

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.221 of 2018

In

Civil Writ Jurisdiction Case No.9320 of 2017

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Janki Ram Jha, Son of Late Nitya Nath Jha, Resident of Village- Naruar, P.S.- Bhairavstan, District- Madhubani at present RZ 84, 2nd Floor, Gali No.3 (Hanuman Mandir) Raghu Nagar, Pankha Road, New Delhi- 110045.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Information and Public Relation, Patna.
2. The Principal Secretary, Department of Information and Public Relation, Patna.
3. The Director, the Directorate of Information and Public Relation, Government of Bihar, Patna.
4. The Resident Commissioner, Bihar Bhawan, New Delhi.
5. The Assistant Director, Bihar Information Centre, Baba Khadak Singh Marg, New Delhi- 110001.
6. The Accountant General Bihar, Vir Chand Patel Marg, Patna.
7. The Assistant Accountant General.

... .. Respondent/s

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Appearance :

For the Appellant	:	Mr. Gajendra Kumar Jha, Advocate Mr. Sushil Kumar Jha, Advocate Mr. Bam Bahadur Jha, Advocate
For the State	:	Mr. Gyan Prakash Ojha, G.A-7 Mr. Gopal Krishna AC to GA-7

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-04-2019

Heard learned counsel for the appellants and learned counsel for the State of Bihar.

2. The dispute in this appeal arises out of the action taken by the respondents for recovery of certain amount from the



appellant due to wrong fixation of pay. The order was challenged in the writ petition giving rise to this appeal and the learned single Judge vide judgment dated 10th of January, 2018 impugned herein allowed the claim of the appellant as against the recovery initiated and in view of the law laid down in the case of *State of Punjab & Ors. Vrs. Rafiq Masih & Ors.*, [(2005) 4 SCC 334], it was held that the appellant should not recover the said amount as there was no element of fraud, misrepresentation or otherwise on the part of the appellant in receiving the said amount.

3. The learned single Judge, however, came to the conclusion that the re-fixation of pay-scale was valid inasmuch as there was no material so as to establish that the appellant had been rightly granted the pay-scale, on the basis whereof payments had been made.

4. It is assailing this part of the judgment that the present appeal was presented on 12th February, 2018.

5. We find from the connected record placed along with this appeal that the State of Bihar filed LPA No.704 of 2018 assailing the same judgment impugned herein against that part of the order whereby recovery from the appellant had been set aside. The appeal to that extent was dismissed, but the later part of the judgment whereby re-fixation had been directed by the learned



single Judge was approved of and the appellants were at liberty to re-fix the pay-scale and make amendments in the pensionary and post-retiral benefits to which the respondent was entitled. The said judgment dated 06.07.2018 passed in L.P.A. No.704 of 2018 is extracted herein under:

“Seeking exception to an order dated 10.01.2018 passed by the learned Writ Court in C.W.J.C. No. 9320 of 2017, this appeal has been filed under Clause 10 of the Letters Patent. There being delay of 95 days in filing of this appeal, I.A. No. 4039 of 2018 has been filed seeking condonation of delay.

Keeping in view the reasons indicated in the application, the same is allowed. Delay in filing of the appeal is condoned. I.A. No. 4039 of 2018 is accordingly allowed and disposed of.

Respondent was working in the Government department in the department of Information and Public Relations. In the year 1987, his pay was fixed in the scale of Rs. 785-1210. He continued to derive the benefit of the revised pay-scale right from 1987 till his retirement on attaining the age of superannuation on 31.05.2015 and after his retirement the pay fixation has been undone. His pay has been re-fixed retrospectively with effect from 29.08.1987 in the lower scale of Rs. 580-860/- and thereafter recovery ordered. Finding that the employee is not responsible for the incorrect pay-fixation done and taking note of the principles laid down by the Supreme Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih & Ors.- (2015) 4 SCC 334** and the various criteria laid down therein, even though the re-fixation has been approved by the learned Writ Court, the



recovery ordered has been quashed and the amount recovered directed to be refunded back to the petitioner.

