6. Respondent no.6/the Accountant General, Bihar by filing a counter affidavit, has stated that the impugned recovery letter dated 22.06.2022, issued by the District Programme Officer, Sitamarhi has not been received by the office of the respondent no.6/the Accountant General, Bihar. Apart from that, respondent no.6/the Accountant General, Bihar has not stated anything in the counter affidavit regarding the legality/sustainability of the impugned letter dated 22.06.2022.

7. Heard learned counsel appearing for the parties and perused the materials on record.

8. Upon hearing the learned counsel for the parties and on perusal of the materials on record, this Court finds that there is no dispute about the fact that the petitioner retired from the post of Assistant Teacher on 31.01.2022, whereafter on 22.06.2022 the impugned recovery letter was issued by the District Programme Officer, Sitamarhi without providing an



opportunity of hearing to the petitioner, thus violating the principle of nature justice, whereby an amount of ₹5,52,789/- was sought to be recovered from the petitioner on account of excess payment made to him. It is also not in dispute that the aforesaid excess amount came to be paid to the petitioner due to erroneous fixation of the last pay drawn by him at ₹72,100/-. However, there is no indication in the counter affidavit that the petitioner had any role to play in the fixation of last pay drawn by him, much less of any fraud played or misrepresentation of any kind.

9. In the aforesaid attending facts and circumstances of the case, what arises for consideration by this Court is whether the recovery of the amount sought to be made from the petitioner in terms of the impugned letter dated 22.06.2022 issued by the respondent authorities is justified after the petitioner's retirement and that too without affording him any opportunity of hearing.

10. The issue similar to the issue raised in this writ petition came for consideration by Hon'ble the Supreme Court in the case of **Jogeswar Sahoo & Ors. Vs. District Judge, Cuttak & Ors. [2025 (3) BLJ SC 139]**, as relied on by the petitioner. That was a case, wherein the excess amount paid to



the Stenographer Grade-I and Personal Assistant posted in the establishment of District Judiciary, Cuttack, Orrisa was sought to be recovered, wherein, the Hon'ble Supreme Court in paragraph no.9 has held as under:-

“9. This Court has consistently taken the view that if the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee or if 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, such excess payments of emoluments or allowances are not recoverable. It is held that such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employee from the hardship that will be caused if the recovery is ordered.”

11. From the decision rendered by the Hon'ble Supreme Court in case of **Jogeswar Sahoo** (supra), the settled legal principle insofar as recovery of excess payment made is that if the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee or if 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, such excess payments of emoluments or allowances are not recoverable. Such a relief against the recovery is granted not because of any right of the employee but by applying the principle of equity while exercising judicial discretion to provide relief to the retired employee from the hardship that will be caused if the recovery is ordered.

12. In the instant case, nothing has been brought on record by the respondents that the excess payment was made to the petitioner on account of any fraud or misrepresentation by the petitioner.

13. In view of the factual position obtaining in the instant case that the excess payment made to the petitioner as indicated in the impugned letter dated 22.06.2022 was not on account of any fraud or misrepresentation of any kind by the petitioner and the same has been issued in violation of the principle of nature justice, letter no. 1960 dated 22.06.2022 (Annexure-4), issued by the District Programme Officer, Sitamarhi, whereby recovery to the extent of sum of ₹5,52,789/- from the petitioner has been ordered, cannot be sustained and the same is hereby set aside and quashed. Consequently, if the amount mentioned above has already been recovered, the



respondents are directed to repay the same to the petitioner forthwith.

14. Insofar as prayer nos. 1(ii) and 1(iii) made in the writ petition is concerned i.e., for a direction to the respondent authorities to fix the petitioner's salary at ₹72,100/- and the pensionary benefits by treating last pay drawn by the petitioner at ₹72,100 in place of ₹ 66,000/- and also to revise the pension paper and payment of the arrears of pension with effect from February, 2022, are concerned, it is hereby observed that since the impugned recovery letter dated 22.06.2022 has been interfered with by this Court not on the ground that the petitioner had the right to receive the aforestated excess amount, but exercising the judicial discretion of this Court on equitable principle to provide relief to the petitioner from hardship that will be caused by such recovery, hence, it shall be open for the respondent authorities to correctly re-fix the last pay drawn by the petitioner after providing the petitioner an opportunity of hearing in the matter.

15. Repayment of the recovered amount, if any, as per the letter dated 22.06.2022 and re-fixation of the last pay drawn by the petitioner as directed above shall be made as expeditiously as possible but in any case not later than three



months from the date of receipt of the certified copy of this order.

16. The writ petition is disposed off with the above observation and direction.

(Nani Tagia, J)

Amrendra/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	08.07.2025
Transmission Date	N/A

