

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1372 of 2012
IN
Civil Writ Jurisdiction Case No. 1958 of 2006**

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Surendra Prasad Singh, son of Late Rambilash Singh, resident of Village-
Amuruham, P.S.- Sahar, District- Bhojpur

.... Appellant

Versus

1. The State of Bihar
2. The Secretary, Irrigation Department, Old Secretariat, Patna
3. Under Secretary, Irrigation Department, Old Secretariat, Patna
4. Chief Engineer, Irrigation Department, Anishabad, Patna
5. Superintending Engineer, Designing and monitoring Division, Anishabad, Patna
6. Executive Engineer, Quality Control Division, Anishabad, Patna

.... Respondents

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Appearance :

For the Appellant/s : Mr. Sia Ram Shahi with
Mr. Manoj Kumar, Advocates
For the Respondent/s : Mr. Kameshwar Pd. Gupta, G.P.10 with
Ms. Deepanjali Gupta, AC to G.P.10

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA**
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)
Date: 11-11-2016

Heard learned counsel for the appellant and learned
Government Pleader No.10 for the State.

The appeal has been filed against the order dated
10.7.2012 passed by the learned Single Judge of this Court by which
the writ application filed by the writ petitioner-appellant has been
dismissed with certain observations.

Learned counsel for the appellant submits that the
appellant is pressing the appeal on the issue of recovery, which,



according to him, cannot be made in view of the fact that the writ petitioner was admittedly a correspondence clerk, a Class III employee, and further that he has retired, both of which grounds are enumerated in the decision of the Apex Court in the case of State of Punjab and others vs. Rafiq Masih (White Washer) and others : (2015) 4 SCC 334 in paragraph-18 of the said judgment, which is quoted below :

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the



employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer’s right to recover.”

Learned Government Pleader is unable to show how the said decision will not apply to the case of the writ petitioner-appellant.

On both counts as per the submission of learned counsel for the appellant, this Court is of the view that the recoveries cannot be made, in view of the law laid down by the Apex Court in Rafiq Masih’s case (supra).

The appeal is, accordingly, partly allowed to the extent that the respondents are restrained from making any recovery from the writ petitioner-appellant and in case any amount has been recovered the same should be refunded to the writ petitioner-appellant within a period of two months from the date of receipt/production of a copy of this order.

(Ramesh Kumar Datta, J)

spal/-

(Rajendra Kumar Mishra, J)

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CAV DATE	
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