IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5022 of 2017

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Lajwanti Kumari, Wife of Sri Bishnudeo Prasad, Resident of village - Madhepur, P.O. Khakhri, P.S. Kashi Chak, District - Gaya

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The District Education Officer, Nawada
3. The District Programme officer, Establishment, Nawada
4. The Block Education officer, Warsaliganj, Nawada
5. The Accountant General (A&E), Bihar, Patna
6. The Senior Accounts officer, office of the Accountant General (A&E), Bihar, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ram Hriday Prasad, Advocate
		Ms. Maruti Kumari, Advocate
For the State	:	Mr. J.P.Kishore, AC to SC13
For Acct. General	:	Mr. Raghwanand, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

3 09-03-2018 Heard learned counsel for the petitioner, State and the Accountant General.

In paragraph nos. 7 and 8 of the instant writ petition the petitioner has prayed for a direction to refund the amount of Rs. 1,74,234/- recovered from the retirement benefits illegally and arbitrarily.

Learned counsel for the petitioner, with reference to paragraph 7 onwards submits that the petitioner has not committed any fraud or misrepresentation in the matter of payment. He submitted that the petitioner superannuated on 30.6.2007 and recovery was made after her superannuation pursuant to the letter dated 11.10.2007 of the Senior Accounts Officer, Accountant General office.

Learned counsel for the petitioner placing reliance on the judgment of the Apex Court in the case of S**tate of Punjab & Ors. Vs. Rafiq Masih (white washer), etc.: 2015 (1), PLJR (SC) 261= (2015) 4 SCC 334**, submits that the Apex Court has already held out that where the recovery is made after superannuation of employee like the petitioner, the respondents are not permitted to make any recovery. Para-12 of the judgment is quoted 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
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> (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 outweigh the equitable balance of the employer's right to recover."

Considering the judgment of the Apex Court, the writ petition is disposed of with a direction to the respondents to act in accordance with law laid down by the Apex Court in Rafiq Masih case (supra) and pass appropriate order within a maximum period of 60 days from the date of receipt/production of a copy of this order and necessary action may be taken to refund the amount recovered from the petitioner.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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