IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.643 of 2025
In
Civil Writ Jurisdiction Case No.8468 of 2024

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1. The State of Bihar through the Additional Chief Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Under Secretary-1 (Management), Water Resources Department, Government of Bihar, Patna.
3. The Engineer-in-Chief (Headquarter), Water Resources Department, Government of Bihar, Patna.
4. The Chief Engineer, Irrigation Creation, Water Resources Department, Aurangabad
5. The Executive Engineer, North Koel Canal Division, Navinagar, Aurangabad
6. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
7. The Deputy Secretary, Department of Finance, Government of Bihar, Patna.

... ... Appellant/s

Versus

1. Shrawan Kumar Son of Late Genauri Lal Resident of mohalla- Mogal Kuan, P.O. and P.S.-Sohsarai, District- Nalanda
2. The Accountant General, Bihar, Patna

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Binay Krishna, S.C.-27
Mr. Rakesh Ambashta, A.C. to S.C.-27
Mr. Rakesh Kumar Ranjan, A.C. to S.C.-27
For the Respondent/s : Mr. Suryakant Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date : 23-09-2026

Re: I.A. No. 01 of 2025

This is an application filed by the appellants seeking

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condonation of 52 days' delay in filing the present appeal.

2. For the reasons stated in the application, the delay of 52 days in filing the appeal is condoned. Accordingly, the I.A. No. 01 of 2025 stands disposed of.

Re: L.P.A. No. 643 of 2025

3. This appeal challenges the order dated 19.03.2025 passed by the learned Single Judge in C.W.J.C. No. 8468 of 2024, whereby the writ petition filed by the respondent herein has been allowed and the amount of Rs. 3,70,542/- recovered from the respondent's leave encashment has been directed to be refunded.

4. It is noted from the impugned order that the learned Single Judge, while allowing the writ petition, has in paragraph 9 onwards stated as under:-

> *"9. Having considered the submissions advanced by the learned Advocate for the respective parties and after perusing the materials on record, this Court finds that admittedly the impugned order of recovery has been passed after superannuation of the petitioner that too for the period 01.01.2009 to 31.07.2017 and further for the period 01.07.2019 to 31.08.2021, but admittedly without there being any show-cause notice or opportunity of hearing to him. The unilateral decision of the respondent authorities to recover the alleged excess amount, in no circumstances, has any sanction of law. The identical issue has come up for consideration before the Hon'ble Supreme Court in the case of* ***Thomas Daniel vs State of Kerala & Ors.****, reported in,* ***AIR 2022 SC 2153****, wherein the*

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> *Hon'ble Supreme Court has deprecated the action of the authorities concerned to recover the excess amount on account of wrong fixation of increment, which was done prior to five years of the superannuation. Reliance of the petitioner on the decision of the* ***Rafiq Masih*** *(supra), which put an embargo on recovery from the employees in certain situations as well as the decision passed by the learned coordinate Bench of this Court also finds substance, in the facts of this case.*
> *10. On all the aforenoted reasons, the impugned order, as contained in Memo No. 114 dated 28.02.2022, stands set aside. The concerned respondent is hereby directed to refund the amount already recovered from the petitioner from his unutilized leave encahsment, preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.*
> *11. The writ petition stands allowed."*

5. The aforesaid order would reveal that the learned Single Judge has relied upon the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer)***, reported in ***(2015) 4 SCC 334***.

6. The learned Single Judge has also referred to the latest judgment of the Hon'ble Supreme Court in the case of ***Thomas Daniel Vs. State of Kerala & Ors.***, reported in ***AIR 2022 SC 2153***, wherein, according to the learned Single Judge, the Hon'ble Supreme Court has deprecated the action of the authorities concerned in recovering excess payment on account of wrong fixation of increment, where such fixation had been made more than five years prior to the date of superannuation.

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In the present case, the wrong fixation alleged by the appellants was made during the period from 01.01.2009 to 31.07.2017. It is a conceded position that the respondent superannuated on 31.08.2021. Accordingly, the recovery sought to be effected was beyond five years, as it also relates to the period commencing from 01.01.2009. Hence, we find that the learned Single Judge was justified in directing refund of the amount recovered by the appellants from the respondent's leave encashment.

7. One aspect which requires consideration is whether the appellants are precluded from correctly fixing the pay of the respondent. The answer has to be in the negative, *inasmuch* as, though they are required to refund the amount already recovered, they shall be within their rights to re-fix the pay of the respondent with effect from the date when the fixation was wrongly made. Upon such re-fixation, they shall not make any recovery in respect of the amount already paid till date. However, for the purpose of future pension, the fixation shall be made as per the applicable rules and the appellants shall have the liberty to appropriately fix the pension on the basis of such re-fixation for the future.

8. With the above observations, the present appeal stands disposed of.

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9. Interlocutory application(s), if any, shall also stand disposed of.

(V. Kameswar Rao, CJ)

(Partha Sarthy, J)

Neha/-

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