# Kedar Nath Prasad Vs The State of Jharkhand and Others

## Writ Petition (S) No. 6220 of 2004

**Court:** Jharkhand High Court

**Date of Decision:** Sept. 23, 2010

**Hon'ble Judges:** J.C.S. Rawat, J

**Bench:** Single Bench

**Final Decision:** Allowed

## Judgement

J.C.S. Rawat, J.

Both the parties are ready to dispose of the writ petition at the admission stage itself. Counter affidavit and rejoinder have

been received.

2. This writ petition has been filed by the Petitioner for quashing annexure-4, which is an order dated 11.8.2004 issued by the Respondents

directing to recover the amount of salary paid to the Petitioner in higher scale as the first time-bound promotion allowed to the Petitioner w.e.f.

1.4.1981 in the pay-scale of Rs. 850 - 1360/- on it being irregular and inadmissible scale of pay on that account of being Rs. 785 - 1210/-. The

Petitioner has further sought a prayer to quash annexure-5 to the writ petition which is an order dated 27.8.2004 by which Respondent No. 3 has

unlawfully deducted a sum of Rs. 27,644.65 from the amount of leave encashment of the Petitioner. It was further prayed to by the Petitioner

release the said amount with statutory interest which has been illegally deducted by the Respondents.

3. The Petitioner superannuated from as Senior Drawing Instructor, Industrial Training Institute (General), Ranchi on 29th February, 2004. The

Petitioner has alleged that Respondent No. 2 accorded the sanction for payment of an amount equivalent to 240 days of untilised earned leave

balance to the credit of the Petitioner on the date of his retirement. He has further stated that on 11.8.2004, Respondent No. 2 passed an order

that his first time-bound promotion allowed to the Petitioner in the pay scale of Rs. 850 -- 1360/- w.e.f. 1.4.1981 was irregular and the Petitioner

was only entitled to a lower pay scale of Rs. 785 - 1210/- from the same date and accordingly the difference of pay was directed to be recovered

from the Petitioner. When the recovery was started to be made, the present Petitioner preferred this writ petition before this Court for the

aforementioned reliefs.

4. Respondent Nos. 1, 2 and 3 have filed a joint counter affidavit stating therein that the Petitioner who has prayed for quashing the annexures 4

and 5 in his writ petition is not maintainable because his pay scale was wrongly fixed at a higher scale; hence, the Department is entitled to make

the recovery from the Petitioner.

5. I have heard the learned Counsel appealing for the parties and perused the record. The moot question arises as to whether the Respondents are

entitled to get the recovery of the amount which has already been paid to him after his superannuation and whether there is any suppression or mis-

representation on behalf of the Petitioner?

6. It is the admitted case of the parties that the Petitioner had made no suppression or mis-representation on the decision of granting a higher pay

scale at the time of promotion. The learned Counsel appealing for the Respondents could not demonstrate that any show cause notice was given to

the Petitioner by the Respondents for such deduction. If there is no suppression of the fact by the Petitioner and the Respondents-authority had

acted upon the said pay scale which was granted to him in a very long past; now after his superannuation, the said amount cannot be recovered

without affording any opportunity of hearing. Under these circumstance:., the direction of recovery of the amount from the Petitioner''s leave

encashment is not sustainable in law and it is not supported by any procedure of law. I find there is merit in the application of the applicant.

7. The writ application is accordingly allowed and the impugned annexures 4 and 5 to the writ petition are hereby set aside. Further, the Petitioner

is entitled to get the leave encashment which has been wrongly withheld by the Respondents and the said amount may be paid to him expeditiously.

Any arrears, if pending, shall also be paid to the Petitioner by the Respondents without any further delay. The pension of the Petitioner shall be

calculated on the basis of last pay scale drawn by the him.

8. No order as to cost.