

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12089 of 2011

Along with
Interlocutory Application No. 5374 of 2012

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Brajeshwar Jha Son of Late Phochai Jha R/o Village-Jogiara, Via-
Anandpur, P.S-Bahadurpur, District-Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary Education, Bihar, Patna.
3. The District Superintendent of Education, Darbhanga.
4. The Accountant General, Bihar Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

6. 12.01.2015

Interlocutory Application No. 5374 of 2012

Heard learned counsel for the parties.

The present Interlocutory Application has been
filed to substitute the sole petitioner who died on 17.04.2012
leaving behind his heirs who have been mentioned in
paragraph no. 2 of the supplementary affidavit.

Learned counsel for the State does not oppose
the prayer.

Accordingly, the name of the sole petitioner be
substituted by (1) Anil Kumar Jha (2) Sunil Kumar Jha (3)
Sushil Kumar Jha (4) Bipin Kumar Jha and (5) Saroj
Chaudhary. Office shall make necessary correction.

Interlocutory application No. 5374 of 2012
stands disposed off.

The present application is directed against the order dated 22.02.2005 by which recovery has been made of Rs. 94460/- from the gratuity of the original writ petitioner on account of excess payment.

Learned counsel for the petitioner submits that the original writ petitioner, even if he had drawn excess payment, the same cannot be recovered as he has worked on the said post and there was not fraud or misrepresentation on his part and further that now he has died. Learned counsel has relied upon decision of the Hon'ble Supreme Court in the case of **Syed Abdul Qadir v. State of Bihar** reported in **2009(2) PLJR (SC) 74**, in which it has been held that excess amount paid not because of any misrepresentation or fraud, no recovery can be made. He has also relied on a decision of this Court in the case of **Pandey Jagdishwar Prasad v. State of Bihar** reported in **2007(3) PLJR 767**, in which it has been held that if an employee has continued beyond the period of superannuation without any fraud or misrepresentation and the State allowed the employee to work, recovery of amount paid to him cannot be recovered. He has also relied upon a decision of this Court in the case of **Pramod Sah v. State of Bihar** reported in **2007(1) PLJR 587**, in which it has been held that the retiral dues having been paid, adjustment could not be from the gratuity.

Learned counsel for the State has filed counter



affidavit in which the stand is that the petitioner was himself the Headmaster-cum-Drawing and Disbursing Officer of the concerned school and he has drawn his salary with increments without passing of Hindi Noting and Drafting Examination. It is submitted that such action amounts to fraud as knowing fully well that he was not entitled to receive salary with increment without passing the Hindi Noting and Drafting Examination still he drew excess amount.

Upon hearing learned counsel for the parties, this Court does not hold the action of the respondents to be unjustified. The petitioner himself being the Drawing and Disbursing Officer prepared his own bill and took advantage of increments being well aware of the fact that he had not passed the departmental Noting and Drafting Examination which was pre-requisite for being allowed increment and still drew the higher salary. This amounted to playing fraud and thus any adjustment made on account of excess amount drawn cannot be said to be mala fide or illegal. The decisions referred to by learned counsel for the petitioner are not applicable in the facts and circumstances of the case, for the simple reason that in those cases there was no fraud or misrepresentation on the part of the petitioners of those cases and rather it was the action of the State authority which had resulted in excess payment whereas in the present case, the petitioner himself had drawn his own salary and taken payment beyond the

permissible amount.

For the reasons aforesaid, this Court does not find any error in the action of the respondents.

Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

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