IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6303 of 2017

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Yadunandan Singh son of Late Rambalak Singh resident of village - Hisua, P.S. - Hisua, District - Nawada, at presently a retired employee of T.S. College, Hisua.

.... Petitioner/s

Versus

1. The Vice Chancellor, Magadh University, Bodh Gaya.
2. The Registrar, Magadh University, Bodh Gaya.
3. The Principal, T.S. College, Hisua, Nawada.
4. The State of Bihar through the Principal Secretary, Human Resources Department of Bihar, Patna.

... . Respondent/s

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Appearance :
For the Petitioner/s :
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 18-06-2018

Heard learned counsel for the petitioner and State. Nobody appears on behalf of the Magadh University.

2. The petitioner has moved the Court for the following reliefs:

> “ *(i) For issuance of a writ in the nature of Mandamus or an appropriate writ or writs, order or orders commanding/directing the respondents authorities to refund the illegally deducted amount of Rs. 1,63,879/- (One lac sixty three thousand eight hundred seventy nine) from gratuity amount which was calculated to Rs. 1,96,286/- payable to the petitioner after his superannuation on 31.05.2012 from college service of T. S. College, Hisua.*

> *(ii) Any other relief or reliefs for which the petitioner is entitled."*

3. The petitioner joined as Peon and was promoted to the post of Clerk. However, promotion was withdrawn and he was reverted to the post of Peon. He superannuated on 31.05.2012. The respondents have deducted an amount of Rs. 1,63,879/- from his gratuity on account of excess payment he had drawn during the promotion period.

4. The law has been settled by the Hon'ble Supreme Court relating to recovery from post retiral benefits in the case of **State of Punjab v. Rafiq Masih** reported as **(2015) 4 SCC 334** wherein it has been held as follows:

> *" 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 hereinabove, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:*
>
> *(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
>
> *(ii) Recovery from the retired employees, or the*

employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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 wrongly 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."

5. As there was no contributory fault or laches on the part of the petitioner or any misrepresentation on his behalf in him having received payment for the post of Clerk and also in view of him having worked on the said post of Clerk and, thus, for him having discharged duty on such post, the respondents cannot be allowed to make deduction/recovery from his post retiral benefits, as has been done in the present case.

6. Accordingly, the writ petition stands allowed. The said recovery from gratuity of the petitioner of Rs. 1,63,879/- having been

held impermissible, direction is issued to pay the same to the petitioner. The same be done within four weeks from the date of production of a copy of this order before the respondent no. 2.

(Ahsanuddin Amanullah, J)

Anjani/-

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