

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10503 of 2013

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1. Rajendra Rai Son Of Late Ram Sovit Rai Residing At Village Bhagwatpur
Patedha, P.S. - Sarai, District - Vaishali

.... Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary, Public Health Engineering
Department, Bihar, Patna
2. The Superintending Engineer, Public Health Engineering Circle, Motihari
3. The Chief Engineer, Muzaffarpur Zone, Public Health Engineering Department,
Bihar
4. The Executive Engineer, Public Health Division, Bettiah

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 10-08-2016

Heard learned counsel for the petitioner and learned
counsel for the State.

2. In the present writ application, the petitioner is
challenging office order no. 07 dated 21.03.2013 contained in
annexure-3 by which the respondent authority has directed for
deduction of the excess amount paid to the petitioner as the
petitioner had passed the final examination of accounts in the year
2010 but has been given the benefit of 1st A.C.P. from 1999 and the
2nd A.C.P. from 2005 which is abundantly clear from letter no. 46
dated 29.12.2011 and the same was reiterated in another office order
no. 08 dated 11.02.2012.



3. Learned counsel for the petitioner submits that the petitioner has not played any fraud nor made any misrepresentation before the respondent authority for grant of the A.C.P. as aforesaid.

4. The Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih reported in 2015(1) P.L.J.R., 261 (S.C.) and State of Punjab Vs. Rafiq Masih reported in 2016(4) PLJR, 37(S.C.) has taken a view that if the payment has been made without any fraud or misrepresentation with respect to the employees of Class III and Class IV, it will not be appropriate to pass an order for recovery of the said amount.

5. Learned counsel for the State has submitted that when it was detected by the Auditor that illegal payment has been made to the petitioner, the impugned order has been passed by the Superintending Engineer for recovery of the said amount. In the counter affidavit the State has not stated that any fraud or misrepresentation had been committed by the petitioner for getting the aforesaid benefits rather from the record it appears that not once but twice letters with respect to grant of A.C.P. has been issued in his favour. In view of the judgment of the Supreme Court in Rafiq Masih (Supra), it will not be proper to allow the State to recover the excess amount paid to the petitioner.

6. In such view of the matter, the order contained in annexure-3 passed against the petitioner is set aside. This writ application is, accordingly, allowed. If any amount has been recovered from the petitioner by the respondent authority, the respondent authority is directed to return back the said amount to the petitioner within a period of three months from the date of production/receipt of a copy of this order.

(Shivaji Pandey, J)

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