

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1229 of 2010

IN

Civil Writ Jurisdiction Case No. 12368 of 2008

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1. Raj Kumar Prasad S/O Late Madan Lal R/O Mohalla- Chowk, Chabar Gali, P.O.
& P.S.- Jhauganj, Distt.- Patna

.... Appellant/s

Versus

1. The State Of Bihar
2. Principal Secretary Road Construction Department, Government Of Bihar, Patna
3. Chief Engineer (Mechanical) Road Construction Department, Government Of Bihar, Patna
4. Superintending Engineer (Mechanical Division), Patna
5. Executive Engineer, Mechanical Division Road Construction Department, Patna
6. Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. NARESH CHANDRA VERMA
Mr. Natraj Verma.

For the Respondent/s : Mr. Saroj Kumar Sharma, A.C. to AAG 5

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 18-04-2016

This Intra Court Appeal has been filed by the unsuccessful writ petitioner being aggrieved by the judgment and order of the learned Single Judge dated 19.05.2010 passed in C.W.J.C. No. 12368 of 2008 by which the learned Single Judge has refused to interfere with the order of promotion passed in respect of the writ petitioner after his retirement on the ground that the promotion was wrongly granted. The learned Single Judge relied upon a Full Bench judgment of this Court in the case of Ram Binod Singh and Others Vs. The Bihar State Electricity Board and others since reported in



2007(3) PLJR, 398. What was held by the Full Bench is that notwithstanding any fraud, misrepresentation or by mistake wrongly if a promotion or benefit was granted, the State was under obligation to take it back and restore the correct position. Since then we have series of judgments of the Supreme Court including a very recent judgment in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others, since reported in (2015) 4 SCC, 334 wherein noticing the line of precedence, their Lordships have clearly held that one of the exceptions to these rules would be where a person has retired, no action could be taken in that regard. To us, the principle is clear. The principle is restitution, and restitution takes within itself equity or equitable circumstance at the time when action is sought to be taken. The right may be there, but it may not be equitable to allow the right to be exercised.

In view of the judgment of the Apex Court, we have no option but to allow the appeal, set aside the judgment of the learned Single Judge. Annexure-6 to the L.P.A. i.e. consequential direction issued by the authority to recover the amount cannot, thus, be sustained. Consequently, the writ petition is allowed. There shall be no order as to be detrimental to the writ petitioner-appellant in regard to the service, either promoting him or making recovery of the amount paid to him.

The Bond given to the Registrar General as directed by
the Court, shall stand discharged.

(Navaniti Prasad Singh, J)

Amin/-

(Nilu Agrawal, J)

AFR/NAFR	AFR
CAV DATE	
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