

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14303 of 2024

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Surendra Yadav S/O Late Chandradeo Yadav R/O Vill- East Dahiawan
Jagdamba Road, P.S- Nagar, Dist.- Saran

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Patna
2. The District Magistrate, Saran at Chapra.
3. The Additional District Magistrate(Establishment), Saran at Chapra
4. The Deputy Collector Establishment, Saran at Chapra.
5. The Block Development Officer, Revelganj, Dist.- Saran.
6. The Accountant General, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pranav Kumar, Advocate Mr. Rajeev Ranjan No.II, Advocate
For the State	:	Mr. Kumar Manish, SC-5 Mr. Prashant Kumar, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 09-04-2026

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The petitioner has filed the instant application for
the following relief(s):

*“That this application is directed for
issuance of appropriate writ for quashing the memo
no.693 dated 29.6.2024 and the subsequent memo
no.786 dated 19.7.2024 and memo no.886 dated
17.8.2024 issued by the respondent no.2 and the
respondent no.5 respectively by which the petitioner
have been asked to deposit the salary and other
emoluments which he has been received for the period
of 10 months in excess of the service period rendered*



by him.”

3. The case of the petitioner in brief is that having been appointed as a Peon in the Collectorate, Chapra in the year 1981, the petitioner worked to the satisfaction of all concerned and as a result thereof was upgraded as a driver by order dated 11.5.1993 w.e.f. 3.6.1987.

4. It is further case of the petitioner that the office of the Collector, Saran at Chapra published a list of employees on 2.10.2023 giving their date of superannuation. The name of the petitioner figured in the said list (Annexure-P/3) at Sl. no.3 and the petitioner was shown as scheduled to be retiring on 31.1.2024.

5. It is the case of the petitioner that the petitioner having retired and on the respondents going through the service records of the petitioner for preparation of his post retiral dues that the respondents came out with an order contained in letter no.817 dated 26.6.2024 impugned herein issued under the signature of the Establishment Deputy Collector, Saran at Chapra. As per the said letter, the total service period of the petitioner having been 42 years and 10 months, in accordance with the decision contained in letter no.12978 dated 19.9.2019 of the Deputy Secretary, General Administration Department, Government of Bihar, the petitioner had worked for an excess



period of 10 months and as such, it was ordered that the amount paid to the petitioner by way of salary etc. beyond the period of 42 years of service that the petitioner worked be recovered in a single instalment. It is against this order dated 26.6.2024 that the petitioner has filed the instant writ application.

6. It is submitted by learned counsel for the petitioner that the petitioner who was working in the capacity of a driver at the time of his retirement was not aware as to what is his correct date of retirement. In fact, even as per the respondent's letter dated 2.10.2023 issued under the signature of the District Magistrate, Saran at Chapra, the petitioner was to retire on 31.1.2024 which he retired. The petitioner not being in any manner at fault for having worked for an excess period of ten months as stipulated in letter dated 19.9.2019 of the General Administration Department, Government of Bihar, he cannot be placed at fault. Further, the salary for the said period has been paid to the petitioner against the work done by him. Reliance has been placed by learned counsel for the petitioner on the judgments of the Hon'ble Supreme Court in the case of *Sahib Ram vs. State of Haryana and others*;[1995 Suppl.(1) SCC 18], *Union of India and others vs. M. Bhaskar and others*;[(1996) 4 SCC 416], *V. Gangaram vs. Regional Joint Director and*



others; [(1997) 6 SCC 139], Syed Abdul Qadir and others vs. State of Bihar and others; [(2009) 3 SCC 475] and State of Punjab and others vs. Rafiq Masih (White Washer) and others;[(2015) 4 SCC 334]. Learned counsel for the petitioner lastly submits that so far as the work of the petitioner is concerned, the respondents were so satisfied with the same that even subsequent to the petitioner's retirement, by order contained in memo no.333 dated 29.2.2024 (Annexure-P/4), the petitioner was engaged by the respondents for a further period of one year. In view of the facts and circumstances of the case, it is prayed that the order impugned contained in letter dated 26.6.2024 directing for recovery of the amount from the post retiral dues payable to the petitioner be set aside. Further prayer is made also to set aside the orders contained in letter dated 19.7.2024 (Annexure-P/7) and letter dated 17.8.2024 (Annexure-P/8) which is a reiteration of the letter dated 26.6.2024 directing for recovery of the salary paid to the petitioner for the excess period that he is said to have worked.

