

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6326 of 2016

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1. Uday Shankar Prasad Son of Late Balram Singh Resident of Kailash Bhawan, Mithapur Khagaul Road, P.O. G.P.O., P.S. Jakkanpur, District - Patna, Presently Working as Compilation Clerk in the Office of Executive Engineer, Road Construction Department, Mechanical Division, Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
3. The Finance Secretary, Finance Department, Government of Bihar, Patna
4. The Engineer - in - Chief - Cum - Additional Secretary - Cum - Special Secretary, Road Construction Department, Government of Bihar, Patna
5. The Superintending Engineer, Road Construction Department, Mechanical Circle, Patna
6. The Executive Engineer, Road Construction Department, Mechanical Division, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S. B. K. Manglam

For the Respondent/s : Mr. Sushil Kumar Singh, A. C. to AAG 10.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 24-08-2016

Annexure-4 dated 16.02.2016 is the order under challenge in the present writ application. The petitioner who is working as a Compilation Clerk has been ordered to refund the excess payment which he had drawn by virtue of grant of 1st and 2nd A.C.P. The respondent authorities have decided to take away the benefit of A.C.P. extended to the petitioner on the ground that the petitioner had not passed the departmental examination of accounts.

2. The benefit of 2nd A.C.P. has been taken away now

and the date of grant of 1st A.C.P. has been altered to 17.01.2010.

3. Learned counsel for the petitioner submits that in terms of 2003 A.C.P. Rules, specially Rule 4 sub-rule (5), that since there is no avenue of promotion provided for the petitioner in his service career, therefore, the said Rule cannot be used for the purposes of taking away the benefit granted to the petitioner by an earlier notification as also to order recovery of the amount so paid. Learned counsel for the petitioner relies on a decision of the Hon'ble Apex Court in the case of **State of Punjab Vs. Rafique Masih (White Washer etc.) reported in (2015) 4 SCC, 334.**

4. So far as the first contention of the learned counsel for the petitioner with regard to Rule 4, Sub-rule (5) that since there is no avenue of promotion, therefore, it cannot be read that that rule will not apply to the petitioner or the rule is redundant. We will be guided by the 2nd part of the rule wherein it has been indicated that if by any notification or regulation passing of departmental examination is required for the grant of benefit of financial progression, then an employee will have to fulfill that requirement.

5. It is not open to argument that requirement of the petitioner passing the departmental examination of accounts or even otherwise for the post of Compilation Clerk which he is holding is not necessary and, therefore, if the respondent authorities by some



oversight or omission or even by mistake extended the benefit of two A.C.Ps. to the petitioner without passing of the departmental examination, it will stay. Since the decision has been taken contrary to the statutory provision and notification which has been occupying the field, the petitioner cannot retain the benefit.

6. This Court had occasion to consider an identical matter with regard to such recovery and withdrawal of benefit of A.C.P. in the case of **Ram Param Purushottam Vs. State of Bihar and others** which was C.W.J.C. No. 18923 of 2015 decided on 11.08.2016. The Court after considering the various facets of the Rules including Rule 4(5) of 2003 A.C.P. Rules as well as taking into consideration the principle laid down by the Hon'ble Apex Court in the case of Rafique Masih (Supra) came to a considered opinion that if a government servant has derived benefit contrary to a statutory provision and even if it has been extended not at the instance of the petitioner but by any subordinate authority, no person can claim that the State will be bound by such decision or that he can hold on to that benefit because permitting such a decision to exist would amount to violation of the statute as well as law. No Court can, therefore, permit violation of a statutory provision and allow gain to an employee knowing fully well the position on the issue.

7. By virtue of annexure-4, the order impugned, it is

the act of illegality which is sought to be corrected by the respondents when the screening committee verified the service history of the petitioner.

8. In view of the above, this Court will not interfere with the impugned order contained in annexure-4. This writ application is, therefore, dismissed.

(Ajay Kumar Tripathi, J)

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