

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22060 of 2019

1. Ram Bahadur Mochi s/o Luchai Mochi, Resident of Kedar Loddge, Post Office Gali, Punaichak, District- Patna.
2. Amit Kumar Shukla s/o Late Girijua Shankar Shukla, resident of Mohalla Rajiv Nagar, Road No. 18, Post- Keshari Nagar, P.S.- Rajiv Nagar, District- Patna.
3. Chandramani Prasad Singh, s/o Lakhan Prasad Singh, resident of Azad Path, Gali No. 4, Chandmari Road, P.S.- Kankarbag, District- Patna.
4. Panchu Prasad, s/o Shivilal Prasad, resident of Mohalla- Sachidanand Colony, Kathpul, District- Patna.
5. Uday Kumar Singh, s/o Baleshwar Singh, resident of Mohalla- Fulwari, Road No. 23, babu Nagar, District- Patna.
6. Kailash Murmu, s/o Sukhu Murmu, resident of Mohalla- Makhdumpur, Dr. D.P. Tirupati House, Khagaul, District- Patna.
7. Raj Kumar Ram, s/o Nandu Ram, resident of Mohalla- Ramdayal Path, Purani Jakkanpur, P.S.- Jakkanpur, District- Patna.
8. Umakant Mishra, s/o Late Rambachhan Mishra, resident of Mohalla- Keshopur, Simari Buxar, District- Buxar.
9. Basant Lal Khaware, s/o Late Kanhaiya Lal Khaware, resident of Ekta Nagar, Western Side Via Khojai Imli, P.s.- Phulwarisharif, District- Patna.
10. Kunkun Kumari, w/o Brajkishore Sharma, resident of Mohalla- Bhutnath Road, Shyam Niwas, Shantiniketan, Sampatchak, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through principle secretary Human Resources Department, Govt. of Bihar, New Secretariat, patna.
2. The Chairman Bihar School Examination Board, (Senior Secondary), Budh Marg, Patna.
3. The Secretary Bihar School Examination Board, (Senior Secondary), Budh Marg, Patna.
4. The Deputy Secretary Bihar School Examination Board, (Senior Secondary) Budh Marg Patna.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Advocate
For the Respondent/s : Mr. Madhaw Pd. Yadaw (Gp23)

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 01-12-2021

Heard learned counsel for the parties.

In the instant petition, petitioners have prayed for the following relief/reliefs:

(i) For issuance of writ in the nature of certiorari for quashing the memo Stha. Pre. 3407/Patna, Dated 14/09/2019 issued under the signature of Secretary Bihar School Examination Board, Patna by which he has ordered to realize the extra payment which has been received by the petitioners for the post of Assistant from the date of their passing out graduation while they were working on lower post contrary to the fact that petitioners have never received such amount rather they have been duly adjusted/promoted from routine clerk to Assistant.

(ii) For issuance of writ in the nature of command directing the respondent authorities to not take any co-receive step in the light of aforesaid order.

(iii) For issuance of order to hold that the adjustment/ promotion of the petitioners on the post of Assistant was good and in accordance with law as per the direction/observation of this Hon'ble Court and on the basis of decision taken by the five



man committee constituted by the respondent themselves hence now they have not right to realize the amount/payment which has been given to petitioners.

(iv) For issuance of writ in the nature of mandamus directing/commanding the respondents authorities to allow the petitioners to discharge their duties on the post of Assistant without any hindrance and breakage and also to pay the salary for the post of Assistant.

(v) For any other appropriate writ/writs, order/orders for which petitioners deemed entitled to.

The impugned order is relating to recovery. The petitioners were stated to have been promoted to the post of Assistant with rider that if they have not passed the graduation within the time limit stipulated they would be reverted and petitioners have not passed graduation within the time limit. In the result, the official respondent proceeded to order for recovery in respect of undue benefit which is stated to have been granted to the petitioner from the year 1996 to 2012. Before issuing Annexure-A1, respondents have issued a notice to the petitioner for which petitioners were stated to have submitted their explanation. On the other hand, perusal of Annexure-A1 dated 14.09.2019 do not reveal in respect of issuance of show-cause notice and receipt of petitioners' explanation and consideration of explanation so as to pass final



order in respect of recovery. Therefore, the Annexure-A1 dated 14.09.2019 is not a speaking order and so also the concerned official respondent has proceeded to pass impugned order only with the empty formalities of issuing show-cause notice and receipt of explanation from the petitioner. In the light of these facts and circumstances, the petitioners have made out a case on the score that the impugned order is non-speaking order and non-consideration of the petitioners' explanation. Thus, Annexure-A1 dated 14.09.2019 is set aside. The concerned respondent is hereby directed to reconsider the petitioners' grievance relating to recovery with reference to show-cause notice, explanation and further petitioners are at liberty to make further explanation while highlighting the decision of the Apex Court in the case of *State of Punjab and Others Vs. Rafiq Masih (While Washer) and Others reported in (2015) 4 Supreme Court Cases 334* within a period of two weeks from today. On receipt of petitioners' additional explanation, the concerned respondent is hereby directed to pass a speaking order after a due consideration of each of the contention raised and to be raised by the petitioner. Such exercise shall be completed within a period of four months from the date of petitioners' additional explanation.



The recovered amount shall be refunded to the petitioner subject to the outcome of the final order to be passed by the competent authority.

With the above observation, the present petition stands disposed of.

(P. B. Bajanthri, J)

Ankit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	06.12.2021
Transmission Date	N.A.

