

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4352 of 2012

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Awadhesh Kumar Shrivastava S/O Late Birendra Pratap Narayan R/O - Hans
Niwas, North Patliputra Colony, P.S.- Patliputra, District- Patna

... .. Petitioner/S

Versus

1. The State Of Bihar , Through The Principal Secretary, Human Resources Development, Govt. Of Bihar, Patna
2. The Collector, Patna
3. The District Education Officer, Patna
4. The Head Ministress Bihar Vidyapith Swanlamban High School, Sadakat Ashram, Patna
5. The Accountant General (A & E) Bihar, Bir Chand Patel Path, Patna
6. The Account Officer, Officer Of The Accountant General (A & E) Bihar, Bir Chand Patel Path, Patna

... .. Respondent/s

with

Miscellaneous Jurisdiction Case No. 486 of 2013

In

Civil Writ Jurisdiction Case No.4352 of 2012

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Awadhesh Kumar Shrivastava S/O Late Birendra Pratap Narayan R/O Hans
Niwas, North Patliputra Colony, P.S- Patliputra, District- Patna.

... .. Petitioner/S

Versus

1. The State Of Bihar Through Mr. Amarjit Sinha The Principal Secretary, Human Resources Development Government Of Bihar, Patna.
2. Mr. N. Sharvan Kumar S/O The Collector, Patna.
3. Mr. Arun Kumar Sharma S/O The District Education Officer, Patna.
4. Smt. Sujata Ojha D/O The Head Mistress, Bihar Vidyapith Swanlamban High School, Sadakat Asharam, Patna.
5. Mr. I.S.D. Dhariwal, S/O The Accountant General (A & E) li, Bihar Birchand Patel Path, Patna.
6. Sri Kusheshwar Pandit The Account Officer, Office Of The Accountant General (A & E), Bihar, Bir Chand Patel Path, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dhananjay Kumar, Advocate
	:	Mr. Rakesh Kumar Srivastava
For the State	:	Mr. Sanjay Prasad, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT



Date : 29-06-2018

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

2. Manyfold submissions have been advanced by Mr. Dhananjay Kumar, learned counsel for the petitioner. The dispute in the present writ application is whether the petitioner is entitled to one increment or not. There is no dispute that petitioner was paid salary not on the basis of forgery or misrepresentation. It is also a fact that the petitioner has now superannuated.

3. In the aforesaid circumstances the Court is constrained to hold that after the judgment of the Apex Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih (white washer), etc.: 2015 (1), PLJR (SC) 261= (2015) 4 SCC 334**, recovery from the superannuated employee is not permissible if the alleged excess recovered amount was not paid to the employee on the basis of forgery or misrepresentation.

4. In view of the law laid down by the Apex Court in the case of **Rafiq Masih** (supra), the order dated 03.01.2012, contained in Annexure-8, so far as the recovery is concerned, cannot sustain. It is accordingly quashed. The Court is not inclined to approve the grant of one increment which was passed for determination of pay scale during the service period of the petitioner. The impugned order to that extent is not disturbed.



5. The respondents are required to work out the entitlement of pension and other pensionary benefits after reducing one increment from the salary for the purpose of determination of pension and pensionary benefits.

6. In view of the above, the respondents are hereby directed to refund the amount recovered from the petitioner pursuant to Annexure-8 within a maximum period of 60 days from the dated of receipt/production of a copy of this order.

7. Adverting to the MJC Application which was filed by the petitioner alleging violation of the interim order passed by the Court, the same is disposed of with a direction to the respondent to refund the recover amount within a maximum period of two months from the date of receipt/production of a copy of this order.

8. With the aforesaid, both the writ petition as well as the MJC Application stand disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
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