IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15646 of 2024

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Namo Nath Jha son of late Nawal Kishor Jha resident of Mohalla-Chandwardai Nagar, Bandh Road, Balughat, Post- Head Post Office, Police Station Muzaffarpur Town, District Muzaffarpur, the retired Chowkidar, Building Construction Department, Building Division, Muzaffarpur

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum- Special Secretary, Building Construction Department, Government of Bihar, Patna
4. The Superintending Engineer, Building Construction Department, Building Circle Muzaffarpur.
5. The Executive Engineer, Building Construction Department, Building Division Muzaffarpur, District - Muzaffarpur.
6. The Treasury Officer, Muzaffarpur, District -Muzaffarpur
7. The Accountant General, Bihar, Patna.
8. The Senior Accounts Officer, Office of the Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh

For the Respondent/s : Mr. Shiv Kumar, AC to GA-3

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CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR

ORAL ORDER

3 11-12-2025 Heard learned counsel for the petitioner and learned counsel for the State.

2. The instant writ application has been filed for the following reliefs:-

(i) For quashing the letter dated 03.02.2024 issued by the Respondent No.5 and contained in letter no.310 dated 03.02.2024, whereby and whereunder the Respondent No.5 has been pleased to request the Respondent No.6 to recover the amount of

Rs.4,17,984/- from the pensionary benefits of the petitioner as fixed by the office of the Accountant General, Bihar, Patna vide memo no. 03/ PEN171123033181/ 202311031719PO dated 18.12.2023 on the ground that in view of the law laid down by the Hon'ble Supreme Court in the case of State of Punjab and others vs. Rafiq Mashi (White Washer) since reported in (2015) 4 SCC 334 as well as in the case of Thomas Daniel vs. State of Kerala and others, there shall be no recovery from a retired government servant.

(ii) For directing the respondent authorities to refund the amount of Rs.4,17,984/- with penal interest which was illegally deducted by the Respondent No.6 on the request made by the Respondent No.5 from the pensionary benefits of the petitioner as fixed by the office of the Accountant General, Bihar, Patna.

(iii) For quashing the office order contained in memo no.2666 dated 18.10.2023 issued under the signature of the Respondent No.5, whereby and whereunder the salary of the petitioner in view of the objection raised by the Respondent No.9 as also pursuant to the memo no.356 dated 18.01.2022, issued by the department that the benefits of Finance Department Resolution No.3972 dated 12.05.2016 and 7577 dated 23.09.2016 is not applicable to the petitioner since the services of the petitioner was regularized after 01.01.1996.

(iv) For directing the respondent authorities to fix/revise the pensionary benefits of the petitioner on the basis of last pay drawn by the petitioner.

(v) For any other relief(s) to which the petitioner is found entitled to in the facts and circumstances of the case.

3. Learned counsel for the petitioner submits that the

petitioner was granted pension in accordance with the last pay drawn certificate issued by the Department. However, without adhering to the principles of natural justice or the procedures recognized in service jurisprudence, Rs. 4,17,984/- has been recovered from the petitioner’s pension/gratuity.

3. It has next been submitted that the petitioner has not made any misrepresentation with respect to the grant of the pay scale, on the basis of which, his pension was fixed after superannuation. Merely on the objections raised by the Office of the Accountant General vide letter No. 165 dated 26.04.2023, a copy of which was also sent to the petitioner vide memo No. PEN-03-166 dated 26.04.2023, the increments allowed to the petitioner during the service period were modified. Based on such modifications, the recovery in question was directed. It is the case of the petitioner that, without providing any opportunity of appropriate hearing with respect to the pension fixation and the recovery, the impugned orders were passed, and the recovery of the said amount was made from his pension/gratuity, as would be evident from the letter dated 28.02.2024, appended to the writ application as Annexure 10/1.

4. It is next submitted that the action of the authorities in effecting recovery is in contravention of the judgment

rendered by the Hon'ble Apex Court in the case of ***Thomas Daniel vs. State of Kerala & Ors.*****, 2022 SCC OnLine SC 536** The relevant portion of the aforesaid judgment is extracted below:

> "12. *In Syed Abdul Qadir v. State of Bihar excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The Court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/ understanding of a Rule of Order. It was held thus:*
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> > ***59.*** *Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be responsible. Rather, the whole confusion was*

because of inaction, negligence and carelessness of the official concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

*13. In **State of Punjab & Ors. vs. Rafiq Mashi (White Washer)**, reported in **(2015) 4 SCC 334,** wherein this Court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:*

8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to *recover.*

18. It is not possible to postulate all situations of hardship which would govern employers 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, summaries the following few situations, wherein recoveries by the employers, would be impermissible in law :-

(i) Recovery from the employers belonging to Class- III and Class- IV service (for 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 employers, 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 iniquitos or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

5. On the other hand, the learned counsel for the State is not in a position to controvert the submission of the learned counsel for the petitioner by referring to the records of the case,

insofar, the procedures which are required to be adopted, prior to directing the recovery from the employee's pension or gratuity, which issues have already been put at rest by the aforesaid dictum of the Hon'ble Apex Court. As such, there is no other material available before this Court to take a view divergent from the settled legal position.

6. At this stage, learned counsel for the State submits that the fixation was carried out in accordance with the objections raised by the Office of the Accountant General and that it was required to be fixed in terms of the petitioner's entitlement. It is in this context, the modification in the pension was made, and the consequent recovery was directed.

7. Considering the stand of the parties, this Court is of the view that, in the course of effecting the recovery, the authorities failed to take note of the settled legal position laid down in the aforementioned judgment of the Hon'ble Apex Court, including the embargo prohibiting recovery from persons of such cadre, as directed therein, which is referred hereinabove, and therefore, this Court has no hesitation in setting aside the recovery orders issued by the authorities, appended with the writ application as Annexure P/9 at page 38, which is contained in Letter No. 310 dated 03.02.2024, and accordingly, the same is hereby set aside.

8. In view of the above, the amount so recovered shall be refunded to the petitioner forthwith, and the orders so passed with regard to the refund of recovery, shall not preclude the authorities from carrying out a fresh exercise of fixation of pension by giving the petitioner a proper hearing, which shall be done in accordance with law.

9. In the result, the instant writ application stands allowed.

(Ajit Kumar, J)

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