Learned counsel for the State argues that once the entire recovery was completed, the refund of the amount could not be ordered. In our considered view, when the recovery itself was illegal and impermissible in view of the law laid down by the Supreme Court in the case of **Rafiq Masih** (supra) no error has been committed by the learned Writ Court directing for refund of the amount in question. The employee concerned being not responsible for the error or the defects in the pay-fixation, the principles in the case of **Rafiq Masih** (supra) would squarely apply in the present case and we see no error in the order passed by the learned Writ Court warranting reconsideration. The Letters Patent Appeal so far as it challenges the direction for refund of the amount is concerned stand quashed. **However, respondents would be free to re-fix the pay-scale and consequently make amendment in the pension and post retiral benefits in terms of the order passed by the Writ Court.**

With the aforesaid, the Letters Patent Appeal stands disposed of.”

6. It appears that the appellant had filed M.J.C. No.2035 of 2018 for taking action under the Contempt of Courts Act for non-compliance of the judgment of the learned single Judge. A show cause was filed by the authority in the said contempt application stating therein that the order of the learned single Judge has been complied with. The affidavit, a copy whereof has been produced before us, however, does not recite the filing of the appeal but the consequential order which was passed



on 23rd of July, 2018, which is part of the said affidavit, and according to which the appellant has received the payments categorically recites the filing of Letters Appeal No.704 of 2018 and the order passed therein. It is thus contended that the annexure appended along with the said affidavit, a copy whereof was served on the appellant, did disclose the filing of the L.P.A. and the judgment delivered therein. A copy of the order dated 23th of July, 2018 that has been filed along with the affidavit has been produced before us.

7. This affidavit was received by the learned counsel for the appellant on 11th of September, 2018. Consequently, once a Division Bench has already affirmed the same judgment of the learned single Judge without there being any protest on the part of the appellant to either recall or review the said judgment in spite of having knowledge of the same, then it will not be appropriate for a Co-ordinate Bench to interfere with the same order on the grounds which are now sought to be raised by the learned counsel for the appellant.

8. The Apex Court in a three Judges' decisions in the case of **Shyam Babu Verma vs. Union of India**, reported in **(1994) 2 SCC 521**, held that it would not be just and proper to make recovery from the employees who were not at fault as they



were in no way responsible for the same but at the same time the Court held that no excess amount shall be recovered as they had been paid for a very long time. However, the award of different pay-scales on merit was upheld.

9. The said view was again reflected in the case of **Sahib Ram vs. State of Haryana**, reported in **1995 Supp (1) SCC 18**, where it was held that the appellant was not possessed the required educational qualification and under the circumstances, the employee was not entitled to any relaxation. The error was therefore not legitimate, even though there was no fault on the part of the appellant and, therefore, the relief was confined to the effect that the amount which had already been paid shall not be recovered. This therefore clearly indicates that any future payments could be affected on account of correct fixation. An erroneous payment of House Rent Allowance came up in the case of **State of Karnataka and anr. vs. Manglore University Non-teaching Employees' Association and Ors.**, reported in **(2002) 3 SCC 302**, where again it was held on the said facts of that case the employees were protected from recovery up to a particular date where no fault could be attributed to them. However, the future implementation was modified to the effect that amounts paid after the cut-off date should be recovered in



instalments and future entitlement was left to the Government to take an appropriate decision. In the case of **Purshottam Lal Das and Ors. vs. State of Bihar and Ors.**, reported in (2006) 11 SCC 492, the Apex Court held that in the normal course if a promotion or appointment is void *ab initio* a mere fact that the employee had held on the post for long cannot be a ground for not directing recovery. However, the Court further went on to refer to the decisions in the case of **Sahib Ram** (supra), **Bihar State Electricity Board and Anr. vs. Bijay Bhadur and Anr.** reported in (2000) 10 SCC 99, and the decisions in the case of **State of Karnataka** (supra) and then held that recovery could not be made on the promotional post but the Court upheld the reversions on account of wrong promotion. It further directed that no arrears or other financial benefits shall be granted in respect of the period concerned. In the case of **Rafiq Masih (White Washer)** (supra), the Court took notice of several judgments of the Apex Court including that of **Abdul Qadir vs. State of Bihar**, reported in (2009) 3 SCC 475, and then in paragraph 18 of the reported judgment indicated some of the parameters on the basis whereof recovery could not be made.

10. In the instant case also, it is a matter of grant of pay-scale to which the appellant was not entitled and in view of



the impugned judgment having already been upheld by a Co-ordinate Bench as indicated above, without there being any challenge raised to the order dated 23rd July, 2018, we find no ground to entertain this appeal. The appeal is, accordingly, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM/Pankaj

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

