

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1174 of 2014
IN
Civil Writ Jurisdiction Case No. 6763 of 2008**

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Kamal Nayan Prasad Singh S/o Late Ram Anugrah Singh Resident of Village Isua,
P.S. Sarmera, District Nalanda.

.... Appellant

Versus

1. The Bihar State Electricity Board, Bailey Road, Patna.
2. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
3. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
4. The Director of Accountant (Secretariat), Bihar State Electricity Board, Bailey Road, Patna.
5. The Finance Controller-II, Vidyut Bhawan, Bailey Road, Patna.
6. The Electrical Executive Engineer, Electric Supply, Sarmera, Shaikhpura.

.... Respondents

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Appearance :

For the Appellant : Mr. Devendra Prasad Singh, Advocate
For the Respondents : Mrs. Nivedita Nirvikar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 19-04-2017

When the appellant filed the writ application for release of his deducted gratuity, amounting to Rs.41,358.37, and also to pay leave encashment etc. including payment of salary for the period 01.04.1997 to 31.01.1998, the learned single Judge dismissed the writ application on 11.04.2014 relying on the judgment of the Hon'ble Apex Court in the case of *Chandi Prasad Uniyal & Others vs. The State of Uttarakhand & Others*, reported in (2012) 8 SCC 417.

However, the law has progressed and thereafter yet



another decision has been rendered by the Hon’ble Apex Court in the case of *State of Punjab vs. Rafiq Masih*, reported in (2015) 4 SCC 334, where even the case of *Chandi Prasad Uniyal* (supra) has been explained.

Admitted position is that the appellant was a Class III employee when, for the so-called excess payment which he had received on account of wrong fixation of his pay-scale, recovery was sought to be effected after superannuation. The Hon’ble Supreme Court has very clearly laid down in the concluding paragraph of *Rafiq Masih* (supra) that it is not permissible.

The law, as it stands today, compels the Division Bench to set aside the order dated 11.04.2014, allow the Letters Patent Appeal and direct the respondents to release the deducted amount and other legal dues of the appellant without any further delay within a period of six weeks.

Letters Patent Appeal stands allowed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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