

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17415 of 2024

Pradeep Kumar S/o Kushum Lal Mandal R/o Vill- Jankinagar Tola, Panchu Mandal, Post- Jankinagar, P.S.- Jankinagar, Dist- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
4. The Engineer-in- Chief-cum-Special Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
5. The Chief Engineer (Mechanical), Public Health Engineering Department, Govt. of Bihar, Patna.
6. The Superintending Engineer, Public Health Engineering Circle, Purnea.
7. The Executive Engineer, Public Health Division, Madhepura.
8. The District Accounts Officer, Madhepura.
9. The District Treasury Officer, Madhepura.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Siyaram Pandey

For the Respondent/s : Mr. Government Advocate (7)

CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL
ORAL JUDGMENT

Date : 07-01-2025

Heard.

2. This petition has been preferred by the petitioner challenging the order dated 08.07.2024 (Annexure-P/4) whereby and whereunder the respondent no. 7 has passed the recovery of excess payment of Rs. 2,83,224/- from the petitioner in the light of letters dated 12.05.2016 and 23.09.2016 respectively of the Finance Department.



3. It is submitted by learned counsel for the petitioner that initially, the petitioner was appointed as Keyman-cum-Choukidar i.e. Group-D Post in the year of 1982 and he has retired on 29.04.2024 from the same post. After his retirement, vide impugned order Annexure-P4, recovery order of excess payment with regard to pay revision of the petitioner has been passed. According to the counsel, since the petitioner is a retired employee of Class-IV and for wrong fixation of his payment, he was not responsible. He has not misappropriated any amount of Government. Therefore, the alleged order of recovery is bad in law.

4. In this context, reliance has been placed by the counsel by referring the judgment passed by the Hon'ble Supreme Court in the case of *State of Punjab and Ors. Vrs. Rafiq Mashi (White Washer)* reported in *2015 AIR SCW 501*.

5. He further submits that in compliance of the order dated 08.07.2024 (Annexure-P/4), the amount has already been recovered from the petitioner. Therefore, it is prayed by the counsel that respondent may be directed to refund the same amount to the petitioner forthwith.

6. Learned counsel for the respondents-State opposes the argument raised by the counsel for the petitioner



and submits that since due to wrong fixation of the pay, the excess payment has been made to the petitioner. Therefore, he is liable to be returned the same. Therefore, according to the counsel, the authority has rightly been passed the order of recovery (Annexure-P/4).

7. Having heard learned counsel appearing for both the parties and considering the submissions made by the counsels as well as the materials available on record, undisputedly, the petitioner is a retired employee and retired from his services from Class-IV Post, there is also no dispute on the point that the alleged fixation of pay has been done by the respondents authority for which petitioner is not responsible. Dealing with the issue, the Hon'ble Supreme Court in the case of *State of Punjab and Ors. Vrs. Rafiq Mashi (White Washer)* reported in *2015 AIR SCW 501* observed and held as under :-

Para-11 Recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of



what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

Para-12 (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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.

8. Since the petitioner is a Class-IV employee, retired from his services and there is no allegation against him for any misappropriation of any fund, therefore, the facts of this case is squarely covered with the judgment of the Hon'ble Supreme Court passed in the case of *State of Punjab and Ors. Vrs. Rafiq Mashhi (White Washer)* reported in *2015 AIR SCW 501(supra)*.

9. In the light of the above, the petition is allowed. The impugned order of recovery dated 08.07.2024 (Annexure-P/4) passed by the respondent no. 7, the Executive Engineer, Public Health Division, Madhepura is quashed. Since the amount has already been recovered from the petitioner, it is directed that the recovered amount will be returned to the petitioner within three weeks from today along with interest @ 8% per annum from the date of recovery.

(Arvind Singh Chandel , J)

shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09-01-2025
Transmission Date	NA

