

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.5690 of 2011**

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Md.Ehtishamuddin , son of Late Abdul Qayum Resident Of Mohalla - Sadar  
Chowk At & P.O. Dehri-On-Sone, District- Rohtas

.... .... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Minor Irrigation Department Govt. Of Bihar, Patna
3. The Principal Secretary Finance Department, Govt. Of Bihar, Patna.
4. The Chief Engineer (South) Tube Well Section Minor Water Resources  
Department, Shaikhpura, Patna-14
5. The Executive Engineer, Tube Well Division Sasaram,Camp Dehri(Rohtas)

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Md. Abdul Manan Khan  
Mr. Md. Nazmul Hoda

For the Respondent/s : AC to SC 18

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**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**

**ORAL JUDGMENT**

**Date: 27-01-2016**

Heard Mr. Md. Abdul Manan Khan, learned counsel, who  
was assisted by Mr. Md. Nazmul Hoda, learned counsel for the  
petitioner and learned AC to SC No. 18.

The petitioner, invoking writ jurisdiction of this court  
under Article 226 of the Constitution of India has prayed for grant of  
following reliefs:-

- a. *To quash the order contained in letter no. 1066, dt. 20.08.2010, whereby the pay scale of Rs. 5000-8000/- of the post of Draftsman granted to the petitioner wef 1.1.96 has been unilaterally cancelled with retrospective effect and the excess amount paid to him has been directed to be recovered after more than 2 and half years of his superannuation which is not*

*only arbitrary and malafide but has been issued without application of mind and in complete violation of the rule of natural justice and fair play.*

- b. Further for direction to the respondents to allow the pay scale of Rs. 5500-9000/- wef 1.1.96 of the post of Draftsman-I granted to the petitioner wef 1.1.96 as a revised replacement scale of Rs. 1400-2600/5500-9000/- and accordingly fix and pay his salary and all retiral benefits including pension & arrears thereof.*
- c. And further not to recover any amount as per the direction in the letter dt. 20.8.2010 (supra) because the grant of pay scale of Rs. 5000-8000/- wef 1.1.96 is in accordance with the recommendation of the fitment committee and has been granted to the petitioner by the competent authority with the approval of the Finance Department and the petitioner has never misrepresented in this regard.”*

It has been claimed that petitioner was initially appointed as ‘Tracer’ in the office of the Executive Engineer, Tube Well Division, Sasaram in the year 1973. Finally, after serving for several years, in the year 1996 he was granted scale of Rs.5000-8000/- with effect from 1.1.1996. He continued to discharge his service and finally he superannuated with effect from 31.1.2008 from the post of Draftsman (Prarupak ) from Tube Well Division, Sasaram, Camp Dehri (Rohtas).

Learned counsel for the petitioner submits that suddenly after two years the impugned order was issued vide order contained in



letter no. 1066 dated 20.8.2010 issued under the signature of Chief Engineer whereby the pay scale granted to the petitioner in the scale of Rs. 5000-8000/- with effect from 1.1.1996 was suddenly cancelled with retrospective effect and direction was given for recovery of the excess paid amount. Immediately thereafter the petitioner approached this court by filing the present writ petition. Learned counsel for the petitioner has also placed reliance on a judgment of the Hon'ble Apex Court reported in **2014 (4) PLJR (SC) 37 State of Punjab & Ors. vs. Rafiq Masih (White Washer)**. He submits that now law has been settled that from the retiral dues of a Class III or Class IV employee normally no recovery should be made if there is no case of any misrepresentation or fraud committed by the employee. The court is also in agreement with the submission of learned counsel for the petitioner.

In this case by order dated 27.7.2011 while granting time for filing counter affidavit this court had directed not to take any coercive action in terms of Annexure - '1' i.e. the impugned order.

In this case a counter affidavit has been filed on behalf of the respondent no. 4 and 5. Learned AC to SC No. 18 by way of referring to the statement made in paragraph no. 8 and 9 of the counter affidavit has tried to justify the impugned order. However, he was not in a position to satisfy the court as to whether the benefit which was



granted to the petitioner with effect from 1996 was granted on the basis of any misrepresentation or fraud committed by the petitioner. It has also not been disputed that before issuance of the impugned order the petitioner was ever given any opportunity to explain on the issue. Meaning thereby, that unilaterally the decision was taken by the Chief Engineer two years after retirement of the petitioner whereby the benefit which was granted to the petitioner i.e. scale of Rs. 5000 - 8000/- with effect from 1.1.1996 was cancelled with retrospective effect and direction was issued for recovery of the same.

On perusal of the impugned order the court is satisfied that the impugned order is palpably illegal and not sustainable in the eye of law. Accordingly the order impugned i.e. Annexure – ‘1’ is hereby set aside.

It is made clear that if any deduction has been affected in view of Annexure – ‘1’ to the writ petition, same may be refunded to the petitioner without unnecessary delay preferably within a period of three months from the date of receipt / production of a copy of this order.

The writ petition is partly allowed.

In respect of relief sought for in paragraph no. 1(b), 1(c) of the writ petition, the petitioner would be at liberty to approach the authority concerned by filing a representation. If such representation

is filed before Respondent No. 4, it may be examined in accordance with law and decided preferably within a period of three months from the date of filing of such representation.

**(Rakesh Kumar, J)**

Praful/-

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