

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8155 of 2013

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1. Nawal Kishore Prasad Sinha S/O Late Damodar Prasad R/O Village- B-12, Bari Patandevi Colony, P.O.- Gulzarbagh, P.S.- Alamganj, Patnacity, District- Patna7

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary-Cum-Finance Commissioner Finance Department, Govt. Of Bihar, Patna
3. Director (Press And Stationary) Finance Department, Govt. Of Bihar, Patna
4. The Superintendent Bihar Secretariat Press, Patna
5. The Deputy Superintendent Bihar Secretariat Press, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satya Ranjan Sinha, Mr. Seema Kumar, Advocate
For the State	:	Mr. Yogendra Prasad Sinha, AAG 15 Mr. Rakesh Ambastha, AC to AAG 15

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 21-06-2016

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

In the present writ petition, petitioner is challenging the order dated 13.2.2013 passed by the Superintendent, Bihar Secretariat Press, Patna and also challenging the order dated 13.10.2014 passed by the Special Executive Officer-cum-Director (Press) whereby and whereunder the benefit granted to him by way of ACP has been found to be illegal, the Special Executive Officer withdrew the benefit as well as also directed to recover the excess amount paid to him.

Learned counsel for the petitioner has raised a very limited grievance with regard to recovery of amount that has been given to the petitioner as he has not challenged the order on merit of the case, detailed the grounds have been given for withdrawing the benefit conferred upon him.

It appears that the benefit of ACP has been granted to him on account of the order passed by this Court in the contempt application vide MJC No.2066 of 2011. Later on his case was reconsidered and was found that illegally benefit was granted. Petitioner has already superannuated from service. It is not the case of the State that petitioner was given benefit by suppression of fact or playing fraud rather on its own on the direction given in contempt proceeding.

It is undisputed fact that benefit has been extended not on the basis of any act done by the petitioner but the authorities on the direction of this Court passed in MJC has granted the benefit. He has placed reliance on the judgment of Hon'ble Supreme Court in the case of State of Punjab and others v. Rafiq Masih (White Washer), reported in 2014(4) PLJR 36 (SC) and State of Punjab and others v. Rafiq Masih (White Washer), reported in 2015(1) PLJR 261(SC).

In both judgments Hon'ble Supreme Court has

categorically stated that if there is no suppression of fact or any fraud and order has been passed by the competent authority inasmuch as petitioner is Class III and IV posts it will be inequitable to recover the amount.

In the present case benefit has been conferred to the petitioner by the competent authority, not on misrepresentation or suppression of the fact but of its own.

Placing reliance on the aforesaid two judgments the impugned order is bad in law and accordingly quashed. However the State will be at liberty to fix the pension and other retiral dues in accordance with law.

With the aforesaid direction this writ petition is disposed of.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
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