

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12040 of 2019

Madan Prasad Singh, age – 60 years (approx.), Gender – Male, son of Late Ramashraya Singh Resident of Village and P.O.- Doiyan, P.S.- Dinara, Dist- Rohtas at present resident of Mohalla- Gaurakshni-Gajaradh, Streat No.1/B, Sasaram, District- Rohtas.

... .. Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Water Resources Department, Irrigation Building, Near Bihar Legislative Council, Government of Bihar, Patna.
2. Engineer in Chief, Water Resources Department, Bihar, Patna.
3. Chief Engineer, Irrigation Creation, Water Resources Department, Dehri, Rohtas.
4. Superintending Engineer, Irrigation Circle, Bhabhua.
5. Executive Engineer, Sone High Level Canal Division, Sasaram.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Dr. Harendra Nath Ojha, Advocate
Mr. Jitendra Kumar, Advocate
For the Respondent/s : Mr.Harish Kumar (GP8)

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 13-01-2021

The petitioner in the present case is seeking following reliefs:

- (i) For payment of entire gratuity amount without recovering the excess salary payment amount which was paid by order of competent authority of the department in view of Finance Department Circular No. 6338 dated 16.07.2015 read with another Finance Department Circular No. 3111 dated 25.03.2015.
- (ii) For providing cost and compensation if any for not complying the directions passed in the Order dated 27.02.2019 in CWJC No. 13644 of 2016 for



treating equal the petitioner as Correspondence Clerk with Accounts Clerk appointed in between 01.05.1980 to 27.09.1999.”

2. During pendency of the writ application an Interlocutory Application being I.A. No. 01 of 2020 has been filed for adding two more reliefs and the I.A. has been allowed vide order dated 25.09.2020 to be part and parcel of the writ application. The reliefs prayed therein are as under:-

“(III) For quashing of the Order dated 11.04.19 passed by the Chief Engineer, Water Resources Department, Dehri to the Superintending Engineer, Irrigation Circle, Bhabhua for Recovery of amount as paid to petitioner by the Department after modification/revision in pay scale as correspondence clerk in term of Finance Department Circular 3111 dated 25.03.2015 read with Circular No. 6338 dated 16.07.15 from the petitioner’s Gratuity amount.

(Vide Annexure -1 of this petition).

(IV) For quashing the Finance Department Circular No. 8059 dated 14.09.15 by which modified pay scale of Bhandarpal/Correspondence Clerk working under Work Departments, as provided under earlier Finance Dept. Circular No. 6338 dated 16.07.15, was withdrawn with effect from 16.07.15 and further directed to deduct the amount paid under modified/revised pay scale if any from them.

(Vide Annexure -8 of writ application, which is also attached herewith as Annexure – 2 to this petition).”

3. It is the case of the petitioner that he was appointed as a Correspondence Clerk on 20.03.1980 in the Irrigation Department, Government of Bihar. While he was still



in service the Department of Finance, Government of Bihar came out with a Circular contained in Memo No. 3111 dated 25.03.2015 (Annexure '1' to the writ application). By this Circular a decision was taken that the employees appointed in the cadre of Accounts Clerk in between 01.05.1980 to 27.09.1999 will be known by a common post known as Sr. Accounts Clerk and those Accounts Clerk are entitled to get pay scale of Rs. 730-1080/- with effect from 01.04.1981; Pay Scale of Rs. 1400-2300/- with effect from 01.01.1986 and Pay Scale of Rs. 4500-7000/- with effect from 01.01.1996 and then after 01.01.2006 PB+2800/- will be applicable. Paragraph '5' of the said Circular on which reliance has been placed on behalf of the petitioner is quoted hereunder for purpose of consideration:-

“सम्यक विचारोपरांत कार्य विभागों के लेखा लिपिक संवर्ग के वेतनमान के संबंध में निम्नलिखित निर्णय लिया गया है :-

