IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 17518 of 2008

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Md. Alauddin Haider Son of late Noorul Hoda, Resident of Mohalla-Bi-Bi-Paker, Warshi Cottage, P.O.-Darbhanga, District-Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Human Resources Development Department, Bihar, Patna.
2. The Accountant General (A& E), Bihar, Patna.
3. The Director of Higher Education, Bihar, Patna.
4. The Regional Deputy Director of Education, Darbhanga.
5. The District Education Officer, Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Behzad Akhter, Advocate.
For the State : Mr. Mrigander Kumar, A.C. to G.A. 11.
For the Accountant General : Mr. Raj Nandan Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 24-08-2015

Heard learned counsel for the parties.

Pursuant to order dated 12.08.2015, supplementary counter affidavit is being filed on behalf of respondent no. 3. The stand in the said affidavit is that the matter relating to encashment of earned leave which was sub-judice before this Court in C.W.J.C. No. 5252 of 2006, the same having been dismissed, the writ petitioner has preferred L.P.A. No. 715 of 2014 which also stood dismissed as withdrawn on 19.05.2015. Thus, according to learned counsel for the State, the petitioner as of now is not entitled to encashment of earned leave.

Learned counsel for the petitioner submits that he had also prayed for refund of amount of Rs. 49,514/- which was deducted from his retiral dues on the ground that the amount had been paid in excess of the pay and dearness allowance admissible to the petitioner. It is submitted that the same is related to a small period from the year 1992 and the petitioner having superannuated in the year 2005, only thereafter in April, 2006 such recovery has been affected. It is submitted that the petitioner having superannuated from a Class-III post and also the recovery being made for so called excess payment made to the petitioner in the year 1992 after 14 years is impermissible in view of the law laid down by the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported in **(2015)4 SCC 334**.

Learned counsel for the State submits that due to wrong fixation of his pay, the petitioner had drawn an excess amount which was only being recovered. However, he is not in a position to contest that there was any furnishing of incorrect information or fraud or misrepresentation on the part of the petitioner.

Considering the facts and circumstances of the case and submissions of learned counsel for the parties, this Court is in agreement with the submissions of learned counsel for the petitioner that his case being covered by the situation under which recovery is impermissible as per the order of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** (supra), the petitioner is entitled to refund of the amount so deducted.

Accordingly, the writ application stands disposed off with a direction to the respondent no. 5 to refund the amount of Rs. 49,514/- which has been deducted from the post retiral benefits of the petitioner and pay the same within one month from the date of production of a copy of this order before the respondent no. 5, failing which the amount shall carry interest at the rate of 9% per annum which shall be recovered from the respondent no. 5.

(Ahsanuddin Amanullah, J.)

P. Kumar

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