IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13011 of 2025

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Jitendra Singh Son of Ram Chandra Singh, Resident of Mohalla-Sherpur, Gandak Colony, Police Station Sadar, District-Muzaffarpur.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Water Resources Department, Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
3. The Chief Engineer, Mechanical, Water Resources Department, Bihar, Patna.
4. The Superintending Engineer, Irrigation Mechanical Circle, Muzaffarpur.
5. The Executive Engineer, Mechanical, Irrigation Mechanical Division, Muzaffarpur.
6. The Treasury Officer, Muzaffarpur.
7. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjeev Kumar Singh
For the Respondent/s	:	Mr.Government Pleader (10)

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CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR

ORAL JUDGMENT

Date : 31-01-2026

In the instant petition, petitioner has prayed for the following relief(s):-

> *"That the present writ application is being filed on behalf of the petitioner above named for issuance of appropriate writ/writs, order/orders in the nature of certiorari for quashing part of order contained in letter no. 205 dated 27.02.2025 issued by respondent no.5, whereby direction has been given to withhold amount of Rs. 602768/- from post retirement benefits i.e. gratuity amount and pension amount on non est ground that the case related to pay anamoly is pending for consideration before this Hon'ble Court, without appreciating the fact that this Hon'ble Court vide order dated 09.02.2024 has already*

stayed the recovery from the salary of the petitioner. In consequent thereof, the petitioner further prays for direction to make payment of entire gratuity amount as well as pension for the period from February, 2025 to May, 2025 with admissible statutory interest to the petitioner and for any other writ/writs, order/orders which the petitioner may found to be entitled in the facts and circumstances of the case."

2. Counsel for the petitioner by referring to the order as contained in Letter No. 205 dated 27.02.2025, submits that on the basis of certain anomalies in the pay fixation, the amount to the tune of Rs. 6,02,768/- has been quantified for recovery but before quantifying such amounts, no such proceedings known to the service jurisprudence, is said to have ever been adopted, and despite there being no misrepresentation on behalf of this petitioner, such amounts have been directed to be recovered from this petitioner after his retirement.

3. It is next submitted that anomalies in the pay fixation, which is being shown for the purpose of making recovery, starts from the period 2016 till the date of retirement on 31.01.2025. The recovery cannot be made, if there is no representation, and as also from the persons, who are low paid, especially Class-IV and Class-III employees. It is the case of the petitioner that in view of the judgment rendered in the case of ***State of Punjab and others vs. Rafiq Masih White Washer & Ors.*** reported in ***(2015) 4 SCC 334***, the recovery is impermissible when excess payment has been made for a period in excess of five years. The relevant para of the aforesaid judgement is reproduced as under:-

> *"18. It is not possible to postulate all situations of hardship which would govern employees 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, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
>
> *(i) Recovery from the employees belonging to Class III and Class IV service (or 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 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."*

4. It is next submitted that there was no misrepresentation on his behalf, for getting such pay fixation done in his favour, rather it was fixed on the basis of the pay scale, which was approved by the Department of Finance, and therefore, the recovery is wholly unsustainable in law.

5. On the other hand, counsel representing the State submits that the petitioner was not entitled to such pay scale still, such benefits were granted to this petitioner, which on finding such anomalies in pay fixation, the authorities, in the light of the Government Circular issued through the Department of Finance, were legally obliged to take decisions for fresh pay fixation, and owing to such fixation, the amounts which were paid in excess, the recovery has been directed vide the impugned order dated 27.02.2025 as contained in Letter No. 205.

6. Counsel for the petitioner fairly submits that for wrong fixation, there is already a writ pending *vide* CWJC No. 9655 of 2023 ***(Jitendra Singh vs. State of Bihar & Ors.)***, and this Court has already stayed the recovery *vide* order dated 09.02.2024. Therefore, the authorities have not recovered the amount in question, which forms part of the impugned order as contained in Annexure-P/6.

7. Considering the fact that the amount in question, which is said to have been quantified for recovery, was paid to this petitioner, as per the pay fixation done and not because of his misrepresentation, and further, the salary was paid pursuant to the pay scale allowed by the Department of Finance, which subsequently was modified based on the recommendation/resolution of the Finance Department, and owing to such modification, any revision in pay scale made with regard to this petitioner, shall not automatically vest an authority to the employer, in absence of any misrepresentation by the employee in question, to make recovery of the amount paid in excess for a period paid in excess of five years, and accordingly, the order dated 27.02.2025 is quashed.

8. Consequently, the instant writ petition stands allowed.

(Ajit Kumar, J)

abhishekkr/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.02.2026
Transmission Date	NA