

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1710 of 2012
IN
Civil Writ Jurisdiction Case No. 8815 of 2005**

- =====
1. The State Of Bihar Through The Secretary, Water Resources Department, Govt. Of Bihar, Patna
 2. The Chief Engineer, Irrigation Mechanical, Water Resources Department, Govt. Of Bihar, Patna
 3. The Superintending Engineer, Mechanical, Irrigation Mechanical Circle, Birpur.
 4. The Commissioner, Finance, Govt. Of Bihar, Patna

.... Respondents-Appellants

Versus

Dudnath Chaudhary, Son Of Late Shiv Balak Chaudhary, Resident Of Village- Mahuari, P.S. Koath, District- Bhojpur.

.... Petitioner- Respondent

=====

Appearance :

For the Appellants : Mr. Anjani Kumar, Senior Advocate (A.A.G.-6)

Mr. Sunil KUMar, A.C. to A.A.G.-6

For the Respondent : Mr. Vishwanath Ram, Advocate

Mr. Ajay Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 25-02-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 1st of February, 2012, whereby the recovery from the salary of the writ petitioner-respondent herein on account of wrong grant of time bound promotion was set aside.

The writ petitioner-respondent herein was appointed against work charge establishment on 16th of November, 1971 and was



regularised against higher post with higher pay scale on 29th of August, 1983. He was also granted time bound promotion vide order dated 09th of November, 1987 with effect from 16th November, 1981 on completion of 10 years of service. The writ petitioner was conferred financial benefit on account of time bound promotion. The same was said to be conferred illegally, therefore, a demand was raised to recover a sum of Rs.2, 21,737/- from the writ petitioner. It is the said recovery which has been set aside by the learned Single Bench by the order impugned in the present Letters Patent Appeal.

The issue regarding recovery on account of wrong fixation of salary has been examined by the Hon'ble Supreme Court in a recent judgment in the case of *State of Punjab and others Versus Rafiq Masih (White Washer) and others*, reported in (2015) 4 SCC 334. It has been held that if any payment has been made without any fraud or misrepresentation on the part of the employee, the same cannot be recovered.

In view of the aforesaid judgment, we do not find any error in the order passed by the learned Single Bench of this Court which may warrant interference in the present Letters Patent Appeal. The Letters Patent Appeal thus stands dismissed.

Any amount recovered in pursuance of the order impugned in the present Letters Patent Appeal shall be refunded to the

writ petitioner expeditiously.



Sunil/-

A. F.R

(Hemant Gupta, J)

(Nilu Agrawal, J)

U			
---	--	--	--