IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5344 of 2012

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SRI PARMANAND SHARMA S/O LATE RAM ANUTHA THAKUR R/O VILL.- HARISHANKAR MANIYARI, POST- SILAUT, DISTT.- MUZAFFARPUR, AT PRESENT R/O SRINAGAR COLONY, HOUSE NUMBER 4/39, GOBARSHAHI CHAUK, MUZAFFARPUR

... ... Petitioner/s

Versus

1. THE STATE OF BIHAR
2. SECRETARY, PRIMARY EDUCATION, GOVT. OF BIHAR, PATNA
3. DIRECTOR, PRIMARY EDUCATION, GOVT. OF BIHAR, PATNA
4. DISTRICT SUPERINTENDENT OF EDUCATION, EAST CHAMPARAN, MOTIHARI
5. DISTRICT TREASURY OFFICER, EAST CHAMPARAN, MOTIHARI
6. ACCOUNTANT GENERAL, BIHAR, PATNA
7. SECRETARY, DEPARTMENT OF FINANCE, STATE OF BIHAR.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bipin Kumar, Advocate
For the Respondent/s	:	Mr. S.S. Shabbar Hussain Gp4

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

6 27-06-2018 The present application has been filed by the petitioner against the decision contained in Annexure-1passed by the respondents for non-passing of noting and drafting examination**.** The respondents have decided to recover the alleged excess amount of Rs. 1,32,833/- (One Lacs thirty two thousand eight hundred thirty three only).

In this case on behalf of the respondent Counter Affidavit has been filed in which they have reiterated that the petitioner has not passed noting and drafting examination and as such recovery was made from the petitioner. Para-6 of the Counter Affidavit filed on behalf of the respondent no.- 4 reads as follows:-

"That in regard to the averment mentioned in para-10 of the writ application it is humbly submitted that the petitioner has not passed Hindi Noting and drafting examination after promotion on the post of head master within over year as such vide letter no. 1771 dt. 06.03.2009 it the Respondent no. 5 was directed to for deduct Rs. 1,32,833/- from the salary of the petitioner as follows. A sum of Rs. 15,000/- was deducted from the salary of the petitioner vide letter issued by B.E.O. Mehsi dt. 18.08.2009 and a sum of Rs. 60,000/- was deducted from the salary of the petitioner by D.D.O. Middle School ghariyarichak and sum of Rs. 45,000/- and Rs. 12,833/- was deducted vide a letter no. 20/09-10 from the salary of the petitioner."

Petitioner has placed reliance on the decision of the State Government contained in Annexure-2, whereby it has been indicated that passing of noting and drafting is not applicable in case individual has passed the examination and granted the higher pay-scale.

Counsel has also placed reliance of the judgment of the co-ordinate Bench of this Court contained in Annexure-3 passed in CWJC No. 2203 of 2006, by which the Court has considered the fact and it was held out that once the petitioner was promoted as the headmaster, he was not required to pass hindi noting and drafting In addition thereto learned counsel submits that in view of the judgment of the Apex court in the case of Rafique Masih (2015) 4 SCC 334. The action of the respondents in recovery of the excess amount after superannuation of the petitioner is impermissible. The cumulative effect the judgment of the Apex Court in Rafique Masih, judgment of the co-ordinate Bench in CWJC No. 2203 of 2010 with regard to passing of the noting and drafting, the Court is of the view that the action of recovery of alleged excess amount from the petitioner is arbitrary exercise of power and as such Annexure-1 cannot sustain, so far as the petitioner is concerned, the respondents are hereby directed to restore the amount recovered from the petitioner within a maximum period of two months from the date of receipt/production of a copy of this order.

The writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

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