

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.98 of 2018

In

Civil Writ Jurisdiction Case No.4880 of 2017

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1. The State of Bihar through the Principal Secretary, Minor Irrigation Department, Government of Bihar, Patna.
 2. The Chief Engineer, Minor Irrigation Department, Bhagalpur.
 3. The Superintending Engineer, Minor Irrigation Circle, Water Resource Department, Saharsa.
 4. The Executive Engineer, Tubewell Division, Minor Irrigation Division, Water Resource Department, Madhepura.
 5. The Treasury Officer, Madhepura.
 6. The District Provident Fund Officer, Madhepura.

... .. Appellant/s

Versus

Rajnish Thakur, Son of late Buddhilal Thakur, Resident of Village & Post Achara, Police Station Phulkaha, District Araria

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, AAG 4
		Mr. Deepak Sahay Jamuar (AC TO AAG 4)
For the Respondent/s	:	Mr. Sanjeev Kumar Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-04-2018

Delay of 176 days in filing of this appeal is condoned.

I.A. No.416 of 2018 stands allowed and disposed of.

In the matter of recovery from pay on account of wrong fixation in the case of class III employee, the learned Writ Court has applied the principle laid down by the Hon'ble Supreme Court in the case of **State of Punjab and others vs. Rafiq Masih (What Washer)** [2015(1) PLJR (SC 261)] and after holding that the five



situations indicated in the judgment rendered by the Hon'ble Supreme Court prohibiting recovery which read as under:-

- “(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.”

class (i) & (ii) apply in the case of the present writ petitioner-respondent, has interfered with the recovery made. In doing so, In our considered view, the learned Writ Court has not committed any error.

Even though Sri Anjani Kumar, learned Senior Counsel by placing reliance on subsequent judgment of the Supreme Court in the case of **High Court of Punjab & Haryana v. Jagdev Singh**, 2016 (4) PLJR (SC) 78, tried to indicate that the principle laid down in the case of **Rafiq Masih (What Washer) (supra)**



will not apply, we are of the considered view that in the case of **Jagdev Singh** (supra), the issue was pertaining to the recovery from a judicial officer by the High Court of Punjab and in the said judgment, five impermissible categories in which the recovery cannot be made have not been interfered with and as this case falls in category (i) & (ii) where recovery is impermissible, we see no reason to make any indulgence into the matter. The appeal stands dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Sunil/-

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