

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.12396 of 2019**

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Bisheshwar Sah, aged about 71 years, male, Son of Binhay Sah, R/o Village  
and P.O.-Mokama, P.S.-Basnahi, District-Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources  
Department, Govt. of Bihar, Patna.
2. The Chief Engineer, Water Resources Department, Birpur, District-Supaul.
3. The Superintending Engineer, Eastern Koshi Embankment Circle, Saharsa,  
District-Saharsa.
4. The Executive Engineer, Drainage Division, Kopariya, Saharsa, District-  
Saharsa.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Santosh Kumar Verma, Adv.  
For the Respondent/s : Mr. Anjani Kumar (AAG4)

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**

**ORAL JUDGMENT**

**Date : 27-06-2019**

The petitioner, who has retired as a Typist-Clerk  
from the office of the Executive Engineer, Drainage Division,  
Kopariya, Saharsa, has challenged the order dated  
22.11.2011, issued by the Executive Engineer, Drainage  
Division, Saharsa, whereby the time bound promotion which



was granted to him was cancelled after 23 years of such grant of promotion and after two years of his retirement and a direction has been issued for recovery of the excess amount which was paid to him.

2. The learned counsel for the petitioner has informed this Court that when this order was passed, the petitioner was not aware of its impact and only when various judgments of this Court were delivered with respect to the fallacy of such decisions of cancelling the time bound promotion or grant of ACP and consequent recovery from the salary, that the petitioner has approached this Court.

3. The learned counsel for the petitioner has submitted that the petitioner retired in the year 2008 and till the time he was in service, there were no departmental rules and there was no avenue of promotions. In order to remove stagnation in service, the Government had initiated a scheme of granting time bound promotion. Later, the aforesaid scheme was changed into Assured Career Progression Scheme, which was again modified and MACP Rules of 2006 came into existence. Even under those rules,



it was not necessary for the employees to have passed any examination, unless it was required according to the service rules.

4. The law in this regard has also been categorically laid down in several cases. A reference has been made to a judgment delivered by this Court in CWJC No. 15647 of 2017 (*Masomat Indu Devi Vs. State of Bihar & Ors.*) on 14<sup>th</sup> February, 2019, wherein, after referring to the case laws on the subject, it has been conclusively decided that in the absence of any departmental rules for grant of promotion, the time bound promotion or ACP which is granted to an employee cannot be taken back and no recovery could be made. Even otherwise, no recovery can be effected from the pension of a person in view of the judgment of Supreme Court delivered in case of *State of Punjab and Ors. Vs. Rafiq Masih (White washer)*, reported in (2015) 4 SCC 334.

5. Since the order impugned in the present petition is of the year 2011 and recovery from the salary started thereafter, this Court refrains from setting-aside the



said order, but deems it appropriate to direct the petitioner to make a representation before the Executive Engineer, Water Resources Department, Kopariya, Saharsa, within a period of four weeks from today annexing a copy of this order, who, on receipt of the same, shall pass necessary order in accordance with law within a further period of six weeks thereafter. The concerned respondent shall also consider the feasibility of passing an order rectifying the mistake and restoring to the petitioner the money which has been deducted from his pension.

6. Needless to state that any order passed by the concerned respondent shall be in accordance with law and with reasons supporting the same.

7. With the aforesaid observation/direction, the writ petition stands allowed/disposed off.

**(Ashutosh Kumar, J)**

Praveen-II/-

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