

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5369 of 2013

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Gupt Nath Lal S/O Late Ramkishun Lal R/O Village + P.O.- Konar, P.S.- Sheosagar, District- Rohtas, At Present C/O Rajiv Ranjan Shrivastava, Gangadhar Puram Colony, Near Swambar Vatika Panchbatti, P.O.- Ramnagar, District- Varanasi (U.P.)

.... Petitioner/s

Versus

1. The State Of Bihar Through Commissioner Cum Principal Secretary Bihar, Panchayat Raj Department, Bihar, Patna
2. The Director Null Bihar Panchayat Raj Department, Bihar, Patna
3. The Deputy Development Commissioner Cum Chief Executive Officer Zila Parishad, Rohtas, At And P.O.- Sasaram, District- Rohtas

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyan Prakash, Adv.
Mr. Sharwan Kumar, Adv.
For the Zila Parishad : Mr. Ashutosh Ranjan Pandey, Adv.
For the State : Mr. Prabhat Bharti, AC to GP-23

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 28-01-2016

Heard learned counsel for the parties.

In the present case, the petitioner was an employee of Rohtas Zila Parishad and his service is governed like the service condition of employees of the State of Bihar. As per the claim of the petitioner, the benefit of A.C.P. was/is applicable to him, accordingly was granted benefit of 1st A.C.P. and 2nd A.C.P., remained in the service of Zila Parishad and demitted the office on 31.5.2010.

Later on, the Chief Executive Officer, Zila Parishad issued letter vide letter no. 117 dated 23.2.2013 to the petitioner to



return the excess amount of Rs. 1,83,488/- that has been paid to him by way of 1st A.C.P. and 2nd A.C.P. as the scheme of A.C.P. does not apply to the employees of the Zila Parishad under the wrong impression and wrong interpretation the aforesaid excess amount has been paid to the petitioner, directed to return the excess amount and, in failure, recovery will be made through certificate proceeding.

Learned counsel for the petitioner has submitted that the service condition of the employees of the Zila Parishad is governed by the Bihar Service Code and the provision, which is applicable to the employees of the State Government, also applies to the employees of the Zila Parishad mutatis mutandis. He has further submitted that as there was no suppressions, fraud or misrepresentation on the part of the petitioner, there was no occasion for the authorities concerned to recover the excess amount which has been paid to the petitioner. Learned counsel for the petitioner has placed reliance on the judgment in the case of *Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors.* reported in *2009(2) PLJR SC 74* and in the case of *State of Punjab & Ors. etc. Vs. Rafiq Masih (White Washer) etc.* reported in *2015(1) PLJR SC 261*. In both the cases, the Court has taken a view that if the excess amount has been paid to the employees by a wrong interpretation of law so much so employee has already superannuated in absence of allegation of any suppression, fraud and misrepresentation, it will be unfair to recover



the excess amount from a retired person. In the case of Rafiq Masih (supra), it has been held that if a class-III and Class-IV post employee has been paid an excess amount, it will be completely illegal and inequitable to recover the amount back after the retirement specially when the employee has not played any fraud or misrepresented the fact. Placing reliance on the previous judgments of the Hon'ble Apex Court as well as the judgment of Rafiq Masih (supra) learned counsel for the petitioner has submitted that passing an order for recovery of the excess amount is completely illegal and must be set aside.

Mr. Ashutosh Ranjan Pandey, learned counsel for the Zila Parishad, has submitted that provision for A.C.P. does not apply to an employees of Zila Parishad and, under the wrong impression, the petitioner was given the benefit of 1st and 2nd A.C.P. Learned counsel for the Zila Parishad has submitted an approval was sought from the State Government but, that was rejected in the year 2008 but, was suppressed and was not brought to the notice of competent authority. It was not known to the officer concerned by the time the petitioner was given benefit of A.C.P. illegally. He has placed reliance on the letter no. 6138 dated 3.12.2008 whereby it has been informed that the provision of A.C.P. is not applicable to certain establishments including the Zila Parishad. Any payment made to the employees



under the A.C.P. Scheme will be treated to financial irregularity. This document was not brought to the notice of the officer concerned and the same had remained in the file suppressed by some interested persons and, on that account, appropriate action could not be taken in time. He has again submitted that by letter dated 30.10.2013 (Annexure-4), the Government has granted permission to the Zila Parishad, rider that it may give the benefit of A.C.P. from its own resources.

Learned counsel for the petitioner has drawn attention of this Court towards the minutes of the Zila Parishad (Annexure-6) from where the Zila Parishad has accepted applicability of 2nd and 3rd A.C.P. Rule subject to approval of the State Government and sent the same to the State Government for approval but, it is a fact that nothing has been brought to the notice of this Court that the State Government has granted any approval for the A.C.P.

Having considered the rival contention of the parties, it is fact that the petitioner was working as an employee of the Zila Parishad. He has been given the benefit of 1st and 2nd A.C.P. under the impression that A.C.P. scheme is applicable to the employees of the Zila Parishad. Accordingly, the petitioner and similarly situated persons were given benefit of A.C.P. In the present case, the petitioner is a retired person. It is also a fact that there is no provision for



granting pension to the employees of the Zila Parishad. Whatever amount that has been paid to the employees at the time of retirement must have been consumed in some other work and it will be very inequitable to ask a retired person to return the excess amount that has been paid to them when there is no allegation of suppression, fraud or misrepresentation by the petitioner. When the matter relates to the employees of class-III and class-IV post, it will be very difficult for them to return the same. It will be relevant to quote paragraph no.12 of the judgment passed in the of Rafiqu Masih (supra) which reads as follows:-

“12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from 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.”*

The Hon’ble Court in that case had held that it will be very difficult for the Class-III and Class-IV employees to pay back the amount which has been paid to them.

In that view of the matter, the order dated 23.2.2013 is quashed but, it is made clear that this order will be only applicable to the persons who have superannuated from service and will not be applicable for those who are continuing in service.

In the result, this application is allowed.

(Shivaji Pandey, J)

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