

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.261 of 2018**

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Md. Naziruddin Son of Moinuddin, resident of West Kunjava, Bihta, P.S.-  
Bihta, District- Patna.

... .. Petitioner

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna
2. Principal Secretary, General Administration Department, Government of Bihar, Old Secretariat, Patna
3. Principal Secretary, Finance Department, Government of Bihar, Old Secretariat, Patna.
4. Principal Secretary, Minor Irrigation Department, Vikash Bhawan, Patna.
5. Engineer-in-Chief, Minor Irrigation Department, Vishesuraiya Bhawan Bailey Road, Patna.
6. Chief Engineer, Minor Irrigation Division, Seikhpura, Patna.
7. Executive Engineer, Minor Irrigation Department, near West of High Court, Patna.

... .. Respondents

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**Appearance :**

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| For the Petitioner/s | : | Mr.Mukul Prasad<br>Mr. K.N.Sharma |
| For the Respondent/s | : | Mr.S.S.P.Yadav -SC 14             |

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL ORDER**

5      22-05-2019                      Matter has been listed today in the Summer Vacations  
  
as the learned Counsel for the petitioner was desirous for  
  
consideration of his case during Vacation.

The slip for listing was filed pursuant to notice dated  
  
08th May 2019, published prior to the Vacation.

The matter is, accordingly taken up for consideration  
  
as both parties are present and willing to assist the Court for  
  
disposal of the matter.



The emergent situation in this case is on account of recovery being made from the petitioner.

The petitioner who is Correspondence Clerk was allowed the benefits of ACP. The petitioner was paid the benefits arising out of ACP from October 2008 till September 2017. The respondents have withdrawn the said benefit on account of non passing of departmental examination by the petitioner. In the circumstances, the petitioner has approached this Court assailing the said withdrawal of benefits granted to him.

Counsel for the State has submitted that since passing of the departmental examination was statutory requirement, the petitioner cannot claim benefits of the same in view of admitted position that he has not passed the departmental examination in issue.

Petitioner's Counsel has referred to the judgment of the Apex Court in the case of *State of Punjab vs. Rafiq Masih (White Washer)* reported in *2015(1) PLJR 261 (SC)*. It is the submission of the petitioner's Counsel that the petitioner is a Class III employee. The alleged excess payment has been made to the petitioner for long period of about nine years and that too without suppression or misrepresentation on behalf of the



petitioner.

Said stand of the petitioner is correct. Even in the counter affidavit the State has taken a stand that the benefit was granted inadvertently. In the circumstances, no fault can be attributed to the petitioner for grant of said benefit for nine long years.

Having regard to the judgment of the Apex Court in the case of *Rafiq Masih (supra)* this Court would hold that recovery if made from the petitioner would be inequitable and harsh and that respondents should be restrained from making such recovery. In view of judgment of the Apex Court this Court would find that the petitioner is covered under Clause (I), (iii) and (v) of paragraph 12 of the said judgment. The authorities are therefore restrained from making any recovery on the basis of office order dated 14.11.2017.

Counsel for the petitioner submits that placing reliance on the judgment of the Division Bench of this Court in the case of *State of Bihar vs. Mahendra Baitha* reported in *2018(3) PLJR 173*, he would be approaching respondent No. 6 with his claim for restoration of benefits on account of ACP by placing on record the fact that for want of promotional avenue the petitioner is entitled to be granted the same benefits without



imposing requirement of passing of departmental examination.

The parties are in agreement that this prayer of the petitioner has to be considered by respondent No. 6 in accordance with law having regard to the said judgment and the State's own Litigation Policy of 2011 specially Clause 4(i)© thereof.

The petitioner would be at liberty to make his claim before respondent No. 6 within a period of four weeks from today. In the event the same is done, respondent No. 6 should take a decision on the claim of the petitioner within a period of eight weeks thereafter.

It is made clear that if any dues are found admissible the same should also be paid during the aforesaid time.

The writ petition stands allowed with the aforesaid liberty & directions.

**(Madhuresh Prasad, J)**

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