(i) दिनांक 01/05/1980 से दिनांक 27/09/1999 की तिथि तक इस संवर्ग में नियुक्त कर्मी एकीकृत पदनाम- “वरीय लेखा लिपिक” से अभिहित होंगे । ऐसे लेखा लिपिक को दिनांक 01/04/1981 के प्रभाव से रू0 730-1080/, दिनांक 01/01/1986 के प्रभाव से रू0 1400-2300/ दिनांक 01/01/1996 के प्रभाव से रू0 4500-7000/ तथा दिनांक 01/01/2006 के प्रभाव से पी. बी. -1 + 2800/ अनुमान्य होगा ।

(ii) दिनांक 28/09/1999 एवं उसके बाद की तिथियों में कार्य विभागों के लेखा लिपिक संवर्ग में कनीय लेखा लिपिक/निम्नवर्गीय लेखा लिपिक/निम्नवर्गीय लिपिक (लेखा) के पद पर नियुक्त कर्मी कनीय लेखा लिपिक के पदनाम से अभिहित होंगे तथा उन्हें दिनांक 31/12/2005 तक रू0 4000-6000/



तथा दिनांक 01/01/2006 से पी. बी. 1 + 2400/- का वेतनमान अनुमान्य होगा । वरीय लेखा लिपिक कोटि में प्रोन्नति के बाद उनका वेतनमान 4500-7000 तथा दिनांक 01.01.2006 के बाद पी. बी. 1+2800 रु. अनुमान्य होगा ।”

4. It is further case of the petitioner that vide Memo No. 6338 dated 16.07.2015 the Additional Secretary, Government of Bihar issued another circular by which considering the nature of work and responsibility of the post of Store Keeper (Bhandarpal) and Correspondence Clerks they were treated at par with the Accounts Clerk under the works Department and they were conferred with the same benefits which were applicable to the Accounts Clerks. Memo No. 6338 dated 16.07.2015 has been brought on record as Annexure ‘2’ to the present writ application and this Court will deal with the same at an appropriate place.

5. The petitioner states that in terms of the circulars/letters (Annexure ‘1’ & ‘2’ of the writ application), he became entitled for the benefits attached to the post of Accounts Clerk and accordingly those benefits were disbursed to him.

6. After the benefits had already been disbursed to the petitioner, the respondents came out with a letter as contained in Memo No. 8059 dated 14.09.2015 (Annexure ‘8’). By this letter it was informed to the Senior Accounts Officer,



Office of the Accountant General, Govt. of Bihar that there had been several discrepancies in the letter dated 16.07.2015 (Annexure '2' to the writ application), therefore, the benefit conferred vide letter dated 16.07.2015 are being withdrawn with effect from the date of issuance of the letter i.e. 16.07.2015. Annexure '8' further states that if any person has been given benefit of the earlier letter and the resolution, the same be recovered from them.

7. It appears that earlier a writ application being CWJC No. 17796/2015 was filed by some of the similarly situated persons for quashing of the letter dated 14.09.2015 (Annexure '8' hereof) issued under the signature of the Secretary (Expenditure), Department of Finance, Government of Bihar. In the said writ application, learned coordinate Bench of this Court though refused to quash the impugned notification but stayed the recovery pursuant thereto. The said writ application was disposed off directing the State Government to take a final decision on a fresh application to be filed by the association or representative of the petitioners before the Principal Secretary, Finance, Government of Bihar. The order passed by the learned coordinate Bench in CWJC No. 17796/2015 is Annexure '16' to the rejoinder filed on behalf of



the petitioner to the counter affidavit of the State respondents.

8. Being aggrieved by the letter as contained in Memo No. 8059 dated 14.09.2015 the Bihar State Road and Building Construction Employees Union (Gope Group) and some other employees had filed CWJC No. 13644 of 2016. By order of a learned coordinate Bench all the similar nature of writ applications were heard together.

