

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15781 of 2008

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Ram Naresh Prasad, S/o Lachhu Ram, Resident of Village Mohalla Mahalpur, P.O. Biharsharif, P.S. Bihar Sharif, District Nalanda. Presently working as Senior Mechanic Grade-II, posted at Hot Mix Plant, Bata More Hathidah Mokama under Road Construction Department, Vishwasaraia Bhawan.

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Old Secretariat, Patna.
2. The Principal Secretary, Road Construction Department, Vishwasaraia Bhawan, Patna.
3. The Engineer in Chief cum Special Secretary, Road Construction Department, Vishwasaraia Bhawan, Patna.
4. The Chief Engineer (Mechanical) Road Construction Wing (Mechanical) Vishwasaraia Bhawan, Patna.
5. The Finance Secretary, Government of Bihar, Patna.
6. The Superintending Engineer Mechanical N.H. Circle, Road Construction Department, Patna.
7. The Executive Engineer, Mechanical, Planning Division Shekhpura, Patna.
8. The Executive Engineer, National High Way Project Mechanical Division, P.W.D. Nawada.
9. The Sub-Divisional Officer, Mechanical, Planning Sub-Division, N.H. Sekhpura, Hawai Adda, Patna.
10. The Sub-Divisional Officer, Hot Mix Plant, Hathidah, Mokama.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumod Kr. Shrivastaw, Adv.
For the Respondent/s : Mr. P.K. Verma, AAG-3
Dr. Mankeshwar Tiwari, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 07-11-2017

Heard learned counsel for the petitioner and counsel for the State.

In this case, the petitioner is challenging the order dated 25.6.1997 passed by the Executive Engineer, National Highway Mechanical Division, Dehri-on-Sone by which excess payment, which has been made to the petitioner, having been directed to be recovered



in 100 installments and also challenging the order dated 27.3.1997 passed by the Executive Engineer, National Highway Mechanical Division, Dehri-on-Sone, whereby and whereunder, he has shown intention to recover the extra amount which has been paid to the petitioner. Both the annexure are under challenge before this Court.

The short fact of this case is that the petitioner was appointed as Junior Mechanic Grade-II on 9.9.1972, was posted under the Sub-Divisional Officer, Mechanical N.H. Sub-Division, Biharsharif, Nalanda but, in fact, joined on 11.9.1972. The petitioner was promoted from the post of Junior Mechanic Grade-II to Junior Mechanic Grade-I on 7.2.1981 and, in the year 2002, he was promoted to the post of Senior Mechanic Grade-II with effect from 29.5.1997. While fixing the salary on the promoted post, it was found that the salary of the petitioner from the initial stage was fixed wrongly and, after correcting the fixation of the salary, direction was issued that there will be recovery of excess amount and finally the order dated 25.6.1997 has been passed for recovery of the said amount in 100 installments.

Learned counsel for the petitioner has submitted that there was no suppression, misrepresentation not any effort was taken by the petitioner for action in the matter of fixation of salary it is the respondent authority fixed the salary, there was no role of the



petitioner in fixing his salary on the post of Junior Mechanic Grade-II, he had/has no understanding in what manner the salary is fixed. Further submitted that he has not done any wrong in any manner for fixation of his salary and, as such, the recovery of excess payment of salary is completely illegal, placing reliance on the order passed by the Hon'ble Supreme Court in the case of *Sahib Ram Vs. State of Haryana & Ors.* reported in *1995 Supp. (1) SCC 18* and subsequently it has been followed in the case of *State of Punjab Vs. Rafiqu Masih* reported in *2015(1) PLJR 261 SC* where the Hon'ble Supreme Court has considered all the previous judgments and has arrived to an opinion that the persons who are appointed on Class-III to Class-IV post, when there is no allegation of any mistake committed or misrepresentation, the recovery of amount will cause great hardship to the person concerned and, in paragraph no.12, the Hon'ble Apex Court has laid down principle where recovery has been held to be bad and quashed the order of recovery, directed for refund of the recovered amount. Further judgment has been reliance in the case of *State of Bihar & Ors. Vs. Dudnath Chaudhary* reported in *2016(2) PLJR 451* wherein identical issue was raised, there also this Court has found if there is no illegality committed by the employee in the matter of fixation of salary by way of misrepresentation and/or fraud, in such event, it will not be proper to recover the amount later on from the low paid



employee.

The State in its counter affidavit has said that the fixation was wrongly done and nowhere it has been mentioned that the fixation was not done at the behest of the petitioner rather it was natural action taken by the officer concerned but submitted that direction for recovery of excess payment cannot be held to be illegal.

Having considered the rival contentions of the parties in view of the judgments passed in the case of Sahib Ram (supra) and the case of Rafiqu Masih (supra), when there is no allegation of commission of fraud and misrepresentation, this Court is of the view that the order for recovery of the extra amount is illegal and not sustainable in law.

In that view of the matter, both the orders dated 25.6.1997 and the order dated 27.3.1997 are quashed and direction is given to return the recovered amount.

With the aforementioned observation and direction, this writ application is allowed to the extent indicated above.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.11.2017
Transmission Date	NA

