IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5164 of 2011

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Ramesh Mahtha, Son of Late Narsingh Mahtha, Resident of Village- Kulhariya, P.S. Babubarhi, District- Madhubani

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Primary Education
2. The Secretary, Department of Primary Education, New Secretariat, Govt. of Bihar, Patna
3. The District Magistrate, Madhubani
4. The District Superintendent of Education, Madhubani
5. The Area Officer (Education), Khutauna, Madhubani
6. The Accountant General, Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Jha, Adv.
For the Respondent/s : Mr. AC to SC-27
Mr. Dhanendra Chaubey, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

19 17-10-2016 Heard Sri Shailendra Kumar Jha, learned counsel for the petitioner, learned AC to SC-27, who has appeared on behalf of Respondent nos.1 to 5 and Sri Dhanendra Chaubey, learned counsel for Respondent no.6/Accountant General, Bihar, Patna.

The petitioner, who retired on 30.04.2008 in the scale of Headmaster, Middle School, Kulhariya, has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India with several reliefs. However, at the time of hearing, learned counsel for the petitioner confined the writ petition to relief no. 1(ii) in the writ petition i.e. for quashing of Annexure-1, Memo No.412 dated 09.06.2010 to the extent whereby Rs.1,00,076/-has been recovered from the retiral dues of the petitioner. Annexure-1 was issued from the office of Accountant General, Bihar, Patna.

Short fact of the case is that the petitioner was initially appointed as Assistant Teacher on 24.01.1976. Subsequently, he was given charge of Headmaster and remained as Headmaster from 07.07.2005 to 11.01.2007 and thereafter retired. Though the petitioner retired with effect from 30.04.2008, Respondent no.6/ Accountant General, Bihar, Patna has issued instruction to the District Superintendent of Education, Madhubani, wherein it was indicated that about Rs.53,463/- was adjusted from provisional gratuity head of the petitioner and further direction was given to recover Rs.46,613/- from pension of the petitioner.

At the time hearing, it was submitted by learned counsel for the petitioner that in view of communication made by the Accountant General, Bihar, vide Memo No. 412 dated 09.06.2010 i.e. Annexure-1 to the writ petition, the remaining amount of Rs.46,613/- was also recovered from retiral dues of the petitioner. It has been argued that without any notice to the petitioner, step was taken for recovery of the aforesaid amount. It has categorically been stated in the writ petition that the petitioner has never misrepresented or committed any fraud in getting the increments and the pay scale, which was subsequently reduced. However, the said amount has been recovered from retiral dues of the petitioner.

In this case, separate counter affidavit on behalf of the Respondent/ State as well as Respondent/ Accountant General, Bihar, Patna have been filed. In both the counter affidavits, Respondents have not denied the stand of the petitioner that he has never misrepresented, however a stand has been taken that the petitioner was not entitled to get the increments due to the reason that he had not passed Hindi Noting and Drafting examination and, as such, in absence of passing of the said examination, he was not entitled to get increments and increment was incorrectly granted to the petitioner.

Learned counsel for the petitioner submits that the petitioner is not disputing regarding re-fixation, but he is assailing the order, whereby recovery was affected from retiral dues of the petitioner. It has been argued that the petitioner was a Class-III employee and without any misrepresentation once any financial benefit was granted, at subsequent stage, that too, after retirement of the petitioner, the Respondents were not at all authorized to recover said amount on the ground that excess amount was paid. Sri Jha, learned counsel for the petitioner has placed reliance on a Judgment of the Hon'ble Supreme Court reported in **2015(1) PLJR(SC) 261 (State of Punjab and others Vs. Rafique Masih (White Washer).**

Learned counsel for the petitioner has specifically referred to paragraph-12 of the said Judgment, which is quoted herein below:-

> "12. 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 employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
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> (ii) Recovery from retired employees, or employees who are due to retire within one year , of the order of recovery.
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> (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 out weigh the equitable balance of the employer's right to recover."

Besides hearing I have also perused the material on record. It is evident that there is no allegation of misrepresentation or commission of fraud by the petitioner in getting increment. It is also a fact that impugned communication was made in the year 2010, where the petitioner retired with effect from 30.04.2008. Accordingly, in view of law laid down by the Hon'ble Apex Court in Rafique Masih's case, act of Respondents regarding recovery from petitioner may not sustain. Accordingly, the writ petition stands allowed with a direction to the Respondents to refund the recovered amount, as indicated in Annexure-1 to the writ petition, to the petitioner within a period of eight weeks from the date of receipt/production of a copy of this order.

It is made clear that the recovered amount must be credited to the account of the petitioner within the aforesaid period, failing which the petitioner shall be entitled to get simple interest @ 9% per annum on the said amount, which shall be recovered from the pocket of the concerned Respondent(s) responsible for non-implementation of the order of this Court within time.

(Rakesh Kumar, J)

NKS/-

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