

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14384 of 2011

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Tej Narayan Malviya son of Late Kashi Nath Malviya resident of Village- Juguri,
P.O. And Police Station- Chandan, Distt.- Banka

.... Petitioner/s

Versus

1. The State Of Bihar Through Secretary, Road Construction Department, Bihar, Patna
2. Superintending Engineer, Mechanical Division, Road Construction Department, Bhagalpur
3. Executive Engineer, Mechanical Division, Road Construction Department, Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amit Prakash

For the Respondent/s : AC to GP1

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 09-05-2016

Heard Sri Amit Prakash, learned counsel for the petitioner
and learned AC to GP No. 1.

The petitioner invoking writ jurisdiction of this court under Article 226 of the Constitution of India has made a prayer for quashing of an order contained in memo no. 245 dated 21.4.2009 and memo no. 267 dated 7.5.2011. By the order dated 21.4.2009 a direction was given to re-fix the pay scale and take step for recovery of the paid amount and vide Annexure – ‘3’ a direction has been issued by the Executive Engineer/ respondent no. 3 for recovery of Rs. 1,27,383/- in 41 installments on the ground that petitioner was earlier granted time bound promotion irregularly even without passing of Hindi noting and drafting examination.



Learned counsel for the petitioner submits that the said order was passed by the respondent no. 3 without any opportunity to the petitioner. He further submits that the petitioner being a class III employee has not committed any suppression of facts or he has made any misleading statement to get time bound promotion and as such, in view of a recent judgment of the Supreme Court reported in **2015 (1) PLJR (SC) 261 State of Punjab and Ors. vs Rafiq Masih (White Washer) etc.** submits that the respondents may not be allowed to proceed with the recovery. He further submits that earlier on 18.10.2011 while granting time to the state counsel for filing counter affidavit this court had restrained the respondents from recovery during the pendency of this petition. By way of filing rejoinder which was filed on 18th April 2016 a specific stand has been taken by the petitioner that till the order of stay passed by this court vide order dated 18.10.2011 a total amount of Rs. 13,577/- was already recovered from the salary of the petitioner.

Learned counsel for the state has opposed the prayer of the petitioner. However, he was not in a position to controvert the submission of learned counsel for the petitioner that in case of class III and class IV employees unless there is an allegation of misrepresentation or suppression of facts no recovery can be affected.

After hearing the parties and considering the facts

particularly the law settled by the Apex Court recently in Rafiq Masih Case (Supra) the orders impugned are liable to be set aside. Of - course in this case counter affidavit has been filed but it has not been asserted that petitioner had obtained time bound promotion by misrepresentation. Accordingly, the respondents are not at all authorized to give affect to the order of recovery. Accordingly, both the orders are hereby set aside. Since till the date of passing of stay order total amount of Rs. 13,577/- was recovered, the respondents are directed to take steps to refund the said amount to the petitioner within a period of three months from the date of receipt / production of a copy of this order failing which, the petitioner shall be entitled to get interest on the recovered amount. Interest shall be calculated from the date of recovery till the payment of the said amount to the petitioner. In that event, the State will be at liberty to recover the interest amount from the pocket of the concerned employee / officer responsible for non- implementation of the order of this court within time.

The writ petition stands allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12-05-2016
Transmission Date	N.A.