

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1709 of 2016

IN

Civil Writ Jurisdiction Case No. 18923 of 2015

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Ram Param Purushottam, Son of Late Ram Chandra Prasad, Resident of Mohalla -
Mohanpur, Punaichak, P.O. - Shastri Nagar, P.S. - Shastri Nagar, District - Patna.

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Mines and Geology Department, Govt. of Bihar, Patna.
2. The Under Secretary, Mines and Geology Department, Govt. of Bihar, Patna.
3. The Director, Mines and Geology Department, Govt. of Bihar, Patna.
4. The Mineral Development Officer, Munger.

.... Respondents

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Appearance :

For the Appellant : Mr. Bindhyachal Rai, Advocate
For the Mines Deptt. : Mr. Devendra Kr. Sinha, Sr. Advocate
Mr. Rajendra Prasad, Special PP (Mines)
For the State : Mr. S. Rahman, AC to GP 24

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 21-11-2016

Heard learned counsel for the appellant and learned
counsel for the respondents.

2. The challenge in the present Letters Patent Appeal is
to an order passed by the learned Single Bench on 11th of August,
2016 in CWJC No. 18923 of 2015 whereby the decision of the State
Government to annul the benefit of the first Assured Career
Progression scale to the appellant and to recover the amount said to be
paid in excess, remained unsuccessful.

3. The appellant was appointed as a Clerk in the year



1987 and worked in that capacity in the office of the District Mining Officer, Munger. He was granted the benefit of first ACP scale on 25th of November 2004 with effect from 09.08.1999. After grant of such benefit, it was found that the appellant was not qualified for the ACP as he had not passed the departmental accounts examination which was a condition precedent for grant of such scale in terms of Rule 157 of the Board's Miscellaneous Rules.

4. The learned counsel for the appellant relied upon a judgment of the Supreme Court in State of Punjab & others Vs. Rafiq Masih (White Washer) & others, in (2015) 4 SCC 334 to contend that the recovery cannot be made from the appellant when there is no misrepresentation or fraud by the appellant. It is argued that the said judgment was distinguished by the learned Single Judge for the reason that the judgment will not be applicable if the appellant has derived contrary to the statutory provisions.

5. We have heard learned counsel for the parties and find that the grant of benefit of ACP scale was an action taken by the officials of the State Government knowing fully that the appellant had not qualified the departmental examination. The argument of learned counsel for the respondents that the benefit of ACP scale was provisional and, therefore recovery could be effected, is not tenable for the reason that merely because excessive payment has been made

to an employee, in the absence of fraud or misrepresentation at the instance of the appellant, will not entitle the employer to deduct the amount given to him. The Supreme Court held as follows:-

“ 15.....A perusal of the aforesaid observations made by this Court in *B.J. Akkara* case (2006) 11 SCC 2007 reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, inasmuch as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. In the observation extracted above, this Court also recorded, that recovery from the employees in lower rung of service, would result in extreme hardship to them. The apparent explanation for the aforesaid conclusion is, that the employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e. Class III and Class IV- sometimes denoted as Group C and Group D) of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India.”

6. In view of the aforesaid judgment, we find that the appellant was not entitled to ACP scale in the first instance having not qualified the departmental examination but such benefit was conferred upon him when there is no misrepresentation or fraud on the part of

the appellant. Once certain benefits have been conferred on the appellant, the same could not be recovered in the light of the aforesaid judgment in Rafiq Masih (supra).

7. Consequently, the appeal is allowed and the order of learned Single Judge dated 11th of August 2016 is set aside. As a consequence the order dated 31st of July, 2015 to the extent that the recovery was ordered to be made from the appellant is also set aside.

8. The Letters Patent Appeal stands allowed in the above terms.

(Hemant Gupta, ACJ)

B.T/Ibrar

(Vikash Jain, J)

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