

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 13425 of 2015

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Smt. Leela Shrivastawa wife of late Radha Raman Permanent address at C/o late Ram Lakhan Lal, Langartoli, P.S Gandhi Maidan, District - Patna at present resident of 7, Prachi Dham Colony P.O. Daya Bagh, P.S.- New Agra, District - Agra (U.P)

.... Petitioner

Versus

1. The State of Bihar
2. The Registrar Co-operative Societies ,Bihar Patna.
3. The Joint Registrar, Co-operative Societies, Patna Division, Patna.
4. Deputy Registrar, Co-operative Societies, Patna Division Patna.
5. District Treasury Officer, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Sinha

For the Respondent/s : AC to Standing Counsel - 23

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

2. 10-08-2017 Heard Sri Manoj Kumar Sinha, learned counsel for the petitioner and learned A.C. to Standing Counsel – 23.

2. The petitioner, who took voluntary retirement with effect from 05-08-2014, has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to quash a letter no. 1144 dated 26-11-2014 issued by the Deputy Registrar, Co-operative Societies, Patna Division, Patna (**Annexure – 1** to the writ petition), whereby it was directed to recover an amount of **Rs. 84,273/-** (eighty four thousand two hundred & seventy three) from gratuity amount of the petitioner.



3. It was submitted by learned counsel for the petitioner that the petitioner had taken voluntary retirement and finally, she superannuated with effect from 05-08-2014. Subsequently, without any notice to the petitioner, by the impugned order i.e. **Annexure - 1** to the writ petition, direction was given to recover the amount i.e. Rs. 84,273/- from the gratuity amount. Learned counsel for the petitioner submits that subsequently, pursuant to Annexure - 1 to the writ petition, the said amount has already been deducted from the gratuity amount. According to learned counsel for the petitioner, the action of the Government official was completely illegal and that too contrary to the settled principle of natural justice. He further submits that after retirement of an employee, if there was no case of getting any advantage by misrepresentation or suppression of fact, then in that event, no recovery is permissible. He has placed heavy reliance on a judgment of the Supreme Court reported in **2015 (1) PLJR (SC) 261 {State of Punjab and others Vs. Rafique Masih (White Washer)}**, which categorically states that in case of retirement of Class III or Class IV employee, no recovery can be effected. He has specifically referred to paragraph 12 of the



said judgment, which is quoted here-in-below:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group ‘C’ and Group ‘D’ service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be



iniquitous or harsh or arbitrary to such an extent, as would far out weigh the equitable balance of the employer's right to recover."

4. By way of placing reliance on the judgment of the Supreme Court as well as arguing that the petitioner has not received any excess payment by way of misrepresentation or fraud, learned counsel for the petitioner submits that there was no question for passing any order for recovery of such huge amount from her gratuity, that too after her retirement.

5. Learned State counsel has opposed the prayer and by way of referring to fact disclosed in the counter affidavit submits that the petitioner had requested the Drawing and Disbursing officer for 'No Dues Certificate', even after deducting any outstanding amount. She submits that once petitioner herself has accepted this fact, there is no question to retreat from her own stand. According to learned State counsel, the order impugned requires no interference and writ petition is fit to be rejected.

6. Besides hearing learned counsel for the parties, I have perused the materials on record. In the counter affidavit, it has not been stated that the petitioner had received excess



payment by misrepresentation or committing fraud. It is also an admitted fact that petitioner was allowed to retire on 05-08-2014 and thereafter, unanimously, an order was issued on 26-11-2014 i.e. Annexure – 1 to the writ petition whereby it was directed to recover the excess amount of Rs. 84,273/-.

7. Considering the ratio laid down by the Apex Court in **Rafiq Masih's case (supra)**, the Court is of the opinion that the recovery order is not sustainable in the eye of law.

8. Accordingly, the order contained in **Annexure – 1** i.e. letter no. 1144 dated 26-11-2014 issued by the Deputy Registrar, Co-operative Societies, Patna Division, Patna is hereby set aside, with a direction to the respondent to refund the recovered amount to the petitioner within a period of eight weeks from the date of receipt/production of a copy of this order. It is made clear that if the recovered amount i.e. Rs. 84,273/- is not credited to the account of the petitioner within specified time, then the petitioner shall be entitled to get interest on the said amount from the date of recovery from the gratuity amount of the petitioner with simple interest @ 8% per annum. In that event, the respondent/State would be at



liberty to recover the interest amount from the pocket of officer/employee responsible for non-implementation of the order of this Court within time.

9. The writ petition is allowed.

(Rakesh Kumar, J.)

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