9. This petitioner was petitioner no. 17 in the said writ application. The writ application was filed seeking a direction to the respondents to confer the same benefits which were available under the government decision dated 25.03.2015 whereby the Scale of Rs. 4000 – 6000/- was made applicable to the appointees as Accounts Clerk on compassionate appointment after 28.09.1999. The fact as noted in the judgment dated 27.02.2019 passed by the learned coordinate Bench of this Court (Annexure '10' to the writ application) would disclose that all the four petitions were considered taking that the petitioners in those writ applications were the appointees on compassionate ground as Correspondence Clerk. It is for this reason Mr. Harish Kumar, learned Government Advocate has hasten to inform this Court that the petitioner was though not an appointee on compassionate ground after 28.09.1999, his case



has also been considered taking him as similarly situated with other petitioners because neither the petitioners' counsel nor the learned counsel representing the State could inform the status of the petitioner as regards his appointment. The fact remains that the writ application preferred by the petitioner has been allowed vide common judgment dated 27.02.2019.

10. It appears that vide judgment dated 27.02.2019 passed in CWJC No. 9633/2016 and its analogous matters, the learned coordinate Bench of this Court has held that the order dated 14.09.2015 as well as order dated 29.03.2016 issued by the Finance Department are unsustainable in law and those have been quashed. Petitioners in those writ applications have been found entitled to the same benefits as have been extended to the petitioners in the case of Vinit Kumar by the Hon'ble Division Bench vide judgment dated 11.07.2018 passed in LPA No. 124/2018.

11. The petitioner was due to retire on 31.03.2019. It is his case that he had received letter as contained in Annexure '11' to the writ application informing him that his gratuity amount has been fixed at Rs. 11,87,010.00 in the light of resolution no. 321 dated 23.05.2017 and resolution no. 3590 dated 24.05.2017 and letter no. 7828 dated 24.10.2018 of the



Finance Department and as such 90% of Gratuity amount of Rs. 10,68,309.00 is approved for its payment. Vide Pension Payment Order (in short 'PPO') dated 14.02.2019 his pension amount was fixed.

12. The reason for once again moving this court by filing the present writ application is that the respondents are not paying the entire gratuity amount to the petitioner. The Chief Engineer, Water Resources Department, Dehri has directed the Superintending Engineer vide letter dated 11.04.2019 to recover the amount paid to the petitioner pursuant to the letter dated 16.07.2015 (Annexure '8' to the writ application). The letter dated 11.04.2019 and the letter dated 16.07.2015 are under challenge in I.A. No. 01/2020. The petitioner is looking for release of his entire gratuity amount without recovering the excess payment allegedly made to him prior to withdrawal of the benefit vide Annexure '8' to the writ application.

13. Learned counsel for the petitioner has pleaded before this court that the spirit of Annexure '2' is to treat the persons rendering the service as Correspondence Clerk on equal footing with the 'Bhandarpal' and the 'Accounts Clerk'. It is his submission that the petitioner was very much rendering his service as Correspondence Clerk on the date of issuance of



Annexure '2' and he was rightly conferred the benefits which were being allowed to the Bhandarpals and the Accounts Clerk who were re-designated as Senior Accounts Clerk.

14. It is submitted that the benefits were provided to the Correspondence Clerk, therefore all those who were serving on the date of issuance of the letter as contained in Annexure '2' were entitled for the benefits as no distinction could have been drawn between those who were appointed prior to 28.09.1999 and those who were appointed after 28.09.1999. It is also submitted that there is no rationale behind saying that the persons who were appointed on compassionate ground would be entitled for the benefit of the pay scale and other benefits but the petitioner would not be entitled for the same. Learned counsel has also submitted that in view of the judgment of the Hon'ble Supreme Court in the case of **State of Punjab & Others Vs. Rafiq Masih (White Washer)** reported in **2015 AIR SCW 501**, the case of the petitioner would be covered under the exceptional category as the petitioner was holding Class - III post and at this stage if the recovery is effected against him he would be deprived of a substantial amount which would have been otherwise available to the petitioner to take care of him at the evening of his life.



