

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19727 of 2016

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Ram Chandra Rajak S/o Sri Munshi Rajak, R/o Mohalla - Pankhatoli, P.O. Ramna, P.S. Kazi Mohammadpur District - Muzaffarpur was Working as Head Clerk under office of Superintending Engineer, National High Way Circle, Road Construction Department, Maripur Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Engineer, Road Construction Department, Patna
3. The Superintending Engineer, National High Way Circle, Road Construction Department, Maripur Muzaff
4. The Accountant General, Account Examination , Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Manoj Kumar Manoj, Advocate
For the State	:	Mr.Uday Shankar Sharan Singh-GP-19
For the Acct. General	:	Mr. Raghwanand, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

7 28-05-2020 Heard learned counsel for the petitioner and the State as well as the Accountant General.

The petitioner has approached this Court for quashing the letter no. 264 dated 4.4.2015 whereby a sum of Rs. 1,09,890/- has been recovered and also for quashing the letter no. 51 dated 18.4.2016 whereby the grade pay of the petitioner has been reduced from Rs. 4800/- to Rs. 4600/-.

In the counter affidavit filed on behalf of respondent Nos. 1 to 3 stand has been taken that the petitioner has not passed the departmental examination disentitling him for grant of MACP.



Counsel appearing on behalf of the petitioner has placed reliance on reply to the counter affidavit filed by respondent Nos. 1 to 3. paragraph nos. 5 to 10 of the reply to the counter affidavit is quoted below:-

“5. That it is stated that whole episode created by respondents without going through the entry made in the service book itself and further records of the case of petitioner with a view to harass the petitioner at the time of superannuation due to reason best known to them and further without asking explanation or show cause from petitioner ever wrongly and without justification in light of an application made by a person who is no way concerned with the petitioner the pay scale of petitioner reduced and recovery and made from retiral dues as well as from other heads of petitioner which is wrong illegal and arbitrary acts of respondents.

6. That it is stated that petitioner already passed accounts examination first paper final level and second paper primary level conducted on 19th December, 1983 and second paper final level conducted on 10 and 11 June, 1984 but wrongly and illegally it has been shown that petitioner passed the examination in the year 2002. It is stated that



after passing the examination in the year 1984 thereafter no requirement of passing the examination in the year 2002 itself as passed by petitioner.

7. That in such view of the matter earlier provided 3rd ACP under MACP Scheme to petitioner are correct and justified as stated above the only cause of degradation made was due to passing of Account Examination by the petitioner as final level and second paper in the year 2002 whereas petitioner already qualified and passed the said Accounts Examination in the year 1984 itself and according the benefit of MACP/3rd ACP accorded to petitioner but without verification of service records of petitioner and further without asking explanation or show cause from petitioner ever wrongly and without justification in the light of an application made by a person who is no way concerned with the petitioner the pay scale of petitioner reduced and recovery of Rs. 427910 has been adjusted from Gratuity amount, Grade pay has been reduced from 4800 and accordingly provisional pension fixed and being paid and further recovery has been made without show cause in light of letter Memo No. 264 dt. 4.4.2015 and letter no. 51 dt. 18.4.2016 (Annexure 1 and 2) which are wrong illegal and arbitrary in light



of the fact that and a letter dated 19.1.2017 has been sent by Respondent No. 3 to Joint Secretary, Road Construction department, Bihar, Patna and a copy of the same has been given to petitioner during pendency of the present writ application.

8. That para-12 under reply is matter of record requires no comment whereas para-13 to 18 under reply it is stated that without proper verification of records of petitioner and without asking explanation or show cause from petitioner wrongly and without justification in light of an application made by a person who is no way concerned with the petitioner the pay scale of petitioner reduced and recovery made from retiral dues as well as from other heads of petitioner which is wrong illegal and arbitrary.

9. That it is stated that the previous fixation which were wrongly rectified and recovery from petitioner made are to be restored as already petitioner passed the examination in the year 1984 itself.

10. That on wrong presumption of passing of examination in the year 2002 which were passed by petitioner again whereas petitioner passed finally said examination in the year 1984 itself and as such no rectification or recovery is justified by the respondents and the same is to be restored.”



From the averments made in the reply to the counter affidavit and after going through the averments made in the counter affidavit, counsel for the State submits that the matter may be remitted back for decision afresh.

Considering the averments made in the reply to the counter affidavit and Annexure-4 and 4/1 thereof, the Court is of the considered view that the respondents have passed the order for reduction without application of mind and without considering the relevant records. In addition thereto, in view of the judgment of the Apex Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih (white washer), etc.: 2015 (1), PLJR (SC) 261= (2015) 4 SCC 334**, the respondents are not justified in deducting the amount from the retiral dues of the petitioner.

Accordingly, the order as contained in letter no. 264 dated 4.4.2015 whereby Rs. 1,09,890/- has been recovered is quashed as also the letter no. 51 dated 18.4.2016 whereby the grade pay has been reduced from 4800 to 4600 is quashed. The Respondents are directed to take fresh decision so far as entitlement of the petitioner for grant of MACP. Necessary corrective measures must be taken by the respondents within a maximum period of two months from the date of receipt/production of a copy of this order.



If the amount of Rs. 1,09,890/- has not been recovered as yet, the same shall not be recovered and if the same has been recovered, it shall be refunded within a maximum period of one month from the date of receipt/production of a copy of this order.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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