

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7821 of 2014

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Ram Raj Pandey, S/o Late Sheo Lochan Pandey, R/o Village+ P .O- Dihi, P.S-
Baddi, District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Water Resources Development Department,
Government of Bihar, Patna.
3. The Chief Engineer (Mechanical), Water Resources Development Department,
Government of Bihar, Patna.
4. The Executive Engineer, Irrigation, Mechanical Division, Dehri On Sone,
Rohtas.
5. The Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Narayan Singh, Advocate.
For the State : Mr. Aditya Nath Jha, A.C. to S.C. 18
For Accountant General : Dr. Anand Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
ORAL JUDGMENT

Date: 17-09-2016

Heard learned counsel for the parties.

2. The petitioner attained the age of superannuation on 30th of July, 2003 from the post of Progress Clerk. Initially, he was appointed on 2nd of February, 1968 on the post of Molder in Work Charge Establishment of Irrigation Mechanical Division, Dehri On Sone. The petitioner and other four persons were promoted to the post of Progress Clerk vide order dated 13th of September, 1971 whereas, petitioner and others were absorbed in the Regular Establishment with effect from 1st of April, 1977. Later, the Progress Clerks were treated



as Lower Division Clerk and were given the scale of Rs. 284-372/- with effect from 1st of May, 1980 and scale of Rs. 586-860/- with effect from 1st of May, 1984 and scale of Rs. 1200-1800/- with effect from 1st of January, 1986. Subsequently, vide communication dated 20th of December, 2000, the clerks working in the Work Charge Establishment prior to 22nd of December, 2000 were treated as Upper Division Clerk and their salary was fixed as Rs. 4,000-6,000/-. Petitioner did receive such salary but thereafter the State Government reduced the pay-scale to Rs. 3050-4590/-.

3. Thereafter, the Assured Career Progression Scheme was implemented and the petitioner was first given A.C.P. promotion scale of Rs. 3200-4900/- with effect from 9th of February, 2000 and second A.C.P. scale of Rs. 4,000-6,000/- with effect from 9th of February, 2001. Subsequently, first A.C.P. scale revised to pay-scale of Rs. 5,000-8,000/- with effect from 1st of February, 2000 and Rs. 5500-9,000/- with effect from 1st of April, 2001.

4. The grievance of the petitioner is that petitioner was granted promotion in the year 1971. Therefore, after 40 years the respondents cannot review the decision of granting promotion and consequently recover the financial benefits which have been granted to the petitioner at an earlier stage.

5. In the counter affidavit filed on behalf of Respondent



Nos. 3 and 4 it is mentioned that petitioner was appointed in the Work Charge Establishment on 1st of February, 1968 as Class-IV employee in the pay-scale of Rs. 105-155/- and was promoted as Progress Clerk on 1st of September, 1971. Though there was no promotional avenue in the Work Charge Establishment, he was wrongly given the benefit of pay increase at the rate of 12 per cent. His service was regularized with effect from 1st of April, 1977 as Progress Clerk. Subsequently, it was detected that excess payment has been made on account of salary fixed with effect from 1st of May, 1980, 1st of April, 1981, 1st of January, 1986 and 1st of January, 1996 respectively. The salary was ordered to be re-fixed and an excess of Rs. 2,65,846/- was found to be recoverable from the petitioner. It is the said amount which is the bone of contention between the parties at this stage.

6. The Hon'ble Supreme Court in the case reported as State of Punjab and others Vs. Rafiq Masih (White Washer and others), (2015) 4 SCC 334 has held that recovery cannot be effected from the retiral benefits if the same has been paid without any fault or misrepresentation on the part of the employee. The recovery after retirement cause hardship and cannot be effected.

7. In view of the aforesaid judgment, the recovery of Rs. 2,65,846/- cannot be effected from the retiral benefits payable to the petitioner after his superannuation.

8. Consequently, the order of recovery is set aside and
the writ application is allowed.

(Hemant Gupta, J)

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