

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.746 of 2016
IN
Civil Writ Jurisdiction Case No. 13962 of 2008**

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Jai Mangal Prasad son of Late Sita Ram Gope, resident of Village- Hemdah, P.S.-
Wazirganj and District- Nawada.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Chief Engineer, Water Resources (Irrigation) Department, Government of Bihar, Anisabad, Patna.
3. The Executive Engineer, Water Ways Division, Nalanda at Biharsharif.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bhola Kumar, Advocate
For the Respondent/s : Mr. Anil Kumar Sinha, GA-9

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 18-07-2017

The delay in filing the appeal is condoned.

I.A. No. 3028 of 2016 stands allowed and disposed of.

Seeking exception to an order dated 23.9.2015 passed by
the Writ Court in CWJC No. 13962 of 2008, this appeal has been filed
under Clause 10 of the Letters Patent.

The writ petitioner-appellant was granted accelerated
promotion to the next higher grade initially with effect from 9.8.1999.
However, subsequently by the order dated 18.2.2008, impugned in the
writ petition, on the ground that petitioner did not pass the



departmental examination, the benefit granted to him from 9.8.1999 was withdrawn and it was granted with effect from 3.12.2004, i.e. the date on which he passed the departmental examination. The learned Writ Court having taken note of the ACP Rules, sub-rule (5) of Rule 4 found that passing of the departmental examination is pre-requisite and if the respondents have granted the benefit of ACP with effect from the date the petitioner passed the examination, i.e., 3.12.2004, there is no error in the same.

During the course of hearing today, the only point canvassed before us is that when the financial benefit of the ACP was granted to the writ petitioner-appellant initially with effect from 9.8.1999 and it was subsequently with effect from 3.12.2004, the recovery ordered with regard to the monetary benefit granted to the petitioner after his retirement is unsustainable in view of the law laid down in the case of **State of Punjab & Ors. Vs. Rafiq Masih (white washer) and Ors.: (2015) 4 SCC 334.**

On going through the averments made in the writ petition and the counter affidavit filed by the State Government, we see that the benefit was initially granted to the writ petitioner with effect from 9.8.1999 without any misrepresentation or act of omission or commission on the part of the writ petitioner-appellant herein, it was a departmental action in granting benefit to the writ petitioner



purportedly in view of certain circular applicable in the matter and the mistake committed by the State Government having been corrected at the instance of the State Government, the law laid down in the case of **Rafiq Masih** (supra) would apply to the case of the writ petitioner-appellant and the respondents, even though they are entitled to grant promotion with effect from 3.12.2004, and they have revised the pay but they are prevented under law from making recovery of the benefit particularly monetary benefit which was granted to the writ petitioner-appellant between 9.8.1999 to 3.12.2004.

Keeping in view the above, we allow the appeal and the writ petition in part. Even though the order granting ACP dated 3.12.2004 is upheld but the direction for recovery of monetary benefit for the period from 9.8.1999 to 3.12.2004 is quashed. The respondents are only granted liberty to re-fix the date of grant of ACP.

With the aforesaid observations, we allow the writ petition and the appeal in part and dispose of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

S.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.07.2017
Transmission Date	

