IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15672 of 2011

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Jagdeo Pandey , son of Late Prayag Pandey resident of Village - Baghibardiha, P.S.- Warisaliganj, District - Nawadah

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Nawadah
3. Prakhand Vikash Padadhikari Warisaliganj (Nawada)
4. Pramukh, Warisaliganj Prakhand, District - Nawadah

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Dronacharya
For the Respondent/s : AC to SC 1

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 26-10-2016

Heard Sri Dronacharya, learned counsel for the petitioner and learned AC to SC No. 1.

The petitioner invoking writ jurisdiction of this Court under Article 226 of the Constitution of India has made a prayer for issuance of appropriate writ for quashing of an order contained in Memo No. 1033 dated 10.6.2011 issued under the signature of Block Development Officer, Warisaliganj (Nawada) vide Annexure – 1 to the writ petition. By the said order the petitioner was directed to file show cause as to under what circumstances even after date of superannuation he worked and received payment. It was indicated that in this manner the petitioner had received Rs. 75,703/-. The petitioner was directed to deposit the said amount otherwise F.I.R.

was required to be lodged against the petitioner. After the said order the petitioner immediately approached this Court by filing the present writ petition and on 3.11.2011 while granting six weeks time to State Counsel for filing counter affidavit direction was issued that till further order no criminal case pursuant of Annexure - 1 would be initiated, if not already done. It is case of the petitioner that he was a Peon in the office of Block Development Officer, Warisaliganj . As per service book the petitioner was to superannuate on 30.4.2010. The petitioner has claimed that being a Class - IV employee and illiterate he failed to notice the date of his superannuation nor authority concerned, before six months of the date of superannuation, intimated the petitioner regarding the date of his superannuation. In any event , the petitioner continued to discharge his duty even beyond the date of superannuation. While he was continuing to discharge his duty the impugned order was issued and immediately thereafter the petitioner was stopped from functioning. It is specific case of the petitioner that he had not made any misrepresentation or committed fraud rather as Class- IV employee he had diligently discharged his duty. The petitioner in the present writ petition has also prayed for directing the respondents to pay monthly emolument from December 2010 to 7.6.2011 the date till he functioned.

Learned counsel for the petitioner admits that the petitioner was paid his emolument till the month of November 2010 . Sri Dronacharya, learned counsel for the petitioner has placed heavy reliance on a recent judgment of the Apex Court reported in **2015 (1)PLJR (SC) 261 (State of Punjab and Ors. vs. Rafiq Masih (White Washer) etc)** . By way of referring to paragraph no. 12 of the said judgment of the Apex Court it has been argued that recovery from Class -III or Class- IV employees in such situation is impermissible. He also submits that in case of retired employee or employees who are due to retire within one year even recovery is impermissible. He further submits that in this case by filing counter affidavit the respondent /State has categorically admitted that the claimed amount i.e. Rs. 75,703/- has already been recovered from the due of the petitioner against leave encashment. This fact has been stated in paragraph no. 8 of the counter affidavit which was filed on 15th December 2011 on behalf of the respondent no. 2 and 3. Accordingly he submits that besides quashing Annexure- 1 direction may be issued to refund the recovered amount and also direct to pay emolument from December 2010 to 7.6.2011 the date on which he was finally stopped to discharge his duty .

Learned State Counsel opposing the prayer submits that whatever action has been taken against the petitioner has been taken in compliance with the law laid down by the Apex Court in a case reported in **(1997) 9 SCC 239 RADHA KISHUN *versus* UNION OF INDIA AND OTHERS.** By way of referring to the statement made in paragraph no. 8 of the counter affidavit he reiterates that action of the respondent is legal, which requires no interference.

Besides hearing learned counsel for the parties I have also perused the materials available on record. The fact that petitioner was a Class -IV employee and who was to retire on 30.4.2010 is not in dispute. In the counter affidavit the respondents have admitted that petitioner prior to his superannuation was never intimated. Being a Class -IV employee it is difficult to record a definite finding that petitioner knowing date of his superannuation has functioned even after the date of superannuation. It is admitted that respondents had never intimated the petitioner regarding his date of superannuation. It is also a fact that petitioner even after date of superannuation had rendered his services as orderly. The petitioner had drawn his salary till the month of November 2010 and thereafter without even payment of salary he was continuing and finally impugned order was issued on 10.6.2011. While directing the respondent /State to file counter affidavit this Court had already restrained the respondents from initiating the any criminal case against the petitioner till further order. Respondents have not stated that any F.I.R. has been lodged against the petitioner. It is true that the action for recovery was taken in the light of the order passed by the Apex Court in Radha Kishun Case (supra) but fact remains that issue regarding recovery in such circumstances has already been set at rest finally by the Apex Court in a recent judgment of the Supreme Court in Rafiq Masih case (supra). It would be better to quote paragraph no. 12 of the said judgment of the Apex Court which is as follows:-

> **"12. 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:-**
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> **(i) Recovery from employees belonging to Class – III and Class – IV service (or Group 'C' and Group 'D' service).**
>
> **(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.**
>
> **(iii) Recovery from 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 iniquitious or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

On perusal of sub clause (ii) of the aforesaid judgment it is clear that no recovery can be affected from Class -III or Class- IV employee after his superannuation. Since long it was clarified that if there is no case of misrepresentation there cannot be any recovery. In view of the proposition laid down by the Apex Court in Rafiq Masih case (supra) the writ petition is required to be allowed to the extent of directing the respondents to refund the recovered amount as admitted in paragraph no. 8 of the counter affidavit to the petitioner within a period of three months from the date of receipt / production of copy of this order.

It is further clarified that if the said amount is not paid to the petitioner within the aforesaid time, thereafter the petitioner shall be entitled to get simple interest at the rate of 9 % @ which shall be calculated from the date of issuance of Annexure -1 i.e. order dated 8.6.2011. In such event the State would be at liberty to recover the interest amount from the pocket of concerned employee(s) / officer(s) responsible for delayed payment. All the respondents are directed to ensure compliance of this order in its letter and spirit within aforesaid time.

So far claim of emolument of the petitioner from the month of December 2010 to 7.6.2011 is concerned, this Court is not recording any opinion. If the so advised, petitioner may avail appropriate remedy

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

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30-10-2016
Transmission Date	N.A.