

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11996 of 2014

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1. Manju Devi Wife of Late Jay Pal Chaudhary C/o Kishori Ram, resident of Powerganj, Bageshwari Road, P.S. Delha, District - Gaya (Bihar)
 2. Surendra Kumar Chaudhary Son of Late Devi Prasad Chaudhary resident of Kavirpur Road, Nath Nagar, Police Station Nath Nagar, District - Bhagalpur
 3. Arun Kumar Son of Late Karu Mahto resident of village - Ittasang, District Nalanda at Biharsharif
 4. Narmadeshwar Sharma Son of Late Ram Sagar Sharma resident of resident of village AND P.O. Pijjor, P.S. Pijjor, District - Gaya
 5. Prabhu Kumar Mandal Son of Late Hiranman Mandal resident of village AND P.O. Resna, Police Station - Pranpur, District - Katihar
 6. Ishwar Prasad Son of Late Jagdish Mahto resident of village - Gonwa, P.O. Sewarhadi, Police Station - Manpur, District - Nalanda at Biharsharif
 7. Sanjeev Kumar Sinha Son of Late Ram Babu Sinha Prabhakar resident of Abdullahchak, P.O. Barriah, Police Station Sampatchak, District - Patna
 8. Rakesh Kumar Son of Late Sharda Nand Lal resident of Nand Bhawan, Gandhi Path, Mithapur, Police Station - Gardanibagh, District - Patna
 9. Ved Prakash Son of Late Sita Sharan Pandey resident of Gardanibagh, Thakurbdi Road No. 12, P.O. Anisabad, Police Station - Gardanibagh, District - Patna
 10. Jai Prakash Prasad Son of Late Hira Lal Prasad resident of village AND P.O. Islampur, District - Nalanda
 11. Upendra Prasad Singh Son of Late Ram Lakhan Singh resident of village - Hasanpur, P.O. Kolawan, Police Station - Harnaut, District - Nalanda at Biharsharif

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Industries, Govt. of Bihar, Patna
3. The Director, Directorate, Department of Industries, Govt. of Bihar, Patna
4. The Senior Joint Director, Food Processing Directorate, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh
For the Respondent/s : Mr. Nawal Kishore Singh, SC-2
Mr. Kamlesh Prasad

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 19-01-2016

Heard learned counsels for the parties.

Annexure – 2 is the order, by virtue of which the benefit of

promotion under the time-bound-promotion scheme, which is now known as A.C.P. Rules, 2003, was taken away, vide Annexure – 2, dated 11.06.2014. Since some of these persons are directly affected by such a decision of withdrawing the benefit of A.C.P. as well as order of recovery was passed, petitioners are seeking quashing of Annexure – 2.

Some petitioners have already retired. In fact, one of the petitioner, petitioner no. 1, is the widow of the erstwhile employee.

Learned counsel for the petitioners make a limited submission on the question of recovery, not on the question of recall of the order of non-grant or wrongly granted benefit. It is also pointed out to the Court that the decision referred in the impugned order of Praveen Dayal has also been brought on record as Annexure – 3. Even in that case, the Learned Single Judge did not permit recovery of the amount by virtue of withdrawal of the benefit for non-passing of the departmental examination.

In addition to that even the Hon'ble Supreme Court have had an occasion to opine in such a situation of recovery in the recent case of *State of Punjab and others Vs. Rafiq Masih (White Washer) reported in 2015 (1) PLJR (SC) [261]*. The relevant paragraph is paragraph 12, which is reproduced hereinbelow:

“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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(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 inferior post.

(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."

In view of the above, petitioners succeed. The order of recovery, contained in Annexure-2, stands quashed.

Before parting, counsel for the petitioners submits that a new rule is already in place, therefore, the same should be applied with regard to grant of benefit of A.C.P. or modified A.C.P., which is in place.

The petitioners are free to assert their right before the

competent authority, who has an obligation to consider their prayer on the basis of existent rule, which is in place now. Such a decision must be taken on an application being filed within a period of three months thereof.

Writ application is allowed with observation / direction as above.

(Ajay Kumar Tripathi, J)

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