15. Mr. Harish Kumar, learned counsel representing the State has opposed the writ application. It is his submission that Annexure '1' and '2' to the writ application would not be applicable to the petitioner. Learned counsel has sought to draw a distinction between the case of the petitioner on the ground that he is an appointee of March 1980 i.e. the date of the appointment is 20.03.1980, therefore in terms of paragraph '5' of Annexure '1' to the writ application, those who were appointed in the post of Accounts Clerk between 01.05.1980 to 27.09.1999 and thereafter would have been only entitled for the same. This is the only ground which has been pleaded before this Court on behalf of the State respondents to defend the withdrawal of the benefits in respect of the petitioner.

16. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **High Court of Punjab & Harayana Vs. Jagdev Singh** reported in (2016) 14 SCC 267, to submit that in the said case the Hon'ble Apex Court had held inter alia that in the cases where at the time of disbursement of the amount itself the employee had been served with a notice that in case such payment is found not payable, the amount will be recovered from him, the employee would be liable to refund the amount.



17. This Court wanted to know from learned counsel representing the State as to whether in the facts of the present case while making disbursement of the benefits by virtue of Annexure '2' to the writ application any such prior undertaking was provided by the petitioner, learned counsel for the petitioner though attempted to refer Annexure '3' to the writ application but learned counsel is unable to show that any undertaking was given to the petitioner prior to disbursement of the benefits in terms of Annexure '2' to the writ application. Learned counsel has however submits that the petitioner is not entitle to take the benefits of Annexure '2' and is liable to refund the amount to the State.

Consideration

18. Having heard learned counsel for the petitioner and learned counsel for the State, this Court finds that there are some admitted facts of this case. In the letter as contained in Annexure '2' it is mentioned that the State Government has declared the Bhandarpal (Store Incharge) equal to the Accounts Clerk cadre. In this regard, the Finance Department's letter no. 6316 dated 06.08.2002 has been referred to. In Annexure '2', thus, it was declared that the Accounts Clerk/Bhandarpal/ Correspondence Clerk will be governed by paragraph '5' of the



resolution no. 3111 dated 25.03.2015 (Annexure '1'). The copy of the letter (Annexure '2') was marked to the Incharge, Finance Officer, Department of Finance for necessary action. After issuance of Annexure '2' the petitioner was made available the benefits accruing out of the same and he was accordingly paid the entire benefits. By Annexure '3' bearing letter no. 575, the District Accounts Officer, Rohtas, Sasaram communicated to the District Accounts Officer, Rohtas, Sasaram about verification of the service book and the salary of the petitioner fixed earlier and mentioned therein the amount so fixed on 01.05.1987 and 01.05.1988 on enhancement. It is in this respect that a mention has been made that upon verification, if any excess payment has been made to the employee the same should be adjusted. It is not the case of the State that upon verification the amount has been found as excess payment. The dispute has arisen because of withdrawal of the benefit after payment vide Annexure '8' to the writ application. The letter talks of only two amounts i.e. Rs. 820/- and Rs. 840/- which were fixed upon enhancement from Rs. 805/- and Rs. 820/- on 01.05.1987 and 01.05.1988 respectively.

19. On perusal of the office order contained in letter no. 684 dated 10.08.2015, 685, 686, 687 and 688, all dated



10.08.2015, it would that these office orders have been issued fixing the pay of the petitioner and the same has been done upon verification of the District Accounts Officer, Rohtas (Sasaram). In these office orders there is no stipulation that any payment made to the petitioner by virtue of the fixation of his pay under these office orders/letters if any excess amount is paid to him, the same may recovered. There is also no stipulation in these office orders that if the benefits being allowed to the petitioner are found to have been wrongly fixed, the same may be recovered. Fact remains that no undertaking was taken from the petitioner.

20. It is a matter of record that while clubbing of the writ petitions for common hearing, the vide order dated 23.11.2016 (Annexure '9') a learned coordinate Bench of this Court passed an interim order in the following terms:

“All these applications will be placed for admission after the report of the Seventh Pay Commission is placed before the Government. Recovery will be subject to outcome of the writ application. The Court gives absolute freedom to any person including these petitioners or their class of people to present their argument and assert for the highest kind of pay scale which they think they deserve, because of their so called exalted position and responsibility which they hold.”



