

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23841 of 2012

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Ram Pulish Singh S/O Late Shital Prasad Singh Resident Of Village & Post :
Amiyawar, P.S. : Nasriganj, District : Rohtash (Deceased)

Represented Through:

1A.- Harshu Prasad Singh and
1B.- Praveen Kumar, both sons of Ram Pulish Singh
Resident of Village & Post : Amiyawar, P.S. : Nasriganj, District -Rohtas

... .. Petitioner/S

Versus

1. The State Of Bihar
2. The Accountant General (A & E) Bihar, Patna
3. The Commissioner Cum Secretary Secondary Education Dept, Govt. Of Bihar, Patna
4. The Director Primary Education, [HRD] Government Of Bihar, Patna
5. The Regional Deputy Director Of Education, Patna Pramandal, Patna
6. The District Education Officer, Bhojpur, Arrah
7. The Treasury Officer, Bhojpur, Arrah
8. The District Account Officer Bhojpur, Arrah
9. The Area Education Officer, Arrah [Bhojpur]
10. The Head Master, Basic School Mahuli, Bhojpur, Arrah

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raj Kumar Prasad, Advocate Mr. Niraj Kumar Mayuri, Advocate
For the State	:	Mrs. Archana Meenakshee, GP-6 Mr. Prabhat Ranjan
For Acct. General	:	Mr. Raghwanand, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 17-09-2018

Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State as well as the Accountant
General.

2. I.A. No. 7762 of 2015 has been filed on behalf of the
petitioner for expunging the name of the sole petitioner, who is
stated to have died during the pendency of the writ petition on



13.07.2015 and for substitution of his heirs and legal representative, the two sons, namely, Harshu Prasad Singh and Praveen Kumar. The wife predeceased the original petitioner.

3. For the reasons stated in the interlocutory application, the prayer for substitution is allowed. Let the name of the original petitioner be expunged and in his place the name of his two sons, Harshu Prasad Singh and Praveen Kumar be substituted as petitioner Nos. 1A and 1B.

4. Accordingly, I.A. No. 7762 of 2015 stands allowed and disposed of.

5. The present writ petition has been filed for quashing of the order dated 9.12.2009, whereby the respondents have directed recovery of alleged excess amount of Rs. 3,34,300/- paid to the original petitioner under the Assured Career Progression Scheme.

6. The original petitioner superannuated on 31st July, 2009 and after his superannuation the respondents have made recovery of the aforesaid amount pursuant to the objection raised by the Accountant General. In the light of the judgment of the Apex Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih (white washer), etc.: 2015 (1), PLJR (SC) 261= (2015) 4 SCC 334** after superannuation of the employee recovery is not



permissible, particularly in view of the fact that there is no allegation of fraud or misrepresentation in the alleged excess payment to the original petitioner. After superannuation on 31st July, 2009 the relationship of master and servant came to an end and as such the respondents are precluded from taking any action against the original petitioner on the cessation of master and servant relationship except action under Bihar Pension Rules. Since the respondents have not initiated any proceeding under Rule 43B now after nine years they are precluded from taking any action even under the Bihar Pension Rules. Consequently, the order dated 9.12.2009 cannot sustain and the same is accordingly quashed. As a result of Quashing of Annexure-1, the respondents are under obligation to return Rs. 3,34,300/- which was recovered pursuant to Annexure-1 in the light of the judgment in the case of **Rafiq Masih** (supra).

7. Learned counsel for the State has highlighted the infirmity in the matter of grant of ACP to the original petitioner but she did not make out any case of fraud or misrepresentation played by the petitioner in the matter of grant of ACP.

8. The respondents have granted such benefit with open eye and cannot, after superannuation of the employee, recover the



amount which was paid to the original petitioner for the lapse of the respondents.

9. Accordingly, the respondents are directed to ensure refund of the recovered amount of Rs. 3,34,300/- to the substituted petitioners within a maximum period of four months from the date of receipt/production of a copy of this order.

10. Failure on the part of the respondents in refunding the amount recovered from the original petitioner may carry interest at the rate of 9% per annum from the date of recovery to the date of actual payment, if the aforesaid amount is not returned/refunded to the substituted petitioners within the time frame as indicated hereinabove.

11. For the reasons stated above, the writ petition is allowed to the extent as indicated above.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.09.2018
Transmission Date	

