

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1797 of 2017

IN

Civil Writ Jurisdiction Case No. 14485 of 2016

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Nisar Ahmad Son of late Hatim Ali, Resident of Village - Shahkund, Police Station-Shahkund, District-Bhagalpur

.... Petitioner - Appellant

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna
3. The Superintending of Police (C) Crime Investigation Department, Old Secretariat, Bihar, Patna
4. The Treasury Officer, Bhagalpur
5. The Accountant General, Bihar, Patna

.... Respondents – Respondents.

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Appearance:

For the Appellant/s : Mr. Md. Najmul Hodda
For the Respondent/s : Mr. P.K.VERMA -AAG3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 28-03-2018

Keeping in view the law laid down by the Hon'ble Supreme Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih (Whitewasher)** [(2014) 8 SCC 883] once the amount was paid to the petitioner in the matter of re-fixation of pay and after retirement, in the absence of there being any misrepresentation, fraud on the part of the petitioner, even if re-fixation was permissible recovery of Rs. 88,630/- was not permissible as this amount was given to the petitioner while in service after re-fixation of pay due to the error of the department which is not attributed as a *mala fide* act or



misrepresentation on the part of the petitioner.

Accordingly, applying the law laid down by the Hon’ble Supreme Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih (Whitewasher)** [(2014) 8 SCC 883], we allow this appeal in part, quash the order dated 17.11.2017 passed by the Writ Court so also the recovery of Rs. 88,630/- from the pensionary benefits of the petitioner even though the respondents are entitled to re-fixation of pay of the petitioner and thereafter recalculate the pensionary benefits to be given to the petitioner but recovery of Rs. 88,630/- from the pensionary benefits of the petitioner is quashed.

In view of the aforesaid, to the extent indicated above the appeal is allowed and disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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