7. The application is opposed by learned counsel for the respondents. Learned counsel for the respondents submits that there is no dispute with respect to the fact that the petitioner worked for 42 years and 10 months and as such taking steps in



accordance with the letter dated 19.9.2019 of the General Administration Department, Government of Bihar (Annexure-C/1 to the counter affidavit filed on behalf of the respondent nos.2 and 5), order was passed for recovery of the salary paid for the excess period of ten months. There is no illegality in the order impugned and no merit in the instant writ application.

8. Heard learned counsel for the petitioner and learned counsel for the respondents. Perused the material on record.

9. The relevant facts in brief are that the petitioner who was appointed as a Peon in the Collectorate in the year 1981 was upgraded as a driver by order dated 11.5.1993 w.e.f. 3.6.1987 and started working in the said capacity to the satisfaction of all concerned. The office of the Collector, Saran at Chapra published a list of employees on 2.10.2023 giving their dates of superannuation wherein the name of the petitioner figured and his date of superannuation had been mentioned as 31.1.2024. The petitioner retired on 31.1.2024.

10. It transpires that the respondents came out with an order contained in letter no.817 dated 26.6.2024 that the total service period of the petitioner till 31.1.2024 was 42 years and 10 months and thus as per the letter of the General Administration Department, the petitioner had worked for an



excess period of 10 months. As such, the respondents came out with an order dated 26.6.2024 contained in memo no.693 dated 29.6.2024 directing for recovery of the salary for the period of 10 months. The same was followed by orders of recovery dated 19.7.2024 and 17.8.2024.

11. It may be observed here that Hon'ble Supreme Court in the case of ***State of Punjab and others vs. Rafiq Masih (White Washer) and others; (2015) 4 SCC 334*** held as follows:

“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 herein above, 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 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.”

12. So far as the facts of the instant case is concerned, even the respondents were not aware with the correct date of superannuation of the petitioner and it is for this reason that in the list of employees published on 2.10.2023 from the office of the Collector, Saran at Chapra, the date of superannuation of the petitioner was given as 31.1.2024.

13. There is no dispute with respect to the fact that the petitioner worked to the full satisfaction of the respondents in so far as even after his superannuation, the petitioner was engaged for a further period of one year. With the level of education of the petitioner, who was a driver, he cannot be faulted for having worked for an excess period of 10 months when the respondents themselves came out with the list of dates of superannuation, which according to them was incorrect.

14. In the opinion of this Court, the case of the petitioner is fully covered by the judgment of the Hon'ble



Supreme Court in the case of *Rafiq Masih* (supra) and the order of one time recovery of the amount of salary paid for the 10 months of salary of the petitioner is not sustainable.

15. In view of the facts and circumstances of the case, the order dated 26.6.2024 (Annexure-P/6) contained in memo no.693 dated 29.6.2024 issued under the signature of the Establishment Deputy Collector, Saran, Chapra, the order contained in memo no.786 dated 19.7.2024 (Annexure-P/7) issued under the signature of the Block Development Officer, Revelganj, Saran and the order contained in memo no.886 dated 17.8.2024 (Annexure-P/8) issued under the signature of the Block Development Officer, Revelganj, Saran are all unsustainable and are hereby set aside.

16. In case any recovery has been made from the petitioner pursuant to the orders impugned in the instant application, the same shall be returned to the petitioner forthwith.

17. The writ application is allowed.

(Partha Sarthy, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.04.2026
Transmission Date	

