

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11995 of 2010

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Raj Kishore Prasad Sinha S/O Late Narsingh Narayan Sinha R/O Vill.- Dhandhwa,
P.O. & P.S.- Bodh Gaya, District- Gaya (Bihar), at present residing at Mohalla-
Saket Nagar, P.O.- Hinoo, P.S.- Doranda, District- Ranchi (Jharkhand)

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary Environment and Forest
Department, Government of Bihar, Patna
2. The Chief Conservator of Forest-Cum-Managing Director, Bihar State Forest
Development Corporation, 13, Patliputra Colony, Patna-800 013
3. The Additional Chief Conservator of Forest - Cum - Managing Director,
Jharkhand State Forest Development Corporation, Hinoo, Ranchi-834002
4. The General Manager, Minor Forest Product Project Circle, Ranchi Road No.1,
297/C, Ashok Nagar, P.O.- Ashok Nagar, P.S.- Argora, District- Ranchi
(Jharkhand)

.... Respondents

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Appearance :

For the Petitioner : Mr.
For the State : Mr. K.P. Yadav, GP-11
Mr. S.C. Bhaskar, AC to GP-11

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 22-02-2018

Heard learned counsel for the petitioner and State.

Nobody appears on behalf of the Bihar State Forest Development
Corporation (hereinafter referred to as the “Corporation”), which is
the main contesting party.

2. The prayer in the present writ petition is limited to
the order of recovery of Rs.6,72,148/- against the petitioner, from his
retiral benefits on the ground of having drawn excess salary pursuant
to promotion which was later on withdrawn.

3. The petitioner was promoted from the post of



Accounts Clerk to Senior Accounts Clerk by order dated 08.11.1988. Thereafter, by order dated 08.08.2006, he was reverted to the post of Accounts Clerk and thereafter, by order contained in Memo No.334 dated 09.11.2009 an order for recovery of the amount which is said to have been drawn in excess due to promotion has been directed to be recovered, the total being Rs.6,72,148/-.

4. Learned counsel for the petitioner submitted that he superannuated on 30.11.2007 and though the order of reversion was prior to his retirement, but the order of recovery was after two years of his superannuation. It was further submitted that the promotion was given to him by the superior officers without there being any fraud or mis-representation on his part and, thus, even if he was reverted back, since he has discharged his duties on the promoted post, he was entitled to get salary and only upon reversion his salary, which has been reduced, could have been maintained, but the authorities cannot recover the amount which has already been paid to the petitioner. It was further submitted that the Courts have also held that recovery after superannuation without there being any mis-representation of fraud on the part of the employee is impermissible, especially in the case of Class-III and Class-IV employees. For such proposition, he has referred to the decision of the Hon'ble Supreme Court in the case of **State of Punjab vs. Rafiq Masih** reported as



(2015)4 Supreme Court Cases 334.

5. Learned counsel for the State submitted that the matter is of the Corporation. Upon query of the Court as to whether there has been any reply to such stand of the petitioner relating to his reversion and recovery, he submitted that the Corporation has not filed any reply on that point.

6. Having considered the matter, the Court finds that the order of recovery is unsustainable. The petitioner was promoted from Accounts Clerk to Senior Accounts Clerk by a conscious decision of the authorities without there being any role of the petitioner. Further, he also joined on the post and discharged his duties and thereafter, if at all he has been reverted, that is a separate issue, but if he has worked on the higher post, he is entitled to the remuneration of the said post and to that extent there is no illegality and there cannot be any recovery. The matter would have been different if the respondents had pointed out to the Court any contributory factor which could have fastened some responsibility on the petitioner in his promotion. That not being the case, the authorities are precluded from making any recovery. The Court also finds that reliance has rightly been placed by the learned counsel for the petitioner on the case of **Rafiq Masih** (supra).

7. For reasons aforesaid, the writ petition stands



allowed. The order impugned directing recovery of Rs.6,72,148/- stands set aside. The petitioner is entitled to payment of any amount which may have been adjusted or recovered in terms of the order impugned. The same be paid to him within one month from the date of production of a copy of this order before respondent no.2.

(Ahsanuddin Amanullah, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23-02-2018
Transmission Date	

