(2026) 08 PAT CK 2519

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.11962 of 2021

Jai Pal Singh APPELLANT

Vs

The State Of Bihar & Ors. RESPONDENT

Date of Decision : 03-08-2026

Acts Referred:
Constitution of India — Article 14, Preamble

Citation : (2026) 08 PAT CK 2519

Hon'ble Judges : Harish Kumar, J

Bench : Single Bench

Advocate : Mr. Prabhunath Pathak, Mr. K.K. Singh

Final Decision : Disposed Of

Judgement

Date : 03-08-2026 Heard Mr. Prabhunath Pathak, learned Advocate for the petitioner and Mr. K.K. Singh, learned Advocate for the State.

2. The challenge in the present writ petition is made to an Office Order bearing No. 5, as contained in Memo No. 51, dated 10.03.2021, whereby the promotion granted to the petitioner with effect from 06.07.1995 has been canceled. The challenge has also been made to the consequential Office Order No. 8, as contained in Memo No. 69, dated 24.03.2021, by which the salary of the petitioner has been re-fixed and the order of recovery was made.

3. During the pendency of the writ petition, the State has also come out with an order under Memo No. 162 dated 24.07.2024, issued by the respondent no. 5, directing for recovery of an amount of Rs. 5,70,600/- in 32 installments, which order has also been questioned by filing an interlocutory application, bearing I.A. No. 1 of 2024.

4. The facts are not in dispute that the petitioner was duly appointed on 05.07.1985, as a Road Roller Khalasi, in the Office of the Superintending Engineer, National Highway Circle Muzaffarpur. Subsequently, in the year 2014 the service of the petitioner was regularized in view of order dated 21.06.2014

and placed under the National Highway Division, Chapra with effect from 04.04.2014. Since, in the meanwhile, the petitioner had completed ten years of regular service, the case of the petitioner was duly considered for the First Time Bound Promotion and after proper deliberation he was extended the benefit of First Time Bound Promotion vide Memo No. 199 dated 01.10.2018. The Time Bound Promotion extended to the petitioner, referred herein above, also got approved by the Commissioner, Patna Division vide Office Order dated 04.12.2018 on recommendation of the Establishment Committee and after verification of the records. Despite the issue of First Time Bound Promotion settled at the level of the authorities concerned, all of a sudden the Superintending Engineer came out with the impugned order canceling the Time Bound Promotion already granted to the petitioner.

5. The petitioner raised serious objection to the impugned action of the respondents, however, nothing has been done and they have come out with the consequential order directing for recovery of the excess amount paid to the petitioner to the tune of Rs. 5,70,600/-.

6. Learned Advocate for the petitioner while assailing the orders impugned submitted that there is no dispute that the persons, who were working in the Work Charge Establishment and subsequently their services have been brought in regular establishment, on being found suitable, in such circumstances the period rendered in the Work Charge Establishment shall be counted for the purposes of Time Bound Promotion in terms with the Memo No. 3/PAR-03-1/92/5000 dated 21.09.1992. It is further contended that the petitioner has been found entitled to get First Time Bound Promotion with effect from 06.07.1995, hence much before coming into the resolution, whereby the scheme of extending Time Bound Promotion has been cancelled with effect from 01.01.1996. Moreover, the action of the respondent in directing for recovery of the excess salary already paid to the petitioner is in the teeth of the order passed by the Hon'ble Supreme Court in the case of ***State of Punjab & Ors. Vs. Rafiq Masih and Ors.*** **:** ***(2015) 4 SCC 334***, besides the decision in the case of ***Thomas Daniel Vs. State of Kerala & Ors.*** **:** ***AIR 2022 SC 2152***.

