# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.18027 of 2011**

======================================================

Rabindra Nath Pandey Son of Late Ram Charitar Pandey Resident Of Village-Maharaj Hata Buxar, Police Station- Buxar, District- Buxar

.... .... Petitioner/s

Versus

1. The State Of Bihar
2. Engineer-In-Chief, Priyojana Sanjojak Nalkoop Prabhag, Bishweswariya Bhavan, Bailey Road, Patna
3. Chief Engineer (South) Tube Well Division, Patna
4. The Superintending Engineer, Tube Well Circle, Arrah, Bhojpur
5. The Executive Engineer, Tube Well Division, Buxar
6. The Accountant General, Bihar, Patna

.... .... Respondent/s

======================================================

**Appearance :**

| | | |
|---|---|---|
| For the Petitioner | : | Mr. Kamal Nayan Chaubey, Sr. Advocate with |
| | | Mr. Ambuj Nayan Chaubey, Advocate |
| For the State | : | Mr. Manoj Kumar Sinha, AC to SC 30 |
| For the A.G. (A&E) | : | Mr. Satyendra Kumar Jha, Advocate |

======================================================

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT

**Date: 27-11-2015**

Heard learned counsel for the parties.

The only issue which remains to be adjudicated in the present writ application is whether the recovery of Rs.1,33,185/- from the post retiral benefits of the petitioner is justified.

Learned counsel for the petitioner submits that he retired on 31.03.2010 from the post of Tube Well Operator and thereafter only by order dated 10.06.2010 such recovery has been directed on the ground that the basis for giving him Time-Bound Promotion being Finance Department letter dated 17.05.2003 was lateron withdrawn by the Finance Department on 06.05.2006 in view of the same having been quashed by the High Court in another proceeding, which is both harsh and against the basic principles of natural justice without any opportunity of hearing.

Learned counsel for the State only reiterates the aforesaid stand of the respondents.

Having considered the matter, without going into the merits as to whether the Time-Bound Promotion to the petitioner was fit to be set aside or not, the fact that the petitioner had no role in getting those promotions which were in accordance with the instructions issued by the Finance Department at the relevant time and further even if it is accepted that the said order was reversed lateron, there is no justification or explanation as to why when the Finance Department on 06.05.2006 had withdrawn the said letter pursuant to which the respondents claim that the petitioner had been granted Time-Bound Promotion, the benefit was not withdrawn and he was allowed to continue till his superannuation on 31.03.2010 and only upon his superannuation the respondents have suddenly woken up to this fact and issued the order dated 10.06.2010. Further, there being no laches, fraud or misrepresentation on the part of the petitioner for receiving the said amount and now upon superannuation the same being sought to be recovered, in the considered opinion of the Court is iniquitous. The Court is fortified in its view by a decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported in **(2015) 4 SCC 334.**

For the reasons aforesaid, the Court holds that the recovery sought from the post retiral benefits of the petitioner amounting to Rs.1,33,185/- is unsustainable and accordingly such action is set aside. The petitioner having been found entitled to that amount, the recovery, if made, shall be returned to him within four weeks from the date of production of a copy of this order before the respondent no. 4.

The writ petition stands disposed off in the aforementioned terms.

**(Ahsanuddin Amanullah, J)**

Anjani/-

| | | | |
|---|---|---|---|
| U | | | |