

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.418 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 322 of 2001**

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1. Schedule Castes Schedule Tribe Rajkiya Krit Madhyamik Shikshak Sangh, Bihar through its the then General Secretary, Raja Ram son of Ram Kishun Ram, Resident of Village Thiloi, P.O.- Dhawphokhar, P.S.- Karamchat, District- Kaimur at Bhabua the then Assistant Teacher, J.D. Patliputra High School, Patna Police Station- Kadamkuan, District- Patna.
 2. Ram Deo Singh son of Late Bishun Singh R/O village- Chausandu, P.O.- Manthur, P.S.- Atari, District- Gaya, the then President of Schedule Castes Schedule Tribe Rajkiya Krit Shikshak Sangh, Magadh Division Gaya, the then President of Schedule Castes Schedule Tribe Rajkiyakrit Shikshak Sangh Magadh Division, Gaya, the then Assistant Teacher, High School, Nardiganj, Police Station- Nardiganj, District- Nawada.
 3. Ram Rup Chaudhary, S/o Late Sibu Chaudhary, Resident of village- Barki Ularganj, P.S.- Kurtha, P.O.- Gaya, District- Gaya, the then General Secretary, Schedule Castes Schedule Tribe Rajkiya Krit Shikshak Sangh, Magadh Division, Gaya District Gaya, the then Assistant Teacher - Chandra Shekhar High School, Gaya P.S.- Kotwali Gaya District -Gaya.
 4. Adalat Harijan S/o Kundan Harijan, Resident of village- Barej, P.S.- Daudpur, District- Saran (Chapra) the then Assistant Teacher, Lokmanya Tilak High School, Guthani P.S. & District- Siwan.

.... Appellant/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Old Secretariat, Patna
2. The Secretary, Secondary Education, Human Resources Development Department (now Education Department), Government of Bihar, New Secretariat, Patna.
3. The Secretary, Finance, Government of Bihar, Patna
4. The Special Secretary, Finance, Government of Bihar, Patna
5. The Reservation Commissioner, Department of Personnel and Administrative Reforms, Government of Bihar, Patna
6. The Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna
7. The Director, Administration, Secondary Education, Department of Human Resources Development, Government of Bihar, Budh Marg, Patna.
8. The Regional Deputy Director, Education, Magadh Division, Gaya
9. The Regional Deputy Director, Education Saran Division, Chapra.

.... Respondents / Respondents

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Appearance:

For the Appellant/s : Mr. Vishwambhar Prasad, Advocate.
For the Respondent/s : Mr. Sunil Kumar Mandal, SC 3,
Mr. Arjun Prasad, AC to SC 3 and
Ms. Neelam Kumari, AC to SC 3.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 11-07-2017

Heard counsel for the appellants and counsel for the State.

The Writ Application of these petitioners – appellants was dismissed by the learned Single Judge because there is a categorical finding keeping in view the circulars and the notifications of the State of Bihar that these petitioners or members of the association were not entitled for promotion on the post of Assistant Teacher on the basis of Kalawadhi of five years. They all became beneficiaries as also of Junior Selection Grade and Senior Selection Grade by calculating five years of Kalawadhi when the Finance Department's notification laid down the minimum period of 12 years.

By virtue of such grant of time bound promotion, on a misinterpretation or misrepresentation of five years of Kalawadhi for Scheduled Castes and Scheduled Tribes category candidates financial benefit was derived. Since such promotion or financial benefit was governed by Finance Department's Circular no. 6022 (F) (2) dated 18.12.1989 there was an obvious mischief by pressing into service another notification relating to Kalawadhi to derive or corner financial



benefit much much before time and entitlement. Since such promotions were held to be bad and were annulled, order for recovery as well was passed and an effort was made on behalf of these appellants to at least write off the steps taken for recovery.

The learned Single Judge refused to pass any order stopping recovery to be made from these appellants on the ground that not only was the benefit given illegally but also the fact that the notifications or orders granting such benefit itself carried a clause and undertaking by the appellants that in case any irregularity was found in the sanction order, the amount paid in excess shall be liable to be recovered. Since the promotion order was a conditional order and there is no argument with regard to non-entitlement of the benefit of promotion then the natural corollary of recovery will flow. The tax payers' money is not required to be squandered on government servants' spacious plea of entitlement. They can only earn and hold on to that benefit which is supported by law and the circulars relating to such grant.

The benefit of promotion is out and out illegal *per se*. The learned Single Judge rightly did not interfere with the order of recovery. Even we are not impressed by the argument and submission of the counsel for the appellants that their cases will come within the ambit of the decision of the Hon'ble Apex Court rendered in the case



of **State of Punjab & Ors. v. Rafique Masih**, reported in **2015 (1) PLJR 261 (SC)**. The appeal is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
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