

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19201 of 2010

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SURESH JHA S/O LATE ACHCHINAND JHA R/O CR.NO. 46F, KOSHI
SHIVIR, BHIMNAGAR, P.O.- BHIMNAGAR, DISTT.- SUPAUL

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. THE PRINCIPAL SECRETARY, DEPARTMENT OF WATER RESOURCES
GOVT. OF BIHAR, PATNA
3. THE PRINCIPAL SECRETARY, DEPARTMENT OF FINANCE GOVT. OF
BIHAR, PATNA
4. THE CHIEF ENGINEER, DEPARTMENT OF WATER RESOURCES
BIRPUR (SUPAUL)
5. THE SUPERINTENDING ENGINEER, CANAL CIRCLE DEPARTMENT
OF WATER RESOURCES, SAHARSA
6. THE EXECUTIVE ENGINEER, IRRIGATION DIVISION, DEPARTMENT
OF WATER RESOURCES BIRPUR(SUPAUL)
7. THE DISTRICT ACCOUNTS OFFICER, SAHARSA
8. THE ACCOUNTANT GENERAL (A/R), BIHAR, BIRCHAND PATEL
PATH, PATNA

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mithilesh Kumar
For the Respondent/s : Mr. (Sc11)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 26-06-2018 The present writ petition has been filed for quashing

the order dated 23.05.2010 issued by the Respondent No. 6

cancelling the pay benefits and further a sum of Rs. 80,253/- has

been directed to be refunded.

The petitioner has superannuated from services from

the post of Helper with effect from 31.12.2009.

Admittedly, the recovery has been sought to be made

after superannuation of the petitioner, which is impermissible

under the law.



Reference, in this regard, be had to the judgments of the Hon'ble Apex Court reported in **2009 (3) SCC 475 (Syed Abdul Quadir Vs. State of Bihar); 1995 Supp(1) SCC 18 (Sahib Ram vs The State of Haryana & others) and 2015 (4) SCC 334 (State of Punjab vs. Rafiq Masih).**

It would be relevant to reproduce the relevant portion of the order of the Hon'ble Apex Court passed in **(2015) 4 SCC 334 (State of Punjab vs. Rafiq Masih)** case hereinbelow:

“18. 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:

- (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.

19. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.”

In view of the aforesaid, the action of the Respondents directing for recovery from the leave encashment of the petitioner or otherwise is quashed and the Respondents are precluded from making recovery of any amount from the petitioner herein and in case any amount has already been recovered, the same shall be refunded.

The writ petition is allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

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