

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.11325 of 2021**

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Lakshmi Choudhary, S/o Late Sukhu Choudhary, resident of Mohalla- Math  
Lakshmanpur Koiri Tola, P.S.- Alamganj, Town and District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Water Resources, Government of Bihar, Patna.
2. The Additional Secretary, Department of Water Resources, Government of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
4. The Accountant General (A & E), Bihar, Patna.
5. The Treasury Officer, Secretariat Treasury, Sichai Bhawan, Bailey Road, Patna.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Suneil Kumar Thakur, Advocate  
For the Respondent/s : Mr. Sanjay Prasad, AC to AAG-4  
For the Accountant General : Mrs. Ritika Rani, Advocate

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL JUDGMENT**

**Date : 28-11-2022**

Heard Mr. Suneil Kumar Thakur, learned counsel for the petitioner, Mr. Sanjay Prasad, learned AC to AAG-4, for the State and Mrs. Ritika Rani, learned counsel for the Accountant General, Bihar, Patna.

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

“(A) For issuance of a writ in the nature of Certiorari for quashing of the office order as contained in Memo No. Pen-8-Sa-646 dated 18.07.2012 issued by and under the signature of the Assistant Accounts Officer, whereby and whereunder the pensionary



benefit of the petitioner has been disposed of by fixing the payable salary after withholding one of the two A.C.Ps. granted to him earlier.

(B) For issuance of a consequential writ in the nature of Mandamus commanding and directing the respondent authorities to redetermine the payable salary of the petitioner i.e. the very basis of the pension fixation after granting / adding the withheld one of the two A.C.Ps., granted to him earlier and thereby to make payment of the differential amount in respect thereof, payable to the petitioner as also for making payment of the amount, what was deducted from the pensionary benefit of the petitioner on account of the withdrawal of one of the two A.C.Ps. granted to the petitioner through Annexure-5 to the instant writ application.

(C) For issuance of a writ in the nature of Mandamus commanding and directing the respondent authorities to make payment of the differential amount payable to the petitioner pursuant to the pay fixation in revised pay structure pursuant to the Resolution No. 630 dated 21.1.2020 of the Department of Finance, Bihar, Patna as contained in office order being No.- 1/Est-05-01/2008-325 Patna dated 24.11.15.

(D) For granting of such other relief/reliefs for which the petitioner may be found legally entitled to be in the facts and circumstances of the case.”

3. The short facts, which led to the filing of the present writ application is that vide Office Order dated 07.02.1972, as contained in Annexure-1, the writ petitioner came to be appointed



as Aakasmik Bhritya/Casual Peon and he joined in the River Valley Scheme, Secretariat, Patna on 07.02.1972 itself. Vide Memo No. 4/Est.(Hq)7- 1020/72-4056 dated 18.08.1972, subsequently after having been found eligible, he was promoted to the post of Routine Clerk on temporary basis vide office order dated 30.05.1973 (Annexure-3 to the writ petition). The promotion of the petitioner was confirmed, as routine clerk with effect from 01.04.1981 (Annexure-4 to the writ petition).

4. It is further contended that on being introduced the Assured Career Progression Scheme Rule, 2003, the petitioner has been extended the benefit of financial progression vide office order dated 31.05.2005 and, accordingly, he has been extended the benefit of 1<sup>st</sup> and 2<sup>nd</sup> ACPs. with effect from 09.08.1999. Later on vide office order dated 06.05.2010, issued under the signature of the Deputy Secretary to the Government, Department of General Administration, Government of Bihar, the petitioner was promoted to the post of Assistant under Bihar Secretariat Service and posted in the department of Water Resources from where he retired on 31.08.2010. Thereafter all of a sudden vide Memo no. Pen. 8 S.646 dated 18.07.2012, issued under the signature of Assistant Accounts Officer, the salary of the petitioner was determined by deducting one of the two ACPs. granted to him vide office order dated



31.05.2005 in course of fixation of the pensionary benefits. It is vehemently contended that before making deduction of the amount paid to him, earlier granted to him by way of benefit of the one of the two ACPs., was actuated without the petitioner being heard and any show-cause to be served upon him and, in fact, in complete defiance of the principles of the natural justice.

