IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8573 of 2009

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Sri Haribansh Prasad Yadav, Son of Late Shivnath Yadav, Resident of Shiv Shanti Market, New Zero Mile, Bairia Road, Ahiapur, P.S. Ahiapur, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Human Resources Development Department, Government of Bihar.
2. The Director, Secondary Education, Government of Bihar.
3. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
4. The District Education, Officer, Muzaffarpur.
5. The Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Awadh Bihari Ojha, Mr. Sriniwas Jha, Mr. Bharat Bhushan & Mr. Nitesh Kumar, Advocates.
For the State	:	Mr. Suryakant Kumar, A.C. to S.C. 19.
For the A.G. Bihar (Respondent No. 5)	:	Mr. Ram Yosh Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 27-08-2015

Heard Mr. A. B. Ojha, learned senior counsel assisted by Mr. Sriniwas Jha, learned counsel for the petitioner, learned AC to SC-19 for the State as well as learned counsel for the Accountant General.

Learned counsel for the petitioner submits that the issue which remains now pertains to deduction of Rs. 1,90,457/- from the gratuity of the petitioner. It is submitted that the so called recovery has been made on the basis of objection raised by the Accountant General indicating payment of excess salary after pay revision. Learned counsel submits that the petitioner was in no way responsible, even if it is accepted that excess amount was paid to him, as neither he had furnished any factually incorrect information nor misrepresented nor committed any fraud with regard to the same. It is further submitted that the objection by the Accountant General also relates to the period beginning from 01.01.1986 and such objection was raised, pursuant to superannuation of the petitioner on 31.07.2008, only on 27.09.2008. It is submitted that thereafter, the order of recovery dated 18.10.2008 has been issued by the District Education Officer, Muzaffarpur. Learned counsel submits that in view of the law settled by the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported in **(2015) 4 SCC 334**, the petitioner having superannuated from the post of Assistant Teacher (Class-III) and the payment relating to a period about more than 20 years back and that too after superannuation of the concerned employee is impermissible.

Learned counsel for the respondents submit that the petitioner had drawn excess salary on account of wrong fixation of pay. However, they are not in a position to dispute the fact that there was no fraud or lapse or misrepresentation on the part of the petitioner in such fixation of the so called erroneous pay scale. They are also not in a position to distinguish the case of the petitioner so as to bring it outside the ambit of the decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** (supra), the relevant being at paragraph-18 which reads as follows:-

> "**18.** It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
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> (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
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> (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
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> (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
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> (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an interior post.
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> (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

Learned counsel for the petitioner has also produced copy of order dated 24.09.2014 passed by a Bench of this Court in **C.W.J.C. No. 8597 of 2009** in the case of **Sri Jagdish Narayan Mishra Vs. State of Bihar**, which according to him was filed by a similarly situated person from whom Rs. 1,74,488/- had been recovered for the same reason by the same officer.

Learned counsel for the respondents are also not in a position to distinguish the case of the aforesaid **Sri Jagdish Narayan Mishra** (supra) with that of the petitioner.

Considering the facts and circumstances of the case and submissions of learned counsel for the parties, this Court finds substance in the contentions of learned counsel for the petitioner. Accordingly, the respondents are directed to refund the amount of Rs. 1,90,457/- to the petitioner within four weeks from the date of production of a copy of this order upon the respondent no. 4. Further, the Court following the decision in the case of **Sri Jagdish Narayan Mishra** (supra) also directs for payment of Rs. 30,000/- in lieu of interest over the sum of Rs. 1,90,457/- deducted from the amount of gratuity. The said amount be also paid within the aforesaid period, failing which the petitioner shall be entitled to cost of Rs. 5,000/- to be paid by the respondent no. 4.

(Ahsanuddin Amanullah, J.)

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