

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5386 of 2015

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Bharat Kumar Jha, son of Late Laxmi Narayan Jha, resident of village and P.O. Nawada, P.S. Bahera, District- Darbhanga.

.... Petitioner

Versus

1. The State of Bihar, through its Chief Secretary, Bihar, Patna.
2. The Secretary, Minor Irrigation Department, Bihar, Patna.
3. The Secretary, Water Resources Department, Bihar, Patna.
4. The Executive Engineer, Tubewell Division Minor Irrigation Department, Begusarai.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Kaushalesh Choudhary, Advocate
For the State : Mr. Arun Kumar Bhagat, AC to AAG XII

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

4 23-09-2016 Heard learned counsel for the petitioner and learned counsel for the State.

The writ application has by order dated 8.5.2015 been confined only to the issue of recovery of Rs.2,63,253/-, which amount has been deducted from the pension and gratuity of the petitioner.

Learned counsel for the petitioner submits that by order dated 21.4.2010 re-fixation of the pay scale of the petitioner has been made, and on the basis of it such recovery has been made by the impugned order dated 7.7.2011. It is submitted by learned counsel for the petitioner that the Supreme Court in the case of State of Punjab and others vs. Fariq Masih (White Washer) and others : (2015) 4 SCC 334 has held that recovery would be impermissible in five conditions as laid down therein in paragraph-18 of the judgment, which is in the following terms :-



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

It is submitted that not only the recovery has been ordered after the retirement of the petitioner for the period of more than five years going back to the change of pay fixation made from the year 1988 but further since the petitioner is a Class III employee, no recovery can be made in such circumstances.

Learned counsel for the State is unable to show that the recovery can be justified in view of the law laid down in the case of Rafiq Masih (supra).

In the above circumstances, the writ application is allowed. The impugned order by which the recovery of Rs.2,63,253/- has been made is quashed and the respondents are directed to refund the said amount to the petitioner within a period of two months from the date of receipt/production of a copy of this order. Within the same period the respondents shall also pay the petitioner the leave encashment amount for the period of 56 days.

(Ramesh Kumar Datta, J)

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