

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4322 of 2013

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Randhir Thakur S/O Late Manohar Thakur Resident Of Village Sirnia, P.O. Jamalpur Gogari, P.S. Gogari, District Khagaria, Retired Accounts Clerk, Dam And Gate, Design Division No. 1, Water Resources Department, Anishabad, Patna.

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government Of Bihar, Patna.
3. The Engineer-In-Chief-Cum-Additional Secretary-Cum-Special Secretary, Water Resources Department, Government Of Bihar, Patna.
4. The Chief Engineer, Central Design, Water Resources Department, Government Of Bihar, Anishabad, Patna.
5. The Superintending Engineer, Dam And Gate Design Circle, Water Resources Department, Anishabad, Patna.
6. The Executive Engineer, Dam And Gate Design Division No. 1, Water Resources Department, Anishabad, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K. Mangalam

For the Respondent/s: Mr. N.K. Singh, S.C.-2

: Mr. Sunil Kumar, A.C. to S.C.-2

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 22-04-2016

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

2. In this case, the petitioner is claiming that he has wrongly been given A.C.P. from 2.7.2008. As per the claim of the petitioner he entered into the service in the year 1971 as fourth grade employee (Embankment Keeper) and thereafter he was promoted to the post of Accounts Clerk in the year 1981 (Class-III post). As per the claim, the



case of petitioner along with others, for promotion, was considered by the Chief Engineer, Water Resources Department and granted the benefit of first A.C.P. from 09.08.1999 and Second A.C.P. from 19.07.2005 and accordingly the payment were made. The petitioner superannuated from the service in the year 2010. After his superannuation, the case of the petitioner along with others were again considered by the Chief Engineer and found that the benefit of A.C.P. has wrongly been given to the petitioner and accordingly vide letter dated 30.09.2011 modified the benefit of A.C.P. In the impugned order the entry of the petitioner in the service has been shown as on 01.06.1971 and absorption has been shown as Accounts Clerk in the year 1981. It has been mentioned in the order that first ACP is not payable to the petitioner and leaving aside the date second A.C.P. has been fixed as on 2.7.2008 and ultimately, the authority vide letter no. dated 15.3.2012 reduced the pay of the petitioner and so much so direction has been given to make recovery of extra amount paid to the petitioner. The ground has been given that petitioner could not pass the departmental examination and as such he cannot be granted the benefit of A.C.P.

3. Learned counsel for the petitioner submits that the order impugned has been passed without giving any notice to the petitioner



and that too after his retirement and so much so there is no avenue of promotion from the post of Senior Accounts Clerk to any other post and chain of promotion comes to an end at the level of Senior Accounts Clerk and as such the ground that has been assigned for having not passed the departmental examination is not a valid ground and the same is not sustainable in law.

4. Learned counsel for the State was granted time on different occasions to meet with the argument of learned counsel for the petitioner with regard to non availability of promotional avenues above the post of Senior Accounts Clerk, but the learned counsel for the State has not filed any affidavit either to accept or contradict the statement made of behalf of the petitioner. The matter is of the year 2013, more than three years has already passed and still the Government is not in a position to inform the Court as to whether there is provision for promotion or not. Be that as it may, it is admitted fact that the impugned order has been passed without giving any notice to the petitioner and that too after his retirement.

5. In the case of *State of Punjab & Ors. v. Rafiq Masih (White washer)*, reported in *2014(4) PLJR, 37* the Hon'ble Supreme Court has held that in case there is no misrepresentation or suppression of material fact, the Government/management should not



go for the recovery of extra amount paid to the employee after his retirement. Admittedly, in the present case, learned counsel for the State has not brought any material to show that the petitioner played any foul or misrepresented for getting the order in his favour for first and Second A.C.P., but from the record it appears that the case of the petitioner and others were considered and they were granted the benefit as per the provision of 2003 ACP Rules.

6. In such view of the matter, this Court is of the view that the State is not justified to recover the extra amount paid to the petitioner. Accordingly, this order of recovery of extra amount is set aside. Let the matter again be considered by the State with regard to entitlement of the petitioner for the benefit of first and second ACP, after giving due notice to the petitioner. The petitioner will have a liberty to explain about his entitlement of first and second A.C.P. in terms of 2003 ACP Rules. The State will examine whether there is further avenue of promotion from the post of Senior Accounts Officer as well as also consider whether the petitioner is required to pass any departmental examination for promotion or for granting the benefit of second ACP. Till the matter is finally decide by the State, the letter dated 21.2.2012 (Annexure-7 to the writ application) and letter dated 15.3.2012 (Annexure-8 to the writ application) are kept in abeyance.

7. With the aforesaid observations and directions, this petition is disposed of.

(Shivaji Pandey, J)

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