21. On record, with the reply to the counter affidavit the petitioner has placed before this Court a copy of the letter dated 07.06.2017 (Annexure '17') issued by the Department of Finance, Government of Bihar. The contents of the letter are relevant for purpose of this case inasmuch as it shows that the State Pay Commission which was constituted by Department of Finance Resolution No. 9701 dated 22.12.2016 for removing the discrepancies in respect of the salaries of the State Government employees has submitted its recommendation and the same was placed before the Cabinet in its meeting held on 16.05.2017 and 23.05.2017. After approval of the recommendations by the Cabinet the revised pay scale sanctioned for the government employees were notified by the Department of Finance Resolution No. 3590 dated 24.05.2017. All the administrative departments were directed to notify their final decision by 30.06.2017. The relevant part of the letter reads as under:-

“राज्य सरकार के निर्णयानुसार वेतन संरचना से इतर आयोग द्वारा की गयी अन्य अनुशंसाओं पर संबंधित प्रशासी विभागों द्वारा दिनांक-30.06.2017 तक अंतिम निर्णय लेकर तत्संबंधी आदेश निर्गत किया जाना है। आयोग की अनुशंसायें वित्त विभाग के वेबसाइट पर उपलब्ध है। सुलभ प्रसंग हेतु आयोग की अनुशंसा की एक प्रति संलग्न की जा रही है। आयोग की आपके विभाग से संबंधित गैर वित्तीय अनुशंसा निम्नवत है-

(क) क्षेत्रीय स्थापनाओं के विभिन्न पदनाम यथा लेखा लिपिक, भंडारपाल, पत्राचार लिपिक, निम्न वर्गीय लिपिक एवं उच्च वर्गीय लिपिक का अलग-अलग संवर्ग नहीं होगा, अपितु ये



सभी सामान्य लिपिक संवर्ग के निम्न वर्गीय लिपिक/उच्च वर्गीय लिपिक के नाम से जाने जायेंगे। लेखा लिपिक मरणशील संवर्ग होगा तथा इस पर नई नियुक्ति नहीं की जाएगी। निम्न वर्गीय लिपिक की 6 वर्ष की कालावधि अथवा दिनांक-01.01.16 जो बाद में हो, की तिथि से उच्च वर्गीय लिपिक के पद पर प्रोन्नति दी जाएगी। उच्च वर्गीय लिपिक से प्रधान लिपिक के पद पर प्रोन्नति हेतु निम्न वर्गीय लिपिक एवं उच्च वर्गीय लिपिक के पदों पर बिताई गयी कुल अवधि को आवश्यक कालावधि को देखते हुए प्रोन्नति प्रदान की जा सकेगी। संबंधित विभाग द्वारा प्रोन्नति का अनुपात 60.40 निर्धारित करते हुए अनुशंसित प्रोन्नति का लाभ आदेश निर्गत की तिथि से दिया जा सकेगा। प्रोन्नति के सभी स्तरों के लिए उस पद का वेतन निर्धारण उसके ग्रेड पे का प्रतिस्थानी पे मैट्रिक्स स्तर दिया जा सकेगा। (चैप्टर 3.2)

(ख) अभियंत्रण सेवा में अनुरक्षित ग्रेड पे रू0-7600 का पद नहीं था। पुनरीक्षित वेतन में वेतन स्तर पर 12 कार्यपालक अभियंता वरीय हेतु स्वीकृत कर वेतन स्तर 11 के 8 वर्ष के अनुभव प्राप्त कार्यपालक अभियंता को इस स्तर पर उन्नयन दिया जायेगा। (चैप्टर 3.7)

अतएव अनुरोध है कि सरकार के निर्णयानुसार आयोग की उक्त अनुशंसा पर दिनांक-30.06.2017 तक निर्णय लेकर आदेश निर्गत करने की कृपा की जाय।”

22. It is because of the aforesaid letter the petitioner has pleaded that now the post of Correspondence Clerk of Works Department is merged with the Lower Division Clerk and Upper Division Clerk in the Seventh Pay Revision report vide Annexure ‘17’.