7. On the other hand, learned Advocate for the State dispelling the aforesaid contention submitted that in the light of the Finance Department's Resolution No. 7310 dated 12.09.2017, the petitioner was given first time bound promotion with effect from 06.07.1995 in the pay scale of Rs. 800-1150/-by an office Order No. 32 read with Memo No. 199 dated 01.10.2018 issued by the Superintending Engineer, but subsequently upon realizing that the benefit of time bound promotion was not admissible to the duly regularized employees, including the petitioner, because the date on which the work charge employees were regularized in the year 2014, the time bound promotion scheme was not in operation and abandoned with effect from 01.01.1996 and the new MACP Rule is in operation since 2010. Accordingly, the Secretary (Resources), Finance Department, Bihar vide its Letter No. 1134 dated 11.02.2021 communicated the

stand of the Finance Department to the office of Lokayukta regarding non-admissibility of the Time Bound Promotion to such Work Charge Employees, who have been regularized in the year 2014. The entire action has been taken in the light of the aforesaid letters and moreover the order of recovery is not iniquitous and harsh, rather the recovery is being made through installment.

8. This Court has heard the learned Advocate for the respective parties and also perused the materials available on record. There is no dispute that the petitioner has brought in regular establishment under office order no. 4 dated 21.06.2014 by considering his past services rendered in the Work Charge Establishment with effect from 06.07.1985. Since the petitioner was also entitled to get time bound promotion after completion of ten years before coming into force of the resolution, which abandoned the scheme of time bound promotion with effect from 01.01.1996, thus the benefit of time bound promotion was duly extended in favor of the petitioner after completion of his ten years of service on 06.07.1995; much before the date on which the resolution has withdrawn the scheme of time bound promotion. Once the past services of the petitioner has been reckoned for regularization and consequently regularized with effect from the date when he joined the services, the benefits which accrued during the interregnum period upon such regularization can not be taken away unless the order of regularization and the rules/regulation which govern the service clearly dis-entitle the petitioner. Such action is vulnerable to challenge and lost its confidence unless it withstands the test of Article 14 of the Constitution, following the principle of natural justice.

9. This Court also takes note of the decision rendered by the Apex Court in the case of ***Rafiq Masih*** (supra) where the Hon'ble Apex Court has enunciated the principle with respect to the recovery of monetary gain extended to the beneficiary employees in excess of their entitlement without any fault or misrepresentation at the behest of recipient. The Hon'ble Court considering the situation of hardship caused to an employee, exempted the beneficiary employees from such recovery in certain situations by holding as follows:-

> " ***8.*** *As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.*
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> 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 hereinabove, 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 the 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."*

10. It would also be worth benefiting to take note of the decision rendered in the case of ***Thomas Daniel*** (supra) wherein the Court has spelt out that *"this Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud 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, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess."*

11. The above referred prosposition has further been reinforced by a Two-Judge Bench of the Hon'ble Supreme Court. In the case of ***Jogeswar Sahoo & Ors. Vs. District Judge, Cuttack & Ors.; (2025) SCC 724***, where the Court referring to the previous discussions has held as under:-

"9. *This Court has consistently taken the view that if the 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, such excess payments of emoluments or allowances are not recoverable. It is held that such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employee from the hardship that will be caused if the recovery is ordered."*

12. In view of the discussion made herein above and considering the totality of the facts, circumstances and the position obtaining in law especially when there exists no misrepresentation or fraud on the part of the petitioner, this Court

prima facie is of the opinion that the impugned order directing recovery from the salary of the petitioner is wholly arbitrary and illegal, apart from iniquitous and harsh and, as such, require interference. Accordingly, the impugned orders dated 10.03.2021, as contained in Memo No. 51 and further Memo No. 69 dated 24.03.2021, besides the order contained in office order no. 17 dated 24.07.2024, are hereby set aside.

13. It is made clear that any amount recovered or deposited by the petitioner in pursuant to the impugned order shall be returned to the petitioner immediately within a period of eight weeks form the date of receipt/production of copy of the order. This Court further clarifies that this order would not come in the way to the authorities concerned to take appropriate action in the matter of finalizing the entitlement of the time bound promotion to the petitioner after following the principle of natural justice, if so advised.

14. The writ petition stands disposed off.

