

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9168 of 2013

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1. Md. Shamser Khan S/O Late Md. Suleman Khan Resident Of Village -
Setanabad, P.O. - Setanabad, P.S. - Simri Bakhtiyarpur, District - Saharsa

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Finance Commissioner, Bihar, Patna
3. The Accountant General, Bihar, Patna
4. The Director, Primary Education, Bihar, Patna
5. The Collector, Saharsa
6. District Programme Officer (Estb.), Saharsa
7. The Treasury Officer, Saharsa
8. Drawing And Disbursery Officer, Middle School, Simri Bakhtiyarpur, District -
Saharsa

.... Respondent/s

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Appearance :

For the Petitioner/s : Ms. Mallika Mazumdar, Advocate.

For the State : Mr. Prabhakar Jha, GP.27

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 05-08-2016

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

In the present writ petition, petitioner has claimed that his
pay scale has been lower down after his retirement and so much
so the order has been passed for recovery of the amount which is
not permissible in law.

Petitioner entered into service as assistant teacher in Lower
Primary Urdu Makhtab Boihganwa (Mahesi) on 22.4.1974 as
untrained intermediate teacher in the fixed pay of Rs.230/-. Later



on there was revision of pay in the year 1981 and accordingly he was given scale of pay of Rs.680-965 and time to time scale of pay of petitioner was revised. On the audit objection it was found that petitioner was given wrong enhancement of pay scale. As per claim of the State, he has wrongly been given Matric Trained scale, when the petitioner is entitled to untrained matric scale and on that account the anomalies took place in the fixation of salary of the petitioner from time to time.

Learned counsel for the petitioner does not dispute that petitioner was remained in trained scale. In such circumstances the petitioner was not entitled to trained scale. The prayer has been made to pass order to make necessary correction since 1981 cannot be looked into after laps of so much time. It is indication of fact that if pay has been enhanced from time to time after retirement the respondent authority has no authority to recover the excess amount from the retiral dues as there is no allegation of misrepresentation and fraud committed by the petitioner but anomalies took place on account of wrong fixation of pay by the authority and for that petitioner cannot be held responsible.

The Hon'ble Supreme Court in the case of State of Punjab & others Vs. Rafiq Masih, reported in 2014(4) PLJR 37 SC and in the case State of Punjab & others Vs. Rafiq Masih, reported in

2015(1) PLJR 261 SC has specifically held that recovery from retired Class III and Class IV employees would be impermissible in law, if there is gap of more than five years, subject to the condition, if payment has not been obtained on account of the act of fraud and misrepresentation of the employees concerned.

In view of the facts and circumstances, the order for recovery of amount issued vide letter no.384-1 dated 13.2.2012 by the Office of the District Education Officer, Saharsa is hereby quashed. If recovery has been made, the respondent authority is directed to return the said amount within a period of two months from the date of receipt/production of a copy of this order.

With the aforesaid observation and direction this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.8.2016
Transmission Date	NA