

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1133 of 2015

In

Civil Writ Jurisdiction Case No. 559 of 2011

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1. The State of Bihar.
 2. The Secretary, Road Construction Department, Govt. of Bihar, Patna.
 3. The Engineer-in-Chief-Cum-Additional Secretary-Cum-Special Secretary, Road Construction Department, Govt. of Bihar, Patna.
 4. The Chief Engineer (Traffic) South Bihar Wing, Road Construction Department, Govt. of Bihar, Patna.
 5. The Superintending Engineer, Bhojpur Road Circle, Road Construction Department, Ara.
 6. The Executive Engineer, Shahabad Road Division, Ara.

.... Appellant/s

Versus

1. Kapil Deo Mehta S/o Late Prasad Mehta, Resident of Pathari, P.O. Maula Nagar, p.S. - Atari, District - Gaya, presently posted as Correspondence Clerk, Shahabad Road Division, Ara.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. P.K. Verma, AAG-III
Mr. S.K. Sharma, A.C. to AAG-III
For the Respondent/s : Mr. S.B.K. Mangalam

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

4 10-11-2016

I.A. No.4741 of 2015

The interlocutory application has been filed for condoning the delay of three years 221 days in filing the appeal.

The circumstances, under which the delay has occurred, have been stated and further it is stated by learned AAG-3 that because of ill health of his Assistant Counsel who was assigned



task of drafting the appeal along with limitation petition and stay petition and who subsequently died, there was further delay.

On a consideration of the aforesaid facts and circumstances, the delay in filing the appeal is condoned.

I.A. No.4741 of 2015 is, accordingly, disposed of.

The appeal has been filed assailing the order dated 12.07.2011 passed in C.W.J.C. No.559 of 2011, by which the impugned order of re-fixation of date of promotion along with the recovery order was set aside only to the extent of recovery with the direction that if any recovery has been made, re-payment would be made to the petitioner.

Learned AAG-III has sought to assail the said order on various grounds. However, when he was asked to justify his stand on the basis of the recent decision in the case of State of Punjab and others vs. Rafiq Masih (White Washer) and others: (2015) 4 SCC 334, he was unable to do so in view of what has been held by the Apex Court in paragraph No.18 of the said judgment, which is reproduced below:-

“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 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:

- (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.”

It is not in dispute that the writ petitioner in the present matter was a correspondence clerk belonging to class-III category posted in the State Government and the recovery had been ordered on account of wrong grant of junior selection grade and senior selection grade without passing the accounts examination. The order has not been interfered with by a learned single Judge except to the extent of recovery relying upon certain decisions of the Supreme Court and of the Full Bench of this Court.

In view of what has been decided by the Supreme Court in the case of Rafiq Masih (supra), it is evident that no recovery can be made from the petitioner respondent in the matter.

The appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Rajendra Kumar Mishra, J)

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