

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5142 of 2017**

Abhishek Anand Son of Late Harendra Prasad Singh, Resident of Mohalla-Anandpuri, P.O.- M.I.T., P.S. Muzaffarpur Sadar, District- Muzaffarpur, presently posted as Junior Accounts Clerk, Road Construction Department, National Highway Division, Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Road Construction Department
4. The Joint Secretary, Road Construction Department, Government of Bihar, Patna.
5. The Superintending Engineer, Road Construction Department, National Highway Circle, Muzaffarpur.
6. The Executive Engineer, Road Construction Department, National Highway Division, Muzaffarpur.
7. The Executive Engineer, Road Construction Department, National Highway Division, Motihari.

... .. Respondent/s

**Appearance :**

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| For the Petitioner/s | : | Mr. S.B.K. Mangalam, Advocate<br>Mr. Ravi Parmar, Advocate |
| For the Respondent/s | : | Mr. Amit Prakash, GA 13<br>Mr. Ravi Bhardwaj, AC to GA 13  |

**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**  
**ORAL ORDER**

6      22-03-2021                      Heard learned counsel for the petitioner and learned counsel for the State.

The father of the petitioner was in the service of the State of Bihar, posted in National Highway Division and he died in harness. Whereafter, the petitioner applied for his appointment on compassionate ground. The Committee



assembled on 30.05.2008, considered the case of the petitioner and recommended that he should be appointed on class-III post. If that post will not available, in that circumstances, he would be adjusted against class-IV post.

In pursuance thereof, the Engineer-in-Chief-cum-Commissioner-cum-Special Secretary, National Highway Division, State of Bihar, vide letter no. 3544 (E) dt. 15/9/09 (Annexure-2) directed the Superintending Engineer, Patna to appoint the petitioner on the post of Accounts Clerk. As the said post was not available, his nomination was returned, again Engineer-in-Chief-cum-Commissioner had written a letter, vide letter dated 04.07.2006 (Annexure-3) addressed to the Superintending Engineer, Road Construction Department, National Highway Division Circle, Muzaffarpur and directed to appoint the petitioner in Lower Division Clerk, class-III post.

In pursuance thereof, the Superintending Engineer, vide letter no. 61 dated 24.2.2010, appointed the petitioner on the post of Lower Division Clerk by Annexure-4. The Superintending Engineer had again issued a letter in pursuance of letter of the Engineer-in-Chief-cum-Commissioner-cum-Special Secretary stating therein that the petitioner was appointed in the pay scale of Rs.5200-20200 in the Grade pay of



Rs.1900 but vide letter no. 142 dated 31.01.2011 (Annexure 5), he was appointed as Accounts Clerk in the pay scale of Rs.5200-20200 there the authority had committed wrong, as the petitioner was appointed as Lower Division Clerk, but was appointed as Accounts Clerk, later on his pay scale was enhanced to Rs. 5200-20200 and grade pay of Rs.2400 without any justification and reason. As the petitioner was appointed in the grade pay of Rs.1900, he could not have been given the grade pay of Rs.2400. As the authority had committed wrong and rightly rectified its mistake and vide letter dated 08.06.2020 the petitioner has been brought back to the post of Lower Division Clerk. In the said letter it has been stated that the petitioner was wrongly paid the salary in the pay scale of Rs.5200-20200 and grade pay of Rs.2400, whereas he should have been paid the salary in grade pay of Rs.1900.

Learned counsel for the petitioner submits that no wrong has been committed by the authority in granting grade pay of Rs.2400, as petitioner was discharging the duty of Accounts Clerk, he was rightly given the grade pay of Rs.2400.

Learned counsel for the State submits that the petitioner was in fact appointed in the grade pay of Rs.1900 on the post of Lower Division Clerk which is separate to Accounts



cadre. He can not hop off and hop in from the clerical cadre to Accounts cadre. He has to be promoted in his own cadre. He cannot be brought to the Accounts cadre which quite distinct and different.

Second point has been raised by learned counsel for the petitioner that the petitioner was adjusted in the grade pay of Rs. 2400 in the year 2010 and he had not misrepresented or suppressed or misguided the authority to grant the grade pay of Rs.2400 and, as such, direction for recovery of extra amount paid to the petitioner is completely illegal and unequitable. In support of the submission, learned counsel for the petitioner has placed reliance on the judgment reported in **(2015) 4 SCC 334** *(State of Punjab and others Vs. Rafiq Masih [White Washer] and others)*.

Learned counsel for the State has vehemently opposed the prayer of the petitioner that he has wrongly received the extra amount and there is no illegality in giving direction for recovery of the extra amount from him.

Having considered the rival contentions of the parties, it is very much clear that the petitioner was recommended for class-III post. Earlier the Chief Engineer-cum-Commissioner-cum-Special Secretary issued letter to the Superintending



Engineer, National Highway, Patna Division to appoint the petitioner on the post of Accounts Clerk, but the said post was not available and then he issued another letter by which he had directed for his appointment in Lower Division Clerk. When the appointment of the petitioner had been made in Lower Division Clerk, the question of his adjustment in Accounts Clerk does not arise. As the petitioner was recommended and appointed as Lower Division Clerk so his adjustment in Accounts Clerk is completely wrong and rightly it has been rectified so there is no illegality in the action of the respondent.

So far the recovery part is concerned, the Hon'ble Supreme Court in State of Punjab and others vs. Rafiq Masih [White Washer] and others case (supra) held that if the extra amount is received and continued for a long period, has been paid without any suppression or misrepresentation of fact, it will be inequitable after long lapse of time to recover the amount from the class-III and class-IV employees.

In such view of the matter, the direction for recovery of the extra amount paid to the petitioner vide Annexure-10 to that extent is quashed, but reversion of petitioner to his original post is legal, does not require any interference. The State would not recover any amount from the petitioner. If any amount has



been recovered from the petitioner, the State is directed to return the same to the petitioner within a period of six months from the date of receipt/production of a copy of this order.

With the above observation and direction, this petition is disposed of.

**(Shivaji Pandey, J)**

Mahesh/-

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