23. In the light of the order dated 23.11.2016 of learned coordinate Bench no recovery was effected. All the writ applications were placed for consideration and those were finally decided on 27.02.2019. A copy of the judgment dated



27.02.2019 has been placed on record as Annexure '10'. The judgment of learned coordinate Bench mentions as matter of fact inter alia as under:-

“The appointees as Correspondence Clerk after 28.9.1999, in terms of pronouncement made by this court in the proceedings arising out of C.W.J.C. No. 9921 of 2017 and LPA No. 1702 of 2017 have been found to be entitled to same pay scale as is being granted to the Account Clerk appointed on compassionate ground after 28.9.1999 and therefore fully covered under resolution of the Finance Department dated 25.03.2015 bearing No. 3111. The decision therefore squarely covers the claims of the petitioners inasmuch as there is no distinction in the claim of the instant petitioners vis-a-vis that of Binit Kumar (supra).”

24. The learned coordinate Bench has held that the order dated 14.09.2015 is not sustainable and the same has been quashed. A direction has been issued to the State respondents to extend the same benefit to the petitioners.

25. Although Mr. Harish Kumar, learned counsel for the State (G.P. 8) as submitted before this Court that in case of the petitioner Annexure '1' and '2' would not be applicable and has taken a stand that in the judgment dated 27.02.2019 the learned coordinate Bench has clearly mentioned about the entitled person and they are those who have been appointed



after 28.09.1999, this Court would not be impressed by this argument.

26. In the counter affidavit as well as the supplementary counter affidavit filed on behalf of the State, a stand has been taken that the reliefs have been granted to only those Clerks who were appointed on compassionate ground on or after 28.09.1999 and because the petitioner has been appointed on 20.03.1980 as Correspondence Clerk, he would not be entitled for the benefit.

27. This Court is unable to subscribe the submissions made on behalf of the State respondents. If it is their stand that the petitioner would not be covered by the judgment dated 27.02.2019, in the opinion of this Court the same is fit to be rejected at the outset as it is not only overreaching the judgment of this Court which has attained finality but is also contemptuous in nature.

28. Learned counsel for the State has taken a plea that the distinction between the case of the petitioner and the others which were placed before a learned coordinate Bench could not be brought to the notice of the Court, this Court is afraid that such submission cannot be allowed to be taken in the present proceeding, on the ground that the State had not been able to



take a plea which was available to the State in the earlier proceeding. This Court would not be sitting in the review jurisdiction to look into the judgment of the learned coordinate Bench.

29. On records the situation, thus, writs large. As on today the order contained in letter no. 8059 dated 14.09.2015 (Annexure '8' to the writ application) has already been set-aside. The judgment dated 27.02.2019 has attained finality.

30. From the aforementioned discussions it is evident that the withdrawal of benefit vide Annexure '8' to the writ application stands nullified by virtue of the judgment dated 27.02.2019 of the learned coordinate Bench of this Court and now in view of the recommendation of the Seventh Pay Commission and acceptance of the recommendation by the Cabinet the post of Accounts Clerk, Bhandarpal, Correspondence Clerk as also Lower Division Clerk and Upper Division Clerk are in the same cadre of General Clerk and they will be known as Lower Division Clerk/Upper Division Clerk.

31. In the Case of **Rafiq Masih (supra)**, the Hon'ble Supreme Court was dealing with a case of excess/unauthorized payment made to an employee. The Hon'ble Apex Court found that all the private respondents in the said case were given



monetary benefits which were in excess of their entitlement. These benefits had been conferred upon them mistakenly by the concerned competent authority in determining the emoluments payable to them. The respondent employees were however not guilty of furnishing any incorrect information and the payment of the higher amount was not as a result of any misrepresentation made by them, nor was it on account of any fraud committed by the employees. In such circumstance, the Hon'ble Apex Court dealt with the previous case laws on the subject and ultimately held as under:

“12. 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.”

