

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12702 of 2017

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Jagdish Harizan son of Bhinku Das @ Bhinak Harizan Resident of Village -
Barauni, P.O. - Rajoun, P.S. - Rajoun, District - Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The District Magistrate, Banka.
3. The Deputy Collector, Establishment, Banka.
4. The District Account Officer, Banka.
5. The Senior Treasury Officer, Banka.
6. The Sub Divisional Officer, Banka.
7. The Land Reforms Deputy Collector, Banka.
8. The Circle Officer, Amarpur Anchal, District - Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Brij Nandad Prasad, Advocate
For the Respondent/s : Mr. Md. Khurshid Alam, AAG-12

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT

Date : 06-05-2019

Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

2. Petitioner has challenged the order dated 09.08.2016,
as contained in Annexure-1 by which recovery of excess amount
on account of grant of 2nd ACP has been postulated and petitioner
has been found not to be granted 2nd ACP as 1st ACP was granted
on 03.12.2007 and the petitioner retired before the entitlement of
2nd ACP on 31.07.2010.

3. A counter affidavit has been filed on behalf of the
State stating therein at Paragraph 10 that the petitioner was
wrongly granted benefit of 2nd ACP with effect from 24.04.2005



but since initial appointment was made on Class-IV post on 24.07.1981 and on 01.05.1987 the petitioner was promoted as Revenue Clerk by appointment and he has passed Hindi Noting and Drafting Examination on 02.12.2007, so he is entitled to 1st ACP on 03.12.2007 after completion of 12 years. Hence, 2nd ACP granted to the petitioner with effect from 24.04.2005 has been wrongly granted, which has been taken away.

4. Learned counsel for the petitioner relies on the decision of the Apex Court in the case of ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer)*** since reported in ***(2015) 4 SCC 334*** wherein at paragraph 18 certain postulates are there that recoveries by the employers would be inadmissible in law, which is as follows :

“18(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 wrongfully 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. He further submits that the 2nd ACP granted to the petitioner way back in the year 2005 has been sought to be taken away after 6 years of his retirement in the year 2016 which is not on account of any misrepresentation or fraud committed by the petitioner.

6. Under such circumstances, in the light of the decision of the Apex Court in the case of Rafiq Masih (supra), order dated 09.08.2016 (Annexure-1) is quashed. Respondent No. 2, the District Magistrate, Banka is directed to ensure payment of all retiral benefits on the basis of last pay drawn by the petitioner on the date of his retirement i.e. 31.07.2010 and pay the remaining retiral benefits to the petitioner within a period of two months from the date of receipt/ production of a copy of this order.

7. Writ application is, accordingly, allowed.

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.05.2019
Transmission Date	NA

(Nilu Agrawal, J)

