

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7417 of 2016

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Balmukund Prasad S/o Late Gopi Prasad Resident of Village - Rampur Kharjamma,
P.O. Satnag, P.S. Chandi, District - Nalanda (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Human Resource Development Department, Government of Bihar, Patna.
2. The Principal Secretary Human Resource Development Department, Government of Bihar, Patna.
3. The District Education Officer, Nalanda, Bihar.
4. The District Education Officer, Nalanda, Bihar.
5. The District Programme Officer, Education Establishment Office of D.E.O. Nalanda.
6. The Block Education Officer, Chandi, Nalanda.
7. The Accountant General, Bihar, Patna.
8. The Assistant Accountant General, Officer of the Account General (A & E) Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 19-12-2017

Heard learned counsel for the petitioner; State and
Accountant General.

2. The petitioner has moved the Court for the following
reliefs:

“(i) For issuance of a direction to the respondent to correct the assessment of retirement benefit of the petitioner passed by District Programme Officer Education Establishment o/o D.E.O. Nalanda (the respondent no.-5) vide memo no.-3362 dated 31.10.2015 in which the earned leaved of the petitioner was directed to the paid only for 252 days in spite of 287 days i.e. 35 days less for which the letter was issued by the D.S.E. Nalanda vide letter no. 2158 dated 19-06-2009 and the



competent authority made a categorical remark in the service book of the petitioner.

(ii) For issuance of a direction to the respondent concerned for making correct assessment of the pension of the petitioner which was issued by Resp No – 8 vide P.P.O. No. 201511102576 dated 26-11-2015.

(iii) For issuance of a direction to the respondent to correct the assessment of the last pay drawn by the petitioner which was reduced from 22000/- per month to Rs. 21360/- and the amount of Rs. 18628/- was reduced under the head of gratuity which has now been calculated Rs. 654892/- from Rs. 673520/- earlier.

(iv) For any other relief/reliefs for which the petitioner is found entitled to be in the facts and circumstances of the case.”

3. In sum and substance, today the submission of learned counsel for the petitioner is that even if he has been paid something extra by mistake, he not being the Drawing and Disbursing Officer and having no role in such fixation, there cannot be any recovery. For such proposition, he relied upon a decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported as **(2015)4 SCC 334**.

4. On a query of the Court to learned counsel for the State as to whether there was any mistake or laches or fault on the part of the petitioner in drawing excess/extra emoluments, the answer is in the negative.

5. Having considered the matter, the writ petition stands disposed off holding that there cannot be any recovery made from



the retiral dues of the petitioner for alleged excess payment made to him beyond his entitlement. However, his pensionary benefits shall be fixed and monthly pension also fixed in terms of his correct entitlement and not in terms of his last pay drawn by him. To that extent, the authorities are justified in reducing the pension of the petitioner, as earlier the same was fixed in a higher scale, which is now required to be reduced, as per his entitlement. With regard to whatever recovery has been made, the same shall be returned to him within one month from the date of production of a copy of this order before the respondent no. 5.

(Ahsanuddin Amanullah, J.)

P. Kumar

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