

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2079 of 2021

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Yugeshwar Sahu S/o Late Jaggan Sahu Resident of Mohalla- Kurji Bailout,
Lakshminagar, Near SBI Colony, Patna- 800010.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Deputy Secretary-1 (Management), Water Resources Department, Government of Bihar, Patna.
4. The Executive Engineer, Ghorasahan Canal Division, Raxaul (East Champaran).
5. The Principal Secretary, Finance Department, Government of Bihar, Patna.
6. The Accountant General (A and E), Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar Tiwari, Advocate Mr. Pawan Kumar Verma, Advocate
For the Respondent/s	:	Mr. Rajan Prakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 07-01-2025

Heard Mr. Arun Kumar Tiwari, along with Mr. Pawan Kumar Verma, learned Advocates for the petitioner and Mr. Rajan Prakash, learned Advocate for the State.

2. The petitioner is aggrieved with the office order bearing Memo No. 504 dated 15.07.2019, whereby the respondent no. 4 has directed to recover the amount of Rs. 5,62,656/- paid to the petitioner, in excess of his entitlement, on account of wrong fixation of salary.

3. Referring to the averments made in the writ



petition, learned Advocate for the petitioner contended that the petitioner was duly appointed as Junior Engineer on 27.02.1989 in the pay scale of 785-25-1135-EB-1210 and superannuated on 30.04.2019, while working as Assistant Engineer at Ghorasahan Division Canal Division, Raxaul (East Champaran).

4. On account of the recommendation of the 5th Pay Revision Commission (hereinafter referred to as, “PRC”), the petitioner was granted pay scale of Rs. 5000-150-8000 with effect from 01.01.1996. After completion of ten years of his appointment and on being found eligible, the petitioner was extended the benefit of 1st ACP in the scale of Rs. 6500-200-10500 with effect from 09.08.1999. Further, on the basis of the recommendation of the 6th PRC, the petitioner was extended the pay scale of Rs. 9300-34800 with Grade Pay-4200 with effect from 01.01.2006. Later on, after completion of twenty years of service, the petitioner became entitle to and was granted 2nd ACP in the pay scale of Rs. 15600-39100 with Grade Pay-6600.

5. It is the contention of the petitioner that by virtue of the benefit granted in terms of the 2nd ACP, as contained in Resolution No. 7566 dated 14.07.2010, read with Memo No. 5034 dated 08.10.2014 issued by the Additional Secretary of the Department, scale of the petitioner by that time had reached at



Rs. 23840; when fixation of pay was to be done, it was to be done in accordance with the table no. 26, as provided in the report of the 6th PRC, which is corresponding to the pay scale of Rs. 15600-39100, which provides for minimum pay at Rs. 25200 and, as such, onward fixation was based on Rs. 25200/-.

6. In the aforesaid premise, the petitioner has been extended the admissible pay scale and at no point of time, the last pay certificate fixation was made on the pay scale of Rs. 9300-34800 with Grade Pay-6600. The learned Advocate for the petitioner vehemently contended that the petitioner has never been granted pay scale of Rs. 9300-34800 with Grade Pay-6600, rather it was in the pay scale of Rs. 9300-34800 + Grade Pay-5400. Any fixation showing excess payment and proposed recovery, as contained in the office order is wholly incorrect, apart from the same being *sans* any opportunity to the petitioner to clarify the position.

7. Irrespective of the aforesaid fact, upon superannuation of the petitioner on 30.04.2019, and after handing over the charge of the office, the respondent no. 4 has come out with the impugned office order dated 15.07.2019 directing for recovery of Rs. 5,70,042/- out of which Rs. 1,88,000/- was proposed to be recovered from monthly salary of



the petitioner.

8. Pursuant to the order aforementioned, the Executive Engineer, Canal Division, Raxaul (East Champaran) vide its Letter No. 505 dated 15.07.2019 communicated to the Accountant General, Bihar with a request to recover the rest amount of Rs. 3,82,042/- from other admissible post retirement benefit.

9. Per contra, learned Advocate for the State submitted that the petitioner was granted 2nd MACP with effect from 01.01.2009 in the Pay Band III (Rs. 15600-39100 + Grade Pay Rs. 6600) vide departmental order contained in Memo No. 5034 dated 08.10.2014 with a clear stipulation that in case if any defect is found in the said order in future, the order shall be cancelled/amended and the excess amount paid to the concerned Junior Engineer shall be recovered. It is also contended that on verification of the pay scales extended to the petitioner from time to time was verified at the level of the department and it has been found that the petitioner has been paid an excess amount of Rs. 5,62,656/- on account of wrong fixation of salary and, as such, the impugned order came to be passed.

10. This Court has given anxious consideration to the submissions advanced on behalf of the learned Advocate for the



respective parties and also perused the materials available on record as well as the copy of the service book of the petitioner, the copy of which has also been brought on record as Annexure-1 to the writ petition. From bare perusal of the impugned order, as contained in Annexure-P/4, *prima facie*, it appears that the impugned order of recovery of the alleged excess amount is based on the premise that the fixation of the pay on the basis of the pay scale 9300-34800 Grade Pay-6600 has been wrongly done in favour of the petitioner, due to which excess payment has been made, leading to recovery of the alleged excess payment by the impugned order.

11. Having gone through the service book of the petitioner, this Court finds substance in the submission of the learned Advocate for the petitioner that at no point of time, his pay has been fixed on the basis of 9300-34800 with Grade Pay-6600, rather the petitioner has been accorded the pay scale of Rs. 9300-34800 with Grade Pay-5400, which facts also fortified from the notings of the service book. Admittedly, the petitioner has been accorded the Grade Pay of Rs. 6600 when he was granted 2nd MACP with effect from 01.01.2009 in the Pay Band III of Rs. 15600-39100. On a query made by this Court to the learned Advocate for the State as to by which letter/order, the



pay fixation of the petitioner has been made in the pay scale of Rs. 9300-34800 with Grade Pay-6600, no explanation has been put forth nor there is any averment in this regard in the counter affidavit.

12. Trite it is that, “no person shall be condemned unheard”. Any order or action of the authorities causing prejudice to the right and entitlement of a person or giving rise to civil or evil consequences must be in conformity with the principles of natural justice; any deviation or transgression of such rule would amount to flagrant misuse of the power holding the impugned order or action, *per se* illegal and fit to be set-aside. Any action or order directing reduction of pay scale and recovery of the excess amount, unilaterally, is arbitrary and illegal and suffers from the vice of non-adherence to the principle of natural justice.

13. This Court finds that the impugned order of recovery after the superannuation of the petitioner is apart from unilateral, in complete violation of the principles of natural justice and wholly non-speaking based upon non-est grounds. In the facts and circumstances aforementioned, this Court is left with no option but to set-aside the impugned order, as contained in Memo No. 504 dated 15.07.2019. The respondent authorities are



directed to refund the alleged excess amount recovered from the petitioner, preferably within a period of eight weeks, from the date of receipt/production of a copy of this order.

14. The writ petition stands allowed to the extent indicated hereinabove.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.01.2025
Transmission Date	NA

