

IN THE HIGH COURT OF JUDICATURE AT PATNA**Letters Patent Appeal No.1074 of 2012****In****Civil Writ Jurisdiction Case No. 732 of 2012**

- =====
1. The State Of Bihar Through The Secretary, Rural Works Department Vishweshraiya Bhawan, Bailey Road, Patna
 2. The Secretary, Finance Department Old Secretariat, P.S.- Sachiwalaya, Distt.- Patna
 3. The Superintending Engineer Works Circle, Gaya, Rural Works Department, Gaya
 4. The Under Secretary Rural Works Department Vishweshraiya Bhawan, Bailey Road, Patna
 5. The Executive Engineer Null, Rural Works Department Works Division Nawadah
 6. The District Accounts Officer, Nawadah
 7. The Treasury Officer, Nawadah

.... Appellant/s

Versus

1. Smt. Sushila Devi wife of Late Dayanand Singh, R/O Village-Bhadokhra P.S.- Mufassil Akauna District Nawadah, (substituted in place of Dayanand Singh S/O Late Chandrika Prasad Singh R/O Village-Bhadokhra P.S.- Mufassil Akauna District Nawadah)
2. The Accountant General (A & E), Bihar, Patna, Virchand Patel Path, Patna

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ashok Kumar Keshri, AAG XI
Mr. Ujjwal Kumar Sinha AG to AAG XI
For the Respondent/s : Mr. Rupak Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**and****HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA****ORAL JUDGMENT****(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)****Dated 03-02-2015**

Interlocutory Application No. 8771 of 2014 has been filed on behalf of respondent no. 1 for substitution of respondent no. 1, as during the pendency of this appeal, he has died. Respondent no. 1 was the writ petitioner, he is ordered to be substituted by his wife who has already appeared through Vakalatnama.



Having heard the learned counsel for the State and learned counsel for the respondents the I. A. No. 8881 of 2014 is allowed. The wife of respondent no. 1 namely, Smt. Shushila Devi is substituted in place of respondent no. 1 who was the original writ petitioner.

Heard learned counsel for the State who is in appeal and learned counsel for the writ petitioner who is respondent no. 1.

The State is aggrieved by the judgment and order dated 9.2.2012 passed in C.W.J.C. No. 732 of 2012 by which the writ application filed by the writ petitioner challenging the order of the State in restricting the period for which ACP was granted as also the consequential steps taken to recover the amounts. Learned single Judge allowed the writ petition on both counts inasmuch as the learned single Judge has held that the order, restricting the benefit of ACP with effect from the date of grant of exemption from appearing in the departmental examinations, having been passed, would cause prejudice to the writ petitioner, without notice to him was in gross violation of principle of natural justice, and as such, was quashed. Consequently, the demand of refund as raised by the State and the refund as appropriated by the State was also set aside.

Learned counsel for the State submits that the State



was correct in restricting the grant of ACP from the date of grant of exemption from appearing in the departmental examinations. In our view, this question does not arise for consideration inasmuch as learned single Judge has not decided that issue at all. He has set aside the order of the State Government which was passed without notice in this regard to the writ petitioner. Learned counsel for the State submits that in fact, writ petitioner had made two representations and considering his representations final orders were passed. In our view, it makes little difference. This stand of the State itself admits and even otherwise it is not disputed that the writ petitioner, having been granted benefit of ACP from its due date, was denied the benefit thereof by shifting the date to the date of grant of exemption. This had serious civil consequences. In fact, after writ petitioner's superannuation, this amount of about Rs. 85,000/- has been deducted from his pensionary benefits. It is on these two issues i.e. non-issuance of show cause and deduction after retirement, the learned Single Judge interfered.

Learned counsel for the State in appeal submits that in fact the writ petitioner respondent no. 1 herein had made several representations that being so there was no necessity of issuance of show cause notice and we are afraid the law is otherwise. In this connection, we may refer to the judgment of **S.L. Kapoor, v.**

Jagmohan and others reported in **AIR 1981 Supreme Court 136**

and in paragraph 16 thereof, which is complete answer to the first submission of learned counsel for the State in appeal. The Supreme Court has held thus:

“The requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. The person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met.”

So far as recovery aspect is concerned, learned counsel for the State submits that the learned single Judge was wrong in ordering refund of amount deducted from the writ petitioner.

As noticed above, it is pointed out by the writ petitioner and not disputed that these amounts are sought to be recovered after the writ petitioner had superannuated. Learned counsel for the State relies on the Division Bench Judgment of this Court in case of **Harendra Prasad Gupta vs. The Union of India & Ors. 2015 (1) PLJR 101** for the proposition that seeking

refund of amount paid by mistake cannot be faulted, however, the judgment is not in that wide terms. Their Lordships in Division Bench having noticed and based their judgment relying upon the judgment in case of **Chandi Prasad Uniyal and Others vs. State of Uttarakhand and Others (2012) 8 SCC 417**. In that judgment itself, in paragraphs 11 and 12, their Lordships of the apex court have referred to two earlier judgments and had pointed out two exceptions. In view of the Apex Court in case of **Syed Abdul Qadir and Others vs. State of Bihar and Others (2009) 3 SCC 475** wherein it was clearly held that such a recovery would not be reasonable where the employee was either about to retire or had retired.

Thus, in the facts of the present case, the writ petitioner had retired, recoveries were sought to be made after his retirement from his retrial dues. That is an exception, in view of the Apex Court as also noticed by the Division Bench in the cases aforesaid. That being so, on both counts the judgment of the learned single Judge cannot be faulted. This appeal has no merit, it is accordingly, dismissed.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

avin/-

U			
---	--	--	--