

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.108 of 2022

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Kaushal Kumar Jha, S/o Late Jivnath Jha, At present Resident of Mohalla-Alkapuri, Gardanibagh, P.S. Gardanibagh, District-Patna. Permanent address-Village and P.S. Sarisab Pahi, District Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Additional Chief Secretary, Building Construction Department, Govt. of Bihar, Patna.
3. The Superintending Engineer, South Bihar Circle, Building Construction Department, New Punaichak, Patna.
4. The Executive Engineer, Rent Division, Building Construction Department, New Punaichak, Patna.
5. The District Account Officer, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Advocate
For the Respondent/s : Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

8 01-07-2025 Heard the parties.

2. The petitioner is aggrieved with the Memo No. 361 dated 03.03.2021 issued by the Executive Engineer, Rent Division, Building Construction Department, Patna whereby the pay scale of the petitioner came to be reduced from 5200-20200, Grade pay 2400 to Rs. 5200-20200, Grade Pay 1900, the copy of which is placed as Annexure 5 to the writ petition. The petitioner also assailed Memo No. 700 dated 29.04.2021 issued by the respondent No. 4 whereby a direction has been issued to recover an amount of Rs. 4,73,256/-, in equal 36 installment.



3. Mr. Siya Ram Shahi, learned Advocate for the petitioner while assailing the impugned order and action of the respondents has narrated the short facts, *inter alia*, it is contended that on the recommendation of District Magistrate-cum-District Compassionate Committee, vide Memo No. 1874 dated 30.07.2015 (Annexure-1) the petitioner was appointed on compassionate ground as Lower Division Clerk in the scale of Rs. 5200-20200 Grade Pay 2400 with other allowances. While the petitioner has been discharging his duty to the entire satisfaction of the authorities concerned, all of a sudden vide Memo No. 1584 dated 17.06.2017 the pay scale of the petitioner came to be reduced in terms of Memo No. 4025 dated 15.05.2017 issued under the signature of Additional Secretary, Building Construction Department. Good sense prevailed to the respondents and subsequently vide Memo No. 372 dated 25.02.2019, the earlier Memo 1584 dated 17.06.2017 stood amended and the previous pay scale of the petitioner restored, the copy of which is marked as Annexure 4 to the writ petition.

4. Unfortunately, again the respondent authorities came out with Memo No. 361 dated 03.03.2021 issued under the signature of Executive Engineer, Rent Division, Building



Construction Department whereby the earlier memo dated 25.02.2019 was further amended and the reduced pay scale of the petitioner was sustained. Based upon the afore-noted letter, the respondent has also come out with Memo No. 700 dated 29.04.2021 directing for recovery of Rs. 4,73,256/- which is said to have been paid in excess to the entitlement of the petitioner.

5. Though various points have been raised while assailing the impugned order, but for adjudication of the matter. Mr. Shahi straightway has taken this Court to the order passed by a co-ordinate Bench of this Court in the case of Binit Kumar & Ors. Vs. The State of Bihar & Ors. (C.W.J.C. No. 9921 of 2017) and its analogous cases. Referring to the afore-noted decision it is thus contended that the letter no. 4025 dated 15.05.2017, based upon which the pay scale of the petitioner came to be reduced was also under consideration in the afore-noted case and finally the subjected letter came to be set aside vide order dated 21.08.2017.

6. Adverting to the aforesaid facts it is thus contended that once the letter which was made the basis to reduce the pay scale was not in existence, the date on which the impugned order came to be passed. In no circumstances, the order as



contained in Annexure 5 and 6 are said to be justified in law, as well as on facts. The impugned orders are nothing but an outcome of non-application of mind, hence cannot be given effect to. Once the letter no. 15.05.2017 is not in existence, it cannot be made the basis for reducing the pay scale or any order which adversely affect the right and entitlement of the petitioner.

7. Mr. Sanjay Kumar, learned Advocate for the State though refuted the admissibility of the petitioner for higher pay scale, however he could not confront the position that the letter no. 4025 dated 15.05.2017 came to be set aside by a Bench of this Court in C.W.J.C. No. 9921 of 2017 and other analogous cases.

8. Considering the submissions set forth by learned Advocate for the respective parties and taking note of the fact that the letter no. 4025 dated 15.05.2017, based upon which the impugned order came to be passed has already been set aside by a Bench of this Court. This Court has no hesitation to hold that the impugned orders suffers from non-application of mind; and accordingly this Court set aside the impugned order as contained in Memo No. 361 dated 03.03.2021 as also the consequential order as contained in Memo No. 700 dated



29.04.2021. The matter is relegated to Additional Chief Secretary, Building Construction Department who shall consider the case of the petitioner with regard to admissibility of his pay scale and pass a reasoned and speaking order after giving proper opportunity of hearing to all the stakeholders, preferably within a period of four months from the date of receipt/production of a copy of this order.

9. It is made clear that any recovery made during the interregnum period, shall abide by the final outcome of the order passed by the respondent no. 2.

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

(Harish Kumar, J)

supratim/-

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