

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.8102 of 2014

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Md. Sagir son of Late Hazi Waris Imam resident of Mohalla- Mehsour Chowk,  
Dumra Road, Sitamarhi, P.S.- Town Sitamarhi, District- Sitamarhi

.... .... Petitioner

Versus

1. The State of Bihar
2. The Secretary, Minor Irrigation Department, Government of Bihar, Patna
3. The Deputy Secretary, Minor Irrigation Department, Government of Bihar, Patna
4. The Coordinator-cum-Engineer-in-Chief, Tube Well Project, Vishwesaraiya Bhawan, Patna
5. The Chief Engineer, Tube Well Project, Minor Irrigation Department, Muzaffarpur
6. The Superintending Engineer, Tube Well Circle, Muzaffarpur
7. The Executive Engineer, Tube Well Division, Sitamarhi

.... .... Respondents

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#### Appearance :

For the Petitioner/s : Mr. Ravindra Nath Dubey

For the Respondent/s : Mr. Dhurjati Kumar Prasad

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

ORAL JUDGMENT

**Date: 20-09-2016**

On a previous direction issued by the High Court in the writ filed by the petitioner, a direction was issued upon the appellate authority to take a decision on the grievance of the petitioner with regard to his entitlement of the pay scale, pension etc.. The direction and the order dated 8.5.2012 is Annexure 6 to the writ application.

Petitioner is back to the High Court because appellate authorities have now decided after verifying the service record of the petitioner to annul the illegally granted promotion for the reasons indicated in Annexure 4 dated 17.1.2009, which is under challenge.

As a consequence thereof vide Annexure 5 dated 29.9.2011

a decision has been taken to effect recovery from the gratuity and earned leave of the petitioner.

Because of certain assertions and averments made in the writ application, which was not tallying with the findings given in Annexure 4, the Court decided to have a look at the original service book of the petitioner. The original service book as per direction was produced and has been perused. The entries made therein support the findings which have been given as the reason for taking away the benefit of promotion of the petitioner.

Two basic things emerge, one that the petitioner was initially appointed as a Fuse-man in the work charge establishment. He was later 'promoted' on the post of Electrician on the order of the Superintending Engineer and was also taken into permanent establishment. Both these decisions have been seriously questioned by the appellate authority on the ground that there is no provision for any promotion to a person working in the work charge establishment and secondly, that the authority, who took the petitioner in regular establishment, does not have the competence to do so.

These facts cannot be disputed both as a proposition of fact or law. Therefore, the impugned order, contained in Annexure 4, does not suffer from any vice and is not required to be interfered with.

However, counsel for the petitioner as a last ditch effort

submits that the order of recovery, contained in Annexure 5, would be a very harsh order for the petitioner looking at the post and position which he held and served organization for a long long time. Recovery to the extent indicated in Annexure 5 will throw the petitioner and family into dire financial distress and therefore, recent decision of the Hon'ble Apex Court does come to the aid of the petitioner, which is the case of State of Punjab v. Rafique Masih (White Washer etc.), reported in (2015)4 SCC 334.

The ratio of the case comes to the assistance of the petitioner. The Court, therefore, is inclined to quash Annexure 5 dated 29.9.2011. If recovery has been made, the petitioner would be entitled to refund. The petitioner will derive benefit only on the post of Fuse-man, not as an Electrician.

Writ application is disposed of with the above observation.

**(Ajay Kumar Tripathi, J)**

Surendra/-

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