

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.315 of 2017
IN
Civil Writ Jurisdiction Case No. 7776 of 2016**

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Vijoy Kumar Sinha son of Late Nand Kishore Prasad Sinha Resident of Mohalla -
Bari Mirzapur, P.O. Munger, P.S. Kashim Bazar, District - Munger, the retired
Senior Accounts Clerk, Road Construction Department, Road Division, Munger.

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.
3. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Engineer-in-chief-cum-Additional Commissioner-cum-Special Secretary Road Construction Department, Govt. of Bihar, Patna.
5. The Superintending Engineer, Road Construction Department, Road Circle, Munger.
6. The Executive Engineer, Road Construction Department, Road Division, Munger.

.... Respondent/s

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Appearance :

For the Appellant/s : Mrs. Anita Kumari, Mr. Shashi Bhushan
Kumar
For the Respondent/s : Mr.Jitendra Verma,AAG11

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 13-11-2017

Seeking exception to an order dated 15.12.2016 passed by
the learned Writ Court in CWJC No. 7776 of 2016 this appeal has
been filed under Clause 10 of the Letters Patent.

In the matter of granting first and second A.C.P. to the
petitioner certain orders were passed by fixing his pay and thereafter
modified which was challenged before the learned Writ Court. The



Writ Court after examining various aspects of the matter found that the petitioner was promoted as a Junior Accounts Clerk on 6.7.1979 in then pay scale of Rs.220-350/-, and thereafter he was granted exemption on 9.12.2006 from passing the Accounts Examination. However, in the meanwhile, as the petitioner was already granted a higher pay scale the error in fixation on the higher scale was withdrawn. The learned Writ Court did not find any error in the same but directed for not making any recovery on such wrong fixation in view of the law laid down by the Supreme Court in the case of *State of Punjab vrs. Rafiq Masih (White Washer) [(2015) 4 SCC 334]*. The learned Writ Court has held that the petitioner cannot be granted wrong benefit which was granted to him contrary to the ACP Rules and we see no reason warranting reconsideration for the simple reason that the petitioner while working as Tracer was adjusting against the sanctioned vacant post of Junior Accounts Clerk which carried a higher pays scale and the petitioner's contention is that this was not promotion cannot be accepted.

Accordingly, once the petitioner has received the benefit of higher pay scale the learned Writ Court has found that he was not entitled to any benefit under the ACP scheme which was granted on account of stagnation and when by adjustment the petitioner has received the higher pay scale the benefit wrongly granted to him can



be withdrawn but the order of recovery has been quashed in view of the law laid down by the Supreme Court.

The appeal is accordingly disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

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