

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6783 of 2015

1. Kapildeo Sharma and Ors son of late Nathun Sharma, Resident of village- Sampat Bigha, P.O.- Sarauta, District- Jehanabad.
2. Thakur Prasad son of Sri Megha Ram, Resident of village- Tetari, P.O.- Tetari, District- Rohtas
3. Pandey Mukti Nath S/o Late Pandey Sidhnath resident of village- Repahatha, P.O- Repahtha, District- Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary Government of Bihar, Patna
2. The Commissioner-cum-Secretary, Rural Development Department , Government of Bihar, Patna.
3. The Additional Secretary, Rural Development, Government of Bihar, Patna
4. The District Magistrate, Rohtas.
5. The DDC Cum Managing Director, District Rural Development Agency, Rohtas at Sasaram.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. VRP Singh, Advocate Mr. Ranjan, Advocate
For the State	:	Mr. AC to PAAG 2

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 09-04-2019

Writ petition has been filed assailing the decision of respondent authorities to recover the payments made to the petitioner on account of benefits granted under the ACP Scheme. The benefits were granted in light of decision dated 31.12.2005 of the Managing Committee of the District Rural Development Authority, Rohtas.

In the counter affidavit placing reliance on subsequent letters of the year 2014 and 2015 issued by the Department of



Rural Development, the respondents have contended that the District Rural Development Authority was not a competent authority to take a decision regarding admissibility of ACP to the employees. It is also submitted that since the employees of DRDA were not government employees the decision to grant ACP is not sustainable.

There is nothing on record to show that the petitioners were in any way responsible for the decision taken by the DRDA on 31.12.2005. It is also not anybody's case that by any misrepresentation or fraud committed by the petitioners they have been granted the said benefits till retirement of petitioner nos. 1, 2 & 3 on 28.02.2011, 31.12.2012 and 28.02.2010 respectively. The decision to make recoveries have been taken after their retirement i.e., on 07.10.2013.

Counsel for the petitioner in this circumstance submits that the respondents cannot be permitted to make any recoveries in light of the judgment of the Apex Court in the case of **State of Punjab vs. Fatiq Masih** reported in **(2015) 4 SCC 334**. Petitioner's case is covered under the decision of the Apex Court in the case of **Fatiq Masih** (supra).

This Court is in agreement with the submission made by counsel for the petitioner. Even though the respondents have



decided that the DRDA was not competent to grant of benefits of ACP, the recovery cannot be sustained in view of the law laid down by the Apex Court in the case of **Fatiq Masih** (supra). Recoveries in the circumstances from the petitioners who were Grade III and Grade IV employees cannot be permitted. This decision however, should not be taken to be a pronouncement on validity of the decision dated 31.12.2005 by the District Rural Development Authority, Rohtas. Respondents are restrained from making any recoveries on account of benefits obtained by the petitioners during their service under ACP scheme.

It would be open to the petitioners to make representation for any other dues to which the petitioners are entitled for their services. Due and admissible amount of leave encashment shall be paid to the petitioner nos. 1 & 2, if not paid positively within a period of eight weeks along with details of calculation, from the date of receipt/production of a copy of this order.

Writ petition is disposed off.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

