

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12826 of 2014

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Brat Nath Pandey Son of Late Sheo Pujan Pandey Resident of village and
P.O. Sakadi, P.S. Koeilwar District - Bhojpur

... .. Petitioner

Versus

1. The State Of Bihar through Principal Secretary, P.W.D., Government of Bihar, Patna
2. The Principal Secretary, Finance, Government of Bihar, Patna
3. The Collector, Bhojpur
4. The Deputy Secretary, Road Construction Department, Government of Bihar, Patna
5. The Engineer - in - Chief, P.W.D., Government of Bihar, Patna
6. The Superintending Engineer, Bhojpur Path Anchal Ara , Bhojpur
7. The Executive Engineer, Sahabad Road Division, Ara, Bhojpur
8. The Sub - Divisional Engineer, Ara, Bhojpur
9. The District Account Officer, Ara, Bhojpur

... .. Respondents

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Appearance :

For the Petitioner/s	:	M/s Rajendra Kishore Prasad, Ashok Kumar Singh Suraj Bans Rai
For the Respondent/s	:	Mr.Ashok Kumar Pathak

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 09-07-2019 Heard learned Counsel for the petitioner and the

learned Counsel for the State.

The petitioner retired as Treasury Guard, a Grade IV employee, on 31.8.2012. Much thereafter on 26.12.2013 the Executive Engineer, Sahabad Road Division, Arrah has issued an order directing that the pay scale of the petitioner be corrected and in stead of Rs. 2650-4000/- the pay scale of the petitioner should be fixed in the scale of Rs. 2610-3540/- with



effect from 1.1.1996. On account of such re-determination/ lowering of pay scale, recovery has been directed of a amount of Rs. 58,983/-.

Petitioner's Counsel submits that one Mahavir Mandal who was on the same post and Department is getting the same pay scale and the petitioner is similarly situated as Mahavir Mandal.

The claim on that score made by the petitioner has been raised by way of rejoinder to the counter affidavit and the respondents have thus had no opportunity to examine this aspect of the matter. The issue however can be considered by the Superintending Engineer, Respondent No. 6.

The writ petition therefore need not be kept pending as parity has to be considered by respondent No. 6. The petitioner, if he is similarly situated, undoubtedly has to be extended the same benefits.

The other issue is whether recovery post retirement could have been effected on account of such alleged excess payment due to wrong fixation of pay done by respondent authorities. In the circumstances, this Court would consider decision of the Apex Court in the case of *State of Punjab & ors vs. Rafiq Masih* repoted in (2015) 4 SCC 334. Relying on the



said judgment of the Apex Court and having regard to the fact that the petitioner had retired much prior to the order of recovery from a Grade IV post and there is no allegation that wrong fixation was on account of any fraud or misrepresentation by the petitioner, this Court would direct that no recovery under the order dated 26.12.2013 be made.

The issue regarding parity is yet to be considered by respondent No. 6. Let such consideration be done within a period of three months from the date of receipt/production of a copy of this order.

The writ petition stands disposed of.

(Madhuresh Prasad, J)

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