5. He next contended that in the meantime office order dated 24.11.2015, Annexure-8 to the writ petition, came to be issued under the signature of Additional Secretary to the Government, in the Department of Water Resources and the salary of the petitioner had revised pursuant to the Resolution no. 630 dated 21.01.2010 making a rider therein that the differential amount payable therein would be paid after the verification of the salary by the Department of Finance. On 29.04.2019 vide Annexure-9, the petitioner has been extended the benefit of 3<sup>rd</sup> MACP with effect from 01.01.2009.

6. During the pendency of the writ application, the Government of Bihar, in the Department of Water Resources, came out with an office order dated 22.07.2021 whereby re-fixation of the salary of the petitioner has been done by cancelling the benefits of ACPs/MACP earlier extended to him, which order is



assailed by filing an interlocutory application (I.A. No. 1 of 2021) on behalf of petitioner.

7. Per contra, learned counsel for the State while justifying the action of the respondent authorities in making fixation of the salary of the petitioner after cancelling the benefit of ACPs/MACP has submitted that from the record it appears that the petitioner was appointed as a Akasmik Bhritya (Casual Peon) vide Departmental letter no. 536 dated 07.01.1972 and he was granted promotion to Class-III post as Routine Clerk with effect from 30.05.1973. His services was regularized with effect from 30.05.1973 vide Departmental letter no. 77-80 dated 09.01.1978. He further contended that the petitioner was granted promotion in Junior Selection Grade with effect from 15.02.1982 in the higher pay scale of Rs.580-860/-. His salary was revised in the pay scale of Rs.1200-1800/- with effect from 01.01.1986 and thereafter he was granted promotion in Senior Selection Grade with effect from 01.02.1995 in the higher pay scale of Rs. 1320-2040/- and later on his salary was revised in the pay scale of Rs.4000 - 6000 with effect from 01.01.1996.

8. Counsel for the State also submitted that the file of the petitioner was also sent to the Finance Department, Government of Bihar for its opinion and it has been opined that



since the petitioner had been granted promotion to the post of Routine Clerk, the benefit of ACP was not admissible to him and, as such, in the light of the said opinion, amended pay fixation order was issued vide Departmental order no. 139, as contained in Memo no. 2529 dated 11.06.2014 withholding the benefit of ACP and he was granted only 2<sup>nd</sup> ACP with effect from 09.08.1999 in the pay scale of Rs.4500-7000/-. He further submits that the petitioner was though granted the benefit of 3<sup>rd</sup> MACP in PB-II (Rs.9300-34800/- + Grade Pay Rs.5400) with effect from 01.01.2009, but when the file was again sent to the Finance Department for verification of fixation of pay of the petitioner, the Finance Department reiterated its earlier opinion that since the petitioner had been granted two promotions, firstly to the post of Routine Clerk and secondly to the post of Assistant, the benefit of ACP was not admissible to him, hence in the light of the said opinion, the benefits of 2<sup>nd</sup> ACP and 3<sup>rd</sup> MACP, earlier granted to the petitioner, have been cancelled and his salary has been reduced to the pay scale of Rs.4000-6000/- with effect from 01.02.1999 and subsequent to the grant of promotion to the post of Assistant, the salary of the petitioner has been fixed in PB-II (Rs.9300-34800 + Grade Pay Rs.4600) with effect from 07.05.2010.



9. Based on the aforesaid facts, the learned counsel for the State submits that as the petitioner had already been allowed two promotions in his service career, he was found not entitled to the benefit under the ACP/MACP scheme and, as such, the impugned action/order passed by the respondent authorities is in conformity with the government orders/circulars issued time to time.

10. It is relevant to state here that during the pendency of the present writ application, the Additional Secretary, Department of Water Resources, Government of Bihar, came out with order dated 22.07.2021 making re-fixation of the salary of the petitioner by deducting the benefits of ACP/MACP, earlier extended to him, which is subject matter of the writ application, by filing the Interlocutory Application No. 01 of 2021. The consequence was not only petitioner's last pay scale was reduced, his pensionary benefit was also calculated on his reduced pay scale, subsequently affecting the petitioner.

