

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3904 of 2011

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Shyam Sundar Jha S/o Sri Sudhishwar Jha Resident Of Village- Banganw, P.O.
Banganw P.S- Saharsa, District- Saharsa.

.... Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary, Irrigation Department,
Government Of Bihar, Patna.
2. The Principal Secretary, Finance Department, Government Of Bihar, Patna.
3. The Chief Engineer, Irrigation Department, Bhagalpur.
4. The Superintending Engineer, Design Circles, Irrigation Department, Bhagalpur.
5. The Superintending Engineer, Irrigation Department, Khagarpur, (Munger.)
6. The Executive Engineer, Ganga Pump Nahar, Circle, Khalgaun, Bhagalpur.
7. The District Accounts Officer, Pay Fixation Section, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Nandan Prasad
For the Respondent/s : AC to GP No. 7

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 09-08-2016

Heard Sri Raj Nandan Prasad, learned counsel for the
petitioner and learned AC to GP No. 7.

The petitioner , had approached this court invoking its writ
jurisdiction under Article 226 of the Constitution of India , initially
with a prayer to quash an order dated 16.7.2007 contained in letter
no. 373 dated 16.7.2007 (Annexure –‘5’) to the writ petition
whereby pay scale of the petitioner was reduced and petitioner had
further prayed for quashing of the order contained in letter no. 868
dated 20.10.2010 (Annexure -‘6’) to the present writ petition
whereby the Superintending Engineer /respondent no. 4 had passed



order of recovery of the excess paid salary to the petitioner to the tune of Rs. 2,45,425/- from the salary of the petitioner. The said amount was to be adjusted by installment of Rs. 8000/- per month. After filing of the present writ petition by order dated 8.3.2011 while granting time to the learned state counsel for filing counter affidavit a bench of this court passed an order for staying the operation of Annexure -'6' to the writ petition. Learned counsel for the petitioner submits that after the order of the stay recovery was stopped.

It has been pleaded that the petitioner was appointed in the work charge establishment as Survey Khalasi on 26.10.1970 in the office of Assistant Engineer , Bhagalpur . Finally, he was absorbed on 16.6.1981 and by order dated 23.7.1981 the petitioner was posted as Correspondence Clerk by the office of Chief Engineer, Irrigation, Bhagalpur. It has further been stated that the Superintending Engineer , Ganga Pump Nahar Circle, Bhagalpur subsequently fixed his pay vide memo no. 315 dated 26.3.1985 and thereafter he started to withdraw his salary as per revised pay scale. After two years a decision was taken by the respondent authority whereby the salary of the petitioner was reduced vide Annexure -'5' to the writ petition, however at much belated stage in the year 2010 the Superintending Engineer had come out with an order directing for recovery of the excess paid amount to the petitioner to the extent of Rs. 245425/-



which was to be adjusted from his salary at the rate of Rs. 8000/- per month. It has categorically been submitted by learned counsel for the petitioner that petitioner never misrepresented or committed fraud in getting higher pay scale. Of course the writ petition was filed with a prayer to quash the order contained in Annexure –‘5’ whereby his pay scale was reduced and also for quashing of Annexure -‘6’ regarding recovery, at the time of hearing Sri Raj Nandan Prasad , learned counsel for the petitioner, makes a prayer for allowing him to confine the writ petition to the extent of quashing of the order contained in Annexure - ‘6’ whereby direction was given to recover the excess paid amount. It has been argued that there was no allegation of misrepresentation or fraud committed by the petitioner. In view of the recent judgment of the Apex Court reported in **2015 (1) PLJR SC 261 (State of Punjab and Ors. etc. vs. Rafiq Masih (White Washer) etc.** it has been argued that no recovery can be affected. He submits that petitioner is covered by the judgment of the Apex Court. The petitioner retired from Class III post. On the sole ground that petitioner has committed no fraud or misrepresentation in getting excess salary it has been argued that at least after the order of stay, recovery part is liable to be set aside.

Learned AC to GP No. 7 by way of referring to the averments made in the counter affidavit submits that the petitioner



has actually withdrawn excess salary and as such direction has rightly been issued in terms of departmental instruction for recovery of the excess paid amount. He has referred to the averments made in the paragraph no. 6 of the counter affidavit to justify the action of the respondents for taking steps in respect of recovery of the excess paid amount from the petitioner.

Besides hearing learned counsel for the parties I have also perused the material available on record. Of course in this case a counter affidavit has been filed on behalf of the respondent no. 3 and 4 but in the counter affidavit there is no indication as to whether the petitioner earlier had obtained higher pay scale by committing misrepresentation or fraud. It is also not in dispute that petitioner at the relevant time was occupying Class III post. Since the Apex Court has already categorically held that no recovery shall be made from Class III or Class IV employees if there is no misrepresentation, obviously the respondents are not authorized to take steps for recovery of the excess paid amount to the petitioner. At this stage it would be appropriate to quote paragraph no. 12 of the Rafiq Masih Case (Supra) which is 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 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 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.

On perusal of the aforesaid guidelines of the Supreme Court the Court is satisfied that that case of the petitioner is covered by clause (i) of paragraph no. 12 of the aforesaid judgment of the

Apex Court .

In view of the facts and circumstances particularly the fact that the petitioner was holding Class III post and there was no allegation of misrepresentation or fraud , certainly the respondents are not authorized to take any steps for recovery from the petitioner on the ground that petitioner had withdrawn excess salary. Accordingly , the order contained in Annexure -‘6’ to the extent of taking steps for recovery of the excess paid amount is hereby set aside and the writ petition is allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12-08-2016
Transmission Date	N.A.