

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9811 of 2014

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Daya Shankar Prasad S/o Yogendra Prasad Resident of Village Baghra Margang,
P.S. Shahpur Patory, District Samastipur. At present residing In the house of Sri
L.B. Bariyar, Retired Income Tax Inspector, Bhola Talkies Road, Dharampur, P.S.
Samastipur, District Samastipur.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner, Department of Irrigation, Govt. of Bihar, Patna.
2. The Chief Engineer, Water Resources Department, Purnea.
3. The Superintending Engineer, Nahar Anchal, Purnea.
4. The Executive Engineer, Irrigation Department Murliganj, Madhepura.
5. The Accountant General (A&E), Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rohit Kumar, Adv.
Mr. J.N.Sinha, Adv.

For the Respondent/s : Mr. Kumar Manish, SC5
Mr. Deepak Kumar, AC to SC5

For the Accountant General: Mr. Uday Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 27-10-2016

Petitioner retired as Clerk in the Irrigation Division,
Murliganj, in the district of Madhepura on 21.1.2013. The order after
his superannuation on 6.1.2014, which is Annexure 4 to the writ
application and also under challenge, was issued to the petitioner,
wherein a direction for recovery was issued by the Chief Engineer,
Water Resources Department, Purnea. The reason for the said
recovery indicated in Annexure 4 is that the petitioner was granted
First Time Bound Promotion wrongly because he did not pass the
departmental examination. The order indicates that the First Time

Bound Promotion, which was given with effect from 7.1.1987, has also been withdrawn.

It is in this background that the writ application has been filed seeking quashing of Annexure 4.

The facts noted above are not matter of dispute. It is the decision taken by the superior authorities much after superannuation of the petitioner, which is the subject matter of dispute in the present writ application. The Court does not hold that there was no necessity to pass departmental examination before an employee could beget the benefit of First Time Bound Promotion. Petitioner had not passed the examination, therefore, in the very first place there was no occasion for the respondents to grant benefit of such kind to him alongwith large number of other employees. The other glaring fact is that after this grant, petitioner derived the benefit thereof for more than 2 and 1/2 decades. The realization dawned upon the authorities only after superannuation of the petitioner.

Grant of such benefit to the petitioner in the very first place was uncalled for but if it was granted, the State authorities should have remedied the situation at the earliest. Having failed to do so, they have difficulty in enforcing such orders or even passing such orders.

Court has reasons to say so because there are decisions on such issues, which have emerged at the level of the Hon'ble Supreme



Court. One of the relevant decision in this regard is the judgment rendered in the case of State of Punjab & ors. v. Rafiq Masih (White Washer) & ors., reported in (2015)4 SCC 334. After having extensively dealt with various submissions raised at the Bar, for the benefit of the litigants and even the State, the Hon'ble Supreme Court crystallized the proposition broadly in following words in paragraph 18 of the said decision:

"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 mad 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."

From what has been put in a nut-shell by the Hon'ble Apex Court in paragraph 18 of the case of Rafiq Masih (supra), surely, a case is made out in favour of the petitioner for quashing Annexure 4 because the case of the petitioner is covered on many aspects which has been envisaged in paragraph 18 of the said decision.

Writ application is allowed. Annexure 4, dated 6.1.2014, is quashed. If any recovery has been made from any of the entitlement of the petitioner by virtue of Annexure 4, then the same would be required to be refunded to the petitioner within a period of three months from the date of production of a copy of this order. The time frame so fixed by the Court has to be adhered to by all the respondents.

(Ajay Kumar Tripathi, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.10.2016
Transmission Date	NA