11. Now the question for consideration before this Court is as to whether the respondent authorities are competent enough to reduce the last pay drawn and order for substantial recovery from the petitioner, after annulling the benefits of financial progression granted under the ACP/MACP scheme.



12. From the materials available on record and also the law, which is relevant for determination of the issue is that no reduction in pay scale or any action which has adverse consequence in respect of a person, can be taken without the person being heard. This is basic cardinal principles of administrative law and an integral part of the principles of natural justice. Any action taken to the pre-judice of a person without hearing him, would be a nullity. It is well settled that no person shall be condemned unheard. It is not disputed either by the State respondents or the Accountant General, Bihar that at any point of time before nullifying the benefits of the financial progression under the ACP/MACP scheme or before reducing the pay scale or before ordering recovery, any show-cause, whatsoever, was asked from the petitioner, much less, no proceeding initiated.

13. Time without number, the Apex Court in catena of judgments has held that if excess amount was not paid on account of any misrepresentation or fraud on the part of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, no recovery can be made in such a situation. The issue involved in the present writ application had



considered by the Apex Court in various cases and one of the important judgment rendered by the Apex Court in the case of **Syed Abdul Qadir Vs. The State of Bihar & Ors.**, reported in **(2009) 3 SCC 475**, would be relevant for consideration of the issue involved in the present case. For proper appreciation of the issue, it would be proper to quote paragraph 27 and 28 of the judgment.

27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram vs. State of Haryana*, 1995 Supp. (1)



SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99.

28. Undoubtedly, the excess amount that has been paid to the appellants - 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 held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-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 appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.”

14. Further, the Apex Court having taken note of various judgments in this point. In the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer)** reported in **(2015) 4 SCC 334** has been pleased to postulate certain situations and hardships governing the employees on the issue of recovery, where payments have mistakenly been made by the employer in excess of their entitlement. For the proper appreciation, para 10 and 18 of the said judgment are quoted, hereinbelow.

“10. In view of the aforestated constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess



amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

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 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.”

15. Further it would not be out of place to observe that principles of natural justice require an administrative authority to record reasons. Generally, principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. The application of principles of natural justice, and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory provisions. Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. Reliance may be taken on the judgment rendered by the Hon'ble Supreme Court in the case of **Union of India & Ors vs E.G. Nambudiri**, reported in, **AIR 1991 SC 1216**.

16. From the aforesaid settled legal proposition, it is manifestly clear that even an administrative order, which involves civil consequences, causing pecuniary loss to an employee or otherwise has to be passed consistently with the rule of natural justice. Any violation of the same would make the order nullity.



17. In view of the aforesaid settled legal proposition, which is applicable in the facts of the present case, the impugned order of reduction and any consequential order of recovery, if any, is in the teeth of the mandate of the judgments rendered by the Apex Court, apart from the fact that the same has been passed without following the principle of natural justice. Therefore, the impugned order of reduction/recovery warrants interference, hence the impugned order of reduction/recovery is hereby set aside.

18. However, this Court is also conscious of the fact, as is evident from the materials available on record that the petitioner was allowed promotion twice in his service career. Firstly, on the post of Routine Clerk and lastly to the post of Assistant under Bihar Secretariat Service and, as such, prima facie, the order nullifying the benefit of financial progression under the ACP scheme and re-fixation of the pension warrant reconsideration only for fixation of the pension afresh on the basis of admissible financial progression, if any. However, it is made clear that before making any re-fixation of the pension, the petitioner may be served a proper show-cause notice and after giving opportunity of hearing, the order of fixation of pension be passed. It is also made clear that this exercise must be completed within a period of



twelve weeks from the date of receipt/production of a copy of this order.

19. In view of the aforesaid observations and directions, the present writ application stands partly allowed to the extent indicated hereinabove.

**(Harish Kumar, J)**

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07.12.2022
Transmission Date	NA

