

IN THE HIGH COURT OF JUDICATURE AT PATNA

Paras Nath Rai

Vs

The State of Bihar & Ors.

CWJC No. 15772 of 2015

21.09.2023

[Hon'ble Mr. Justice Mohit Kumar Shah]

Issue for Consideration

Whether recovery of excess payment made to the petitioner due to incorrect pay scale fixation can be sustained in the absence of any misrepresentation on the part of the petitioner.

Headnotes

Court deemed it fit and proper to direct the respondents not to recover the amount of excess pay/salary paid to the petitioner on account of incorrect fixation of pay scale, and in case any recovery had been made, the same was directed to be refunded to the petitioner. (Para 4)

Case Law Cited

State of Punjab v. Rafique Masih, (2015) 4 SCC 334

Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC

Sahib Ram v. State of Haryana, (1995) Supp. 1 SCC 80

Sahib Ram v. State of Haryana, (1995) Supp. 1 SCC 18

Shyam Babu Verma v. Union of India, (1994) 2 SCC 52

B. Ganga Ram v. Regional Joint Director, (1997) 6 SCC 139

Purshottam Lal Das v. State of Bihar, (2006) 11 SCC 492

Bihar State Electricity Board v. Bijay Bhadur, (2000) 10 SCC 99

B.J. Akkara v. Government of India, (2006) 11 SCC 7089

List of Acts

No statutory Act has been specifically cited.

List of Keywords

Pay Scale Revision

Recovery of Excess Salary

Misrepresentation

ACP (Assured Career Progression)

Fixation of Pay

Government Servant

Retrospective Recovery

Judicial Review

Principle of Natural Justice

Overpayment

Case Arising From

Challenge to departmental decisions regarding pay scale revision and recovery from a retired government servant in the Water Resources Department, Bihar.

Appearances for Parties

For the Petitioner: Mr. Sanjya Kumar Chaubey, Advocate

For the Respondents: Mr. Madhaw Prasad Yadaw, GP-23

Headnotes Prepared by Reporter:

Amit Kumar Mallick, Adv.

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15772 of 2015

Paras Nath Rai son of Late Tota Rai, resident of village- Mahaicha, P.O. Hathua, P.S. Hathua, District Gopalganj

... .. Petitioner/s

Versus

1. The State Of Bihar through Secretary, Department of Water Resources, Government of Bihar, Patna.
2. The Secretary, Department of Water Resources, Government of Bihar, Patna
3. The Secretary, Department of Finance, Government of Bihar, Patna
4. The Chief Engineer, Water Resources Department, Siwan
5. The Superintending Engineer, Saran Canal Circle, Gandak Scheme, Siwan
6. The Executive Engineer, Saran Nahar Pramandal Gandak Yojna, Bhore, District Gopalganj

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjya Kumar Chaubey, Advocate
For the Respondent/s : Mr.Madhaw Prasad Yadaw, GP-23

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date:-21-09-2023

1. The present writ petition has been filed seeking the following reliefs:-

"i) For the issuance of appropriate writ in the nature of "Certiorari" to quash the order dated 17.12.2003 as contained in Service Book, issued under the signature of Respondent no.6 whereby and whereunder the revised pay scale of the petitioner authorized vide letter no.1102 dated 9.10.2002 in the pay



scale of 4000-100-6000 w. e. f 1.1.1996 has been brought down in the pay scale of 3050-75-3950-80-4590 w.e.f. same i.e. 1.1.1996 with a direction for recovery of excess amount which shall be recovered in twelve installment.

ii) For the issuance of appropriate writ in the nature of Certiorari for quashing order as contained in letter no.1794 dated 22.12.2006 whereby and whereunder the petitioner has been awarded issued under signature of respondent no.6.

I ACP w. e. f. 9.8.1999 in pay scale of 3200-85- 4900 and II ACP we. f. 9.8.1999 in pay scale of 4000-100-6000.

iii) For the issuance of appropriate writ in the nature of certiorari for quashing order contained in letter no.748 dated 14.7.2015 issued under signature of respondent no. 5 whereby and whereunder the revised pay scale of petitioner and benefit of 1st ACP and 2nd ACP has been rejected by the respondent no.5 Superintending



Engineer Saran Canal Circle Gandak Scheme, Siwan which is illegal and arbitrary.

iv) For the issuance of appropriate writ in the nature of Mandamus to grant the petitioner the appropriate revised pay scale we. f. 1.1.96 and also to award the 1st and 2nd ACP in appropriate pay scale from the due dates and also to calculate the entire dues to the petitioner and pay the same alongwith statutory as well as penal interest.

v) For any other consequential benefits which the petitioner is entitled after authorization of the revised pay scale and A.C.P.”

2. At the outset, the learned counsel for the petitioner submits that since there has been no misrepresentation on the part of the petitioner, warranting grant of wrong pay scale to the petitioner, no recovery can be made pursuant to re-fixation of the pay scale of the petitioner, granted initially in the pay scale of Rs.4000-100-6000 with effect from 01.01.1996, which has stood



revised vide letter dated 09.10.2002, as also vide letter of the Finance Department dated 31.07.2002 and the pay scale has consequently been re-fixed as Rs.3050-75-3950-80-4590.

3. The aforesaid fact has not been disputed by the learned counsel appearing for the respondent-State.

4. Having regard to the facts and circumstances of the case, I deem it fit and proper to direct the respondents not to recover the amount of excess pay/salary paid to the petitioner on account of incorrect fixation of pay scale, as Rs.4000-100-6000 instead of Rs.3050-75-3950-80-4590 and in case any recovery has been made, the same is directed to be refunded to the petitioner forthwith.

5. At this juncture, it may be pertinent to state that the law regarding recovery is no longer res integra and has been well settled in a catena of decisions reported in reported in **(2009)3 SCC (Syed Qadir vs. State of Bihar); (1995) Suppl.1 SCC 80 (Sahib Ram vs. State**



of Haryana); (1994) 2 SCC 52 (Shyam Babu Verma vs. Union of India); (1997) 6 SCC 139 (B.Ganga Ram vs. Regional Joint Director); (2006) 11 SCC 492 (Purshottam Lal Das vs. State of Bihar); (2000) 10 SCC 99 (Bihar State Electricity Boardvs. Bijay Bhadur); (2006) 11 SCC 7089 (B.J. Akkara vs. Government of India University) and (1995) suppl. 1 SCC 18 (Sahib Ram vs. State of Haryana) and the one reported in (2015) 4 SCC 334 (State of Punjab vs. Rafique Masih).

6. The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.09.2023
Transmission Date	NA

