

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.704 of 2018

In

Civil Writ Jurisdiction Case No.9320 of 2017

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1. The State of Bihar through the Principal Secretary, Department of Information and Public Relation, Patna.
 2. The Principal Secretary, Department of Information and Public Relation, Patna.
 3. The Director, the Directorate of Information and Public Relation, Govt. of Bihar, Patna.
 4. The Resident Commissioner, Bihar Bhawan, New Delhi.
 5. The Assistant Director, Bihar Information Centre, Baba Khadak Singh Marg New Delhi - 110001.

... .. Appellant/s

Versus

1. Janki Ram Jha, Son of Late Nitya Nath Jha Resident of Village - Naruar, P.S. Bhairvasthan, District Madhubani at present RZ 84, 2nd Floor, Gali No. 3 (Hanuman Mandir) Raghu Nagar, Pankha Road, New Delhi - 110045.
2. The Accountant General Bihar Vir Chand Patel Marg, Patna.
3. The Assistant Accountant General, Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajesh Kumar (Ac to GP 3)

For the Respondent/s :

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)



Date : 06-07-2018

Seeking exception to an order dated 10.01.2018 passed by the learned Writ Court in C.W.J.C. No. 9320 of 2017, this appeal has been filed under Clause 10 of the Letters Patent. There being delay of 95 days in filing of this appeal, I.A. No. 4039 of 2018 has been filed seeking condonation of delay.

Keeping in view the reasons indicated in the application, the same is allowed. Delay in filing of the appeal is condoned. I.A. No. 4039 of 2018 is accordingly allowed and disposed of.

Respondent was working in the Government department in the department of Information and Public Relations. In the year 1987, his pay was fixed in the scale of Rs. 785-1210. He continued to derive the benefit of the revised pay-scale right from 1987 till his retirement on attaining the age of superannuation on 31.05.2015 and after his retirement the pay fixation has been undone. His pay has been re-fixed retrospectively with effect from 29.08.1987 in the lower scale of Rs. 580-860/- and thereafter recovery ordered. Finding that the employee is not responsible for the incorrect pay-fixation done and taking note of the principles laid down by the Supreme Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih**



& Ors.- (2015) 4 SCC 334 and the various criteria laid down therein, even though the re-fixation has been approved by the learned Writ Court, the recovery ordered has been quashed and the amount recovered directed to be refunded back to the petitioner.

Learned counsel for the State argues that once the entire recovery was completed, the refund of the amount could not be ordered. In our considered view, when the recovery itself was illegal and impermissible in view of the law laid down by the Supreme Court in the case of **Rafiq Masih** (supra) no error has been committed by the learned Writ Court directing for refund of the amount in question. The employee concerned being not responsible for the error or the defects in the pay-fixation, the principles in the case of **Rafiq Masih** (supra) would squarely apply in the present case and we see no error in the order passed by the learned Writ Court warranting reconsideration. The Letters Patent Appeal so far as it challenges the direction for refund of the amount is concerned stand quashed. However, respondents would be free to re-fix the pay-scale and consequently make amendment in the pension and post retiral benefits in terms of the order passed by the Writ Court.



With the aforesaid, the Letters Patent Appeal stands disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

P.K.P./-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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