

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3861 of 2014

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Sheela Srivastava Wife Of Late Shailesh Kumar Srivastava House No. 296, Mitra Mandal Colony (Saket Vihar), Anishabad, P.O.- Anisabad, P.S.- Gardanibagh, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Road Construction Department, Vishweshvaraiya Bhawan, New Secretariat, Patna
3. The Superintending Engineer (Mechanical), Mechanical Circle, Road Construction Department, Vishweshvaraiya Bhawan, Patna
4. The Treasury Officer, Secretariat Treasury, Vishweshvaraiya Bhawan, New Secretariat Patna
5. The Accountant General (A And E), Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nityanand Mishra

For the Respondent/s : Mr. SC-27- Kinkar Kumar

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 30-01-2016

Heard learned counsels for the parties.

The short question, which has been raised by the counsel for the petitioner while assailing Annexure-1 and Annexure-3 is that such recovery after retirement of the petitioner cannot be affected in view of the proposition of law settled by the Hon'ble Apex Court in the 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 same, taking into consideration that such a decision to take away the benefit has been taken after retirement of the petitioner, who was a class-iii employee, the impugned order, contained in Annexure-3 is quashed. Annexure-1 is quashed, so far as relating to recovery and consequence thereof.

Writ application is allowed.

(Ajay Kumar Tripathi, J)

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