

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 2372 of 2016

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Shivaji Sharma S/o Shri Raj Sharma, Resident of Village- Dhuriyari,
P.O- Bansibigha, P.S.- Ghoshi, District- Jehanabad..... Petitioner.
Versus

1. The State of Bihar.
2. The Chief Secretary, Water Resource Development Department,
State of Bihar, Sichai Bhawan, Old Secretariate, Patna.
3. The Chief Engineer, Water Resource Development Department,
Balmiki Nagar, Patna.
4. Sri Kailu Sardar S/o not known, Chief Engineer, Water Resources
Development Department, Balmiki Nagar, Camp Motihari, East
Champaran.
5. The Executive Engineer, Tirhut Canal Division No.- 1, Bettiah,
West Champaran.
6. The Superintending Engineer, Tirhut Canal, Anchal, Bettiah, West
Champaran.
7. Sri Rajiv Gupta S/o not known Head Clerk, Balmiki Nagar Camp
Motihari, East Champaran.

.... Respondents.

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Appearance :

For the Petitioner : Mr. Shree Kant Pandey, Adv.
For the State : Mr. Sita R. Yadav, GP-16
: Mr. Manoj Kumar, AC to GP-16.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 14-02-2017

Heard learned counsel for the petitioner and the State.

The petitioner seeks quashing of part of the
order/direction contained in the letter no. 1595 dated 10.12.2015
issued under the signature of the Executive Engineer, Tirhut Canal
Division No. 1, Bettiah, i.e. the respondent no. 5, as contained in
Annexure-6 in pursuance of the letter of the Chief Engineer, Water



Resource Department, Balmiki Nagar Camp Motihari, i.e., respondent no. 4, by which the earlier promotion to junior selection grade and, thereafter, further promotion in senior selection grade was rectified and the excess payment to the petitioner was directed to be recovered.

Counter affidavit has been filed on behalf of the State. It is stated in paragraph 5 that the petitioner was appointed as against the post Moharrir (Class-III post) on 16.05.1970. In the light of order dated 10.01.2007 passed in LPA Nos. 533 of 1996 and 534 of 1996, the petitioner was allowed pay-scale of Rs. 4,000-6,000/- which was admissible to all Moharrirs appointed prior to 20.12.2000. Later on, it appears that the scheme of time bound selection grade came into effect on 01.04.1981 and though the petitioner was appointed on 16.05.1970 but only after seven months of service he was granted promotion in Junior Selection Grade. He was further promoted in Senior Selection Grade in view of eleven years' service which is contrary to the scheme of time bound promotion. Since it was written in paragraph 4 of the order that if any defect is found in the order the same would be cancelled and excess payment would be recovered the impugned action has been taken. However, the petitioner has already retired in the month of February, 2009 and about seven years after his retirement, this stand



has been taken.

In my considered view, the impugned order cannot be faulted. However, so far the recovery part is concerned, in view of the Apex Court decision in the case of **State of Punjab and Ors. vs. Rafiq Masih (White Washer) etc. [2015(1) PLJR SC 261]** which lays down in clear terms that recovery from retired employees belonging to Class-III and Class-IV would not be permissible, it is held that though order cannot be faulted with but no recovery can be made in terms of Anneuxre-6. If any, recovery has already been made then that amount has to be refunded forthwith.

This disposes of the writ petition.

(Dr. Ravi Ranjan, J.)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.05.2017
Transmission Date	NA

