

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10211 of 2013

=====

Kapil Deo Sah Son Of Late Faguni Sah Resident Of Village - Bishamberpur, P.O.
And P.S. Mahsi District East Champaran At Present Residing At Mohalla Gayatri
Nagar, P.S. Motihari, P.O. Motihari, District East Champaran

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Engineer, Water Resources Department, Balmiki Nagar, P.S. Balmiki Nagar, District - West Champaran
3. The Superintending Engineer, Tirhut Cannel Circle Motihari
4. The Treasury Officer East Champaran Motihari

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Janardan Singh, Adv.
Mr. Akhilesh Kumar, Adv.
For the Respondent/s : Mr. Rishi Raj Sinha, SC-19
Mr. Akhilesh Kumar Sinha, A/C 19

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 08-08-2016

Heard learned counsel for the parties.

In this case, the petitioner is challenging the letter no. 491 dated 13.4.2012 with respect to deduction of Rs. 78,941/- from the leave salary of the petitioner after his retirement from service from the post of Assistant with effect from 31.1.2012 and order vide letter no. 438 dated 13.2.2012 issued by the respondent no.2 on the basis that Rs. 78,941/- has been deducted by letter no. 491 dated 13.4.2012 and for issuance of direction to the respondent not to cancel the higher scale given by the Chief Engineer vide letter no. 3121 dated 12.12.2009 giving the benefit of 1st and 2nd ACP to the petitioner.



The petitioner has superannuated as an Assistant with effect from 31.1.2012 from Tirhut Cannel Circle, Motihari, passed the Accounts examination which is apparent from office letter no. 947 dated 2.5.2001 (Annexure-4). The office order no. 7540 dated 1.7.2008 shows that the petitioner has cleared all the examination relating to accounts and is entitled to the benefit of 1st and 2nd ACP but the authority concerned has recorded in the letter dated 13.2.2012 (Annexure-1) that those who were given the enhancement of pay-scale of Rs. 2610-3540 or 2650-4000, in such circumstances, the benefit of 1st ACP will not be given and, as such, the benefit of 1st ACP is withdrawn and directed to pay 2nd and 3rd ACP to the petitioner.

Learned counsel for the petitioner has submitted that as petitioner has already cleared the Accounts examination, whatever benefit has been given to the petitioner by way of ACP cannot be withdrawn, so much so that, after the retirement, the respondents are not justified or not acted properly in passing the order for recovery of the amount in the name that the petitioner has been paid the excess amount.

Learned counsel for the State has tried to justify the action of the respondents that the petitioner has cleared the Accounts examination in the year 2000, he cannot be given the 1st time bound

promotion, wrongly he was given the benefit, whatever he was given the benefit is recoverable in law. The impugned letter shows other reason for recovery of money allegedly paid to him in excess what petitioner is entitled to.

Having considered the rival contentions of the parties, in view of the judgments in the case of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc.* reported in 2015(1) PLJR (SC) 261 and in the case of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer)* reported in 2014(4) PLJR (SC) 36, where the Hon'ble Apex Court held that if there is no allegation of fraud or misrepresentation on the part of an employee, but in a regular manner the authority has paid the excess amount, in such circumstances, the recovery of the excess amount after superannuation of an employee is not permissible in law.

In that view of the matter, as the petitioner has admittedly passed the Accounts examination, whatever be the lacuna is no longer in existence, and thus, the order of recovery of the excess amount passed by the Superintending Engineer vide letter no. 491 dated 13.4.2012 is hereby quashed and direction is given to the authority concerned to return the amount to the petitioner without any delay preferably within a period of one month from the date of receipt/production of a copy of this order. The authority will also examine whether a persons who has passed the examination,

subsequently is justifiable to re-adjudge the amount of pension, as the deficiency, whatsoever was there was rectified.

With the aforementioned observations and direction, this application is allowed.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.8.2016
Transmission Date	NA