

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16844 of 2014

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Alam Hussain @ Md. Alam Hussain son of Late Kalamuddin, R/o Village-
Kateshar, P.O.- Nagra, P.S.- Khaira, Distt. Chapra (Saran)

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Secretary, the Department of Secondary Education, Bihar, Patna
3. The Director, Department of Secondary Education, Bihar, Patna Budh Marg,
Patna
4. The Regional Deputy Director, Education, Tirhut-cum- Saran Division,
Muzaffarpur
5. The District Magistrate, Saran at Chapra
6. The District Education Officer, Saran at Chapra
7. The Headmaster, High School Rampur Khoram Saran at Chapra
8. The Treasury Officer, Saran at Chapra
9. The Accountant General, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rabindra Nath Singh, Advocate
For the Respondent/s	:	Mr. Saurabh Kumar, AC to SC-19
Accountant General	:	Mr. Raghwaqnand, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 10-09-2018 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State as well as Accountant
General.

Petitioner is aggrieved by the decision of Director
contained in Annexure-6. The order of the Director Secondary
Education dated 08.08.2014 was passed after the order of
remand in CWJC No. 8319 of 2006.

From perusal of Annexure-6 it appears that after
superannuation of the petitioner, when the document was sent to
the office of the Accountant General in connection with



finalisation post retiral claim of the petitioner, the office of Accountant General detected irregularity in grant of time bound promotion to the petitioner. Pursuant to the objection of the office of the Accountant General, the respondent took a decision to recover the alleged excess amount, which was wrongly paid to the petitioner. There is no dispute that petitioner was not entitled to grant of time bound promotion before he could acquire the training qualification, but that decision was taken by the respondent with open eye. It is admitted by the counsel appearing on behalf of the respondent that there was no fraud or misrepresentation on the part of the petitioner in the matter of obtaining the time bound promotion and the consequential benefits.

In view of the above the Court does not find any justification so far as recovery is concerned, particularly in view of the judgment of the Apex Court in the case of State of Punjab & Ors. Vs. Rafiq Masih etc. 2015 (4) SCC 334 as there was no fraud or misrepresentation and the petitioner superannuated before the decision of the respondent regarding recovery.

Under the aforesaid circumstance the order of recovery is hereby declared as unsustainable. The writ petition is allowed, Annexure-6 is quashed to the extent of recovery.



However quashing of Annexure-6 will not disentitle the respondent to fixing pensionary benefit of the petitioner as per the lawful entitlement of the petitioner. Final decision as to fresh determination of entitlement for grant of pensionary benefit may be taken by the respondent within a period of four month from the date of receipt/production of a copy of this order.

With the aforesaid the writ petition, stands disposed of.

(Anil Kumar Upadhyay, J)

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