32. Learned counsel for the State respondents has relied upon the judgment of the Hon'ble Apex Court in the case of **Jagdev Singh (supra)**. In the said case, the respondent was appointed as a Civil Judge (Junior Division) on 16th July 1987 and was promoted as Additional Civil Judge on 28th August 1997 in the Judicial Service of the State of Punjab. By notification dated 28th September, 2001 a pay scale of Rs. 10,000 – 325 – 15,200 (Sr, Scale) was allowed under the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules 2001. Under the Rules, each officer was required to submit an undertaking that any excess which may be found to have been paid will be refunded to the government either by adjustment against future payments due or otherwise. The respondent had also furnished an undertaking and was granted the revised pay scale.

33. In the aforementioned background when the recovery was sought for from the respondent and the judgment of the Hon'ble Apex Court in the case of **Rafiq Masih (White Washer) etc. (supra)** was sought to be relied upon, under the



proposition (ii) the Hon'ble Apex Court distinguished the case on the ground that the Officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

34. It is thus apparent on the face of it that the case of **Jagdev Singh** was clearly distinguishable on facts from the case of **Rafiq Masih (supra)**. In the present case, no such undertaking was ever sought for from the petitioner and it is not the case of the State that the petitioner had furnished any undertaking in this regard.

35. In fact after quashing of the order as contained in letter dated 14.09.2015 (Annexure '8' to the writ application), the very basis for seeking recovery has gone. The case of the petitioner has not been distinguished and in the opinion of this Court the stand taken by the State respondents saying that those who were appointed after 28.09.1999 will only be entitled for the benefit is a kind of misplaced submission. The petitioner has already been disbursed the benefits accruing to him under Annexure '2' to the writ application. He has retired from service on 31.03.2019 and at this stage the recovery sought for by the



impugned order which is under challenge in I.A. No. 01/2020 is not sustainable. The petitioner has not made any misrepresentation and there is no allegation of playing any fraud against the petitioner in the matter of deriving the benefits accruing out of Annexure '2'. It is in fact not a case of excess payment. The case is one of conferring the same benefit to the petitioner being a Correspondence Clerk which were allowed to the Accounts Clerk and the focus of Annexure '2' is on the nature of the duties which were being performed by the Accounts Clerk/Bhandarpals and the Correspondence Clerk which were of similar nature. The recommendation of the Seventh Pay Revision which has already been accepted by the State Government vindicated the stand of the petitioner and now the post of Accounts Clerk/Bhandarpals/Correspondence Clerk have been merged in the cadre of General Clerks. This Court finds the case of the petitioner covered under proposition no. (i), (ii), (iii) & (v) of **Rafiq Masih (White Washer) etc.** (supra).

36. In the opinion of this Court the petitioner has been able to make out a case for setting aside the impugned orders as contained in I.A. No. 01/2020. The impugned order dated 11.04.2019 passed by the Chief Engineer, Water Resources Department, Dehri as contained in Annexure '1' to I.A. No.



01/2020 (it should have been marked as Annexure '16' in continuity of the Annexures to the writ application) is hereby set-aside. Since the order dated 14.09.2015 (Annexure '8' to the writ application) has already been set-aside by a learned coordinate Bench of this Court, this Court need not pass any order with respect thereto as the same is no longer in existence. On both counts as discussed above this writ application is fit to succeed.

37. The writ application stands allowed.

38. The State respondents are directed to pay the entire gratuity with statutory interest thereon from the date 30 days after the gratuity became due to the petitioner till the date of payment without any deduction/recovery of the alleged excess salary payment under Annexure '2' to the present writ application. Such payment shall be made within a period of two months from the date of receipt/production of a copy of this order.

39. There would however no order as to cost.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.01.2021
Transmission Date	

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

