

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10393 of 2022

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Dinesh Kumar S/o Late Shital Mandal, Resident of At and P.O. - Laukha, P.S.
- Supaul, District- Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Director, Primary Education, Government of Bihar, Patna.
5. The District Programme Officer (Establishment) Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Singh, Adv.
For the Respondent/s : Mr. Madanjeet Kumar, GP 20

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

4 30-01-2023 1. The petitioner by way of this writ petition has

prayed as under:

*“(I) For issuance of an appropriate writ
or writs for quashing of letter no. 1177 dt.
28.06.2022 issued by the District Programme
Officer(Establishment), Madhepura (annexure-3 to
the writ petition) whereby and whereunder it is
intimated to the petitioner that earlier he has
received salary of Rs. 72,100/- on 01.07.2020. But
that has been revised to Rs. 66,000/-. So, to deposit
the excess amount Rs. 6,04,396/- (Six lakh four
thousand three hundred ninety six) through chalan*



within one week.

(II) Any other relief or reliefs for which the petitioner is found entitled in law be granted to him.”

2. This Court in **Chandrakant & Ors. Vs. State of Bihar** and connected writ petitions **C.W.J.C. No. 2783/2021** reported in **2022(6) B.L.J., Page 563** vide judgment dated 23.09.2022 has held as under:

“27. This Court agrees that as per the Supreme Court judgment passed in the case of Syed Abdul Quadir (supra) granting of higher salary was in the same grade, in terms of the provisions contained in FR 22(1)(a)(2) therefore such teachers were only required to be shifted in the new pay scale as per the gazette notification, dated 22.01.2010, they were not to be treated as the promoted in the higher grade.

28. In the opinion of this Court, therefore, merely because the decision would affect several teachers who have been wrongly granted said benefit and who have also retired, illegality can not be allowed to be perpetuated.

29. The prayer to quash the letter, dated 10.11.2020, is therefore liable to be rejected.

30. However, in the case of Syed Abdul Quadir (supra) the Supreme Court examined



*whether recoveries are required to be made in such circumstances and found that the fault does not lie with the individual teachers to whom the benefit has already been advanced and, therefore, any amount which has already been released is not required to be recovered. The view expressed in the case of Syed Abdul Quadir has been reiterated by the Apex Court in the case of **State of Punjab & Ors. Vrs. Rafiq Masih (white washer) & Ors.** reported in (2015) 4 SCC 334 and further again reiterated in the case of **Thomas Daniel Vrs. State of Kerala & Ors.** reported in 2022 SCC Online SC 536 wherein it has been held as under :*

“14. Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.”

31. In view of the above, the contention raised by the petitioners of having benefit of ACP Scheme or MACP Scheme fails and the order passed by the respondents, dated 10.11.2020 and



consequential orders thereto are upheld holding that the petitioners would only be entitled to the benefits granted to them under Circular, dated 16.11.2000.

32. However, it is further held that the petitioners and other teachers who were wrongfully granted benefit of ACP/MACP would have to get their pay fixation revised and if they have retired, their pension would also be accordingly revised. But, no recovery shall be made for the extra amount which they have received.”

3. Keeping in view thereto, no order of recovery is required to be made from the petitioner.

4. Accordingly, the writ petition stands allowed to the aforesaid terms.

(Sanjeev Prakash Sharma, J)

Suraj/-
Item No. 120

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