

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5269 of 2022

Md. Shahirul Haque, Son of Late Abudul Hafiz, Resident of Village - Mohammadpur, P.O. - Bara Shankar, P.S. - Patahi, District - East Champaran at Motihari, the retired Tube Well Khalasi, Public Health Division, Dhaka, District - East Champaran at Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary, Public Health Engineering Department, Government of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna.
3. The Engineer - in - Chief - Cum - Special Secretary, Public Health Engineering Department, Government of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna.
4. The Chief Engineer, Public Health Engineering Department, Government of Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Circle, Motihari.
6. The Executive Engineer, Public Health Division, Dhaka, District - East Champaran.
7. The Senior Treasury Officer, East Champaran at Motihari, District - East Champaran at Motihari.
8. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr.Vijay Kumar Singh, Advocate
For the State	:	Mr.Bijay Kumar Sinha, AC to AAG5
For Accountant General	:	Mr.Bindhyachal Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

5 08-09-2022 The petitioner was granted some benefit under a Government decision as contained in communication dated 16.11.2013, the same is sought to be withdrawn and an amount of Rs.7,37,599/- is sought to be recovered from the petitioner.

The counter affidavit discloses that under a misconception the benefit has been extended to the petitioner though petitioner was not a *bona fide* beneficiary of resolution



Nos.3972 and 7577 dated 23.09.2016 issued by the Finance Department. On discovery of the said mistake the amount noted above is sought to be recovered from the petitioner post-retirement. It is not in dispute that he is a Grade-4 employee.

Having regard to the aforesaid facts, learned counsel for the petitioner submits that he would be made to suffer immensely on account of such withdrawal/recovery post-retirement. The amount was granted under valid and existing decisions of the Government, however, allegedly under a misconception. The misconception of the Authorities was *bona fide* and the petitioner had not contributed in creating any misconception by any misrepresentation. He submits that the law is well settled in this regard specially with respect to persons who have retired from such posts as the petitioner being in the Grade-4 that taking into account the hardships likely to arise from such recovery the Authority should not be permitted to make such recovery. He relies upon decision of the Apex Court in the case of ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer)*** reported in ***(2015)4 SCC 334***. It is also submitted that the recovery is not preceded by any opportunity and is in gross violation of the principles of natural justice.

Learned counsel for the State, however, submits that immediately upon discovery of the undue benefit having been



extended to the petitioner the authorities have acted to make recoveries. The petitioner was not entitled to the said amounts and, therefore, he cannot raise a grievance. It is also submitted that for any mistake whether *bona fide* or not the State Exchequer cannot be made to suffer.

Considering the rival submissions and having regard to the decision of the Apex Court and the fact that recovery is not preceded by compliance with principles of natural justice, this Court would direct the authorities not to recover the amount in question. Petitioner, however, cannot be permitted to hold on to a benefit which is not due and admissible. The Authorities, therefore, would be duly justified in implementing the decision for revising the entitlement to the petitioner on account of pension, in accordance with rule, prospectively and ensure that the due and admissible amounts are paid expeditiously to the petitioner, preferably within three months from the date of receipt/production of a copy of this Order.

Writ application is allowed to the limited extent indicated above.

(Madhuresh Prasad, J)

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