

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13581 of 2014

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Shiv Bachan Ram, Son of Late Sri Motilal Ram, Resident of Village- Panwari,
Police Station- Sikrahata, District- Bhojpur at Ara. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Govt. of Bihar, Patna.
2. The Director, Secondary Education, Education Department, Bihar, Patna.
3. The Regional Deputy Director of Education, Patna, Division, Patna.
4. The District Education Officer, Rohtas at Sasaram.
5. The Accountant General, Bihar, Birchand Patel Marg, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vishwambhar Prasad, Advocate

For the Respondent/s : Mr. Ranvijay Singh, Ac to SC-23

For the Accountant General : Mr. Raghwanand, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 10-09-2018

Heard learned counsel for the petitioner and State as
well as Accountant General.

2. Learned counsel appearing on behalf of the petitioner submits that the petitioner superannuated on 30.09.2009. After superannuation, the respondents have reduced the pay scale of the petitioner. He further submits that after the order of the Writ Court in C.W.J.C. No. 2907 of 2011, the matter would have been decided by the Divisional Education Establishment Committee, but Regional Deputy Director of Education, Patna Division, Patna has passed the order, who lacks jurisdiction. In addition thereto, he submits that the Regional Deputy Director of Education, Patna Division, Patna has adopted two different yardstick, while deciding similar issue, he has approved the pay scale of similarly circumstanced other, but in the



case of the petitioner different yardstick was followed by the Regional Deputy Director of Education, Patna Division, Patna and such decision is per se arbitrary, discriminatory and unsustainable in the eye of law. He further submits that in view of the judgment of the Apex Court in the case of **State of Punjab & Ors vs. Rafiq Masih**, reported in **(2015) 4 SCC 334**, the action of the respondents in directing recovery after superannuation is unsustainable.

3. The present writ application has been filed on 07.08.2014, but even after four years, no counter affidavit has been filed.

4. Under the aforesaid circumstance, the Court is constrained to decide the writ application on the basis of the pleading available on the record and the legal submission advanced on behalf of the petitioner.

5. So far as application of judgment of the Apex Court in the case of **State of Punjab & Ors vs. Rafiq Masih** (supra) is concerned, on consideration of the peculiar facts of the case, the Court is of the view that after superannuation, the recovery is impermissible unless it is a case of fraud or misrepresentation committed by the petitioner and as such the Court cannot approve the case of the respondents in directing for recovery.

6. So far as the other issue of discrimination is concerned, the respondents have to see that similar treatment should



be extended to the petitioner as similarly circumstanced have been given the same benefit, particularly in view of the Litigation Policy contained in para 4 (c), which is quoted herein below:

4. C. A good number of cases are from the category of similar cases. Each Government Department will aim to consider and settle the claim of the representationist/applicant-employee/ citizen, if the claim is found covered by any decision of the Court. Many service matters of this nature, can be disposed of at the level of the Department itself without compelling the litigant to come to the Court. In this manner, the Government Departments would be acting as efficient litigants.”

7. This aspect of the matter similar treatment under Litigation Policy, 2011 was considered by the Full Bench in the case of **Amresh Kumar Singh Vs. The State of Bihar & Anr.**, reported in **2018 (2) PLJR 929**.

8. The third aspect as to the jurisdiction of the Regional Deputy Director of Education, Patna Division, Patna is concerned, the Court is prima facie of the view that the matter would have been placed before the Divisional Education Establishment Committee and not before the Regional Deputy Director of Education, Patna Division, Patna.

9. Accordingly, the order as contained in Memo No.



167 dated 05.02.3013 (Annexure-8) cannot sustain, it is quashed. The matter is remitted to the Divisional Education Establishment Committee for fresh decision. The Divisional Education Establishment Committee shall examine the claim of the petitioner and if it is found that similarly circumstanced others have been granted such benefit, similar benefit should be granted in the light of Litigation Policy and Full Bench judgment reported in 2018 (2) PLJR 929.

10. So far as the recovery is concerned, in the absence of fraud or misrepresentation recovery is not permissible after superannuation in the light of the judgment of the Apex Court in the case of **State of Punjab & Ors vs. Rafiq Masih** (supra).

11. The respondents are directed to take fresh decision as to the entitlement of the petitioner for grant of similar pay scale like the similarly circumstanced within a period of four months from the date of receipt/production of a copy of this order.

12. With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	.09.2018
Transmission Date	

