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**(2020) 07 PAT CK 0040**

**Patna High Court**

**Case No:** Civil Writ Jurisdiction Case No. 9400 Of 2019

Govind Jha

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

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**Date of Decision:** July 6, 2020

**Hon'ble Judges:** Anil Kumar Upadhyay, J

**Bench:** Single Bench

**Advocate:** Dipak Kumar, Vikash Kumar

**Final Decision:** Disposed Of

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### **Judgement**

Heard learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the State.

Despite indulgence granted by this Court on 15.06.2020 to the respondents, no counter affidavit has been filed.

The grievance of the petitioner in the present writ petition is that he was entitled to pay scale of Rs.4000-6000/-instead of Rs.3050-4590/- and

payment of other retiral benefits after revision of pension. As the petitioner has passed ITI Examination after obtaining permission from the

Department in the year 1976, he was apparently entitled to pay scale of Rs. 4000-6000/-. However, the respondents have decided to reduce pay scale

and also directed for recovery of the excess amount paid to the petitioner.

The issue of recovery of excess amount paid to the petitioner was challenged in CWJC No. 7900 of 2008 which was allowed by a coordinate Bench

of this Court vide oral judgment dated 08-03.2017. The relevant part of the judgment dated 08.03.2017 passed in CWJC No. 7900 of 2008 in

paragraph nos. 8 to 10 is quoted hereinbelow for ready reference:-

8. Sri Raghwanand, learned Govt. Advocate 11 has vehemently opposed the prayer. He submits that since incorrectly by Annexure 3 to

the writ petition, the pay-scale of the petitioner was enhanced, after the said irregularity was detected by the authority concerned, it was rightly

corrected and since incorrectly the said enhanced pay-scale was given to the petitioner, the excess paid amount was already recovered from the

petitioner and the recovered amount is not required to be refunded. However, he does not dispute the law laid down by the Apex Court in Rafique

Masih's case (supra) . Further, with regard to submission of learned counsel for the petitioner that earlier enhanced pay-scale was finally approved by

the Finance Department, the learned State counsel has not disputed the same. Meaning thereby that earlier pay-scale was already approved by the

Finance Department. 9. Besides hearing learned counsel for the parties, I have also perused the materials available on record. On going through the

record, it is evident that after the petitioner had passed I.T.I. examination, the case of petitioner with others was considered for granting enhanced

pay-scale and accordingly, it was enhanced as Rs.4000-6000. The said order was passed in the year 1999 itself and from 1999, the petitioner enjoyed

the benefit of enhanced pay-scale and continued to get the same up to the year 2007. However, without any notice to the petitioner, the Chief

Engineer had issued direction by the impugned order i.e. order contained in Annexure-7 to the writ petition for reducing the pay- scale as well as

recovery of the amount. Since, learned counsel for the petitioner has confined his prayer only to the extent of refund of recovered amount, this Court

has not delved into the matter as to whether re-fixation was correct or incorrect, but fact remains that it was a case of enhancement without any

misrepresentation or misconduct/fraud committed by the petitioner and as such, in view of law laid down by the Apex Court, as has been quoted

hereinabove, there is no reason but to allow the writ petition.

10. Accordingly, the writ petition is allowed with a direction to the respondents to refund the recovered amount within a period of three months from

the date of receipt/production of a copy of this order. It is made clear that if the aforesaid amount is not refunded and credited to the account of the

petitioner, the petitioner shall be entitled to claim interest at a simple rate of 6% from the date on which deduction was started from the pay-scale of the petitioner and in that event, the State Government would be at liberty to recover the said interest amount from the officer/employee responsible for non-compliance of the order of this Court within time.

Considering the fact situation, the Court is inclined to dispose of the writ petition with a direction to the Chief Engineer (Mechanical), Department of

Water Resources, Bihar, Patna (respondent no.3) to take appropriate decision with regard to claim of petitioner for grant of pay scale of Rs.4000-

6000/- and revision of pension. If it is found that any employee similarly circumstanced in the Department has been granted pay-scale of Rs.4000-

6000/- on obtaining the certificate of ITI Examination, the petitioner should be extended the same benefit. The entire exercise must be completed by

the respondents within a maximum period of three months from the date of receipt/production of a copy of the order, failing which the petitioner shall

be entitled to interest at the rate of 9% per annum on all the momentary benefits from the date of filing of the writ petition i.e. 25.04.2019 till the date

of actual payment.

With the aforesaid observation and direction, the present writ petition stands disposed of.