

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20594 of 2011

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Lakhendra Prasad Singh , son of Late Ishwar Singh , resident of Village-Bindi Dih, P.S.- Silao, District - Nalanda

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The District Magistrate, Nalanda

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ajey Kumar, Adv.

For the Respondent/s : Mr. AC to GP-30

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

4 23-06-2016

Heard Sri Ajey Kumar, learned counsel for the petitioner and learned AC to GP-30.

The petitioner, invoking writ jurisdiction under Article-226 of the constitution of India, has prayed for partly quashing of an order dated 25.04.2011 passed by the District Magistrate, Nalanda (Annexure-9 to the writ petition), whereby direction was given to recover Rs.69,398-/, which was paid excess to the petitioner vide Bill No.91/2008-09.

The petitioner's case is that he superannuated as Head Clerk, Legal Section, Nalanda Collectorate with effect from 31.01.2004. Since he was not given the benefit of A.C.P.Scheme, he approached this Court by filing a writ petition vide C.W.J.C.No.1190 of 2011, which was disposed of on 20.01.2011

granting liberty to the petitioner to file representation before the District Magistrate and, thereafter, the District Magistrate was directed to examine the same and pass appropriate order in accordance with law within specified time.

Learned counsel for the petitioner submits that after the order of this Court, the petitioner filed representation, mainly for grant of benefit under the A.C.P. Scheme. He submits that by the impugned order, the District Magistrate has accepted the claim for granting the benefit of A.C.P. to the petitioner. However, at the same time, he has directed for recovery of huge amount i.e. Rs. 69,398/- from the petitioner knowing well that the petitioner retired as Class-III employee long back in the year 2004. Learned counsel for the petitioner submits that it was not a case that the petitioner had obtained such scale by way of misrepresentation or committing fraud and, as such, in view of recent Judgment of the Hon'ble Supreme Court reported in (2015) 4 SCC 334; State of Punjab & Ors Vs. Rafiq Masih (White Washer & Ors)., no such recovery order can be passed.

Learned State Counsel, though , has opposed the prayer of the petitioner, he submits that in view of law settled by the Hon'ble Apex Court, certainly without any misrepresentation or fraud committed by an employee belonging to Class-III or

Class-IV employee, any recovery order can be passed.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. On perusal of the impugned order, it is evident that the petitioner was paid purportedly excess to his entitlement vide Bill No.91/2008-09. Meaning thereby that prior to filing of the writ petition, the petitioner was already granted the said benefit. It has also not been disputed that the petitioner has got such scale without any misrepresentation or fraud. Accordingly, in view of law settled by the Hon'ble Apex Court in Rafiq Masih's case (supra), the order impugned to the extent of proposing to recover the said amount stands quashed.

Learned counsel for the petitioner submits that in view of impugned order, recovery has already been affected. Accordingly, the Respondents are directed to refund the recovered amount i.e. Rs.69,398/- to the petitioner within a period of two months from the date of receipt/production of a copy of this order, failing which the petitioner shall be entitled to get interest @ 9% per annum on the said amount , which is to be calculated from the date of recovery till the date of payment. Such interest amount shall be recovered from the pocket of concerned officer/employee responsible for non-implementing the order of this Court within

time.

With above observation and direction, the writ
petition stands allowed.

(Rakesh Kumar, J)

NKS/-

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