

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1642 of 2021

1. Manuel Kisku, S/o Paul Kisku, R/o P.S. Digha, District -Patna.
2. Pradeep Kumar, S/o Brajnandan Prasad, R/o P.S. Mirganj, District Gopalganj.
3. Baidya Nath Prasad, S/o Rajendra Prasad, R/o P.S. Phulwarisharif, District-Patna.
4. Sujeet Kumar, S/o Lal Babu Ray, R/o P.S. Parsa Bazar, District -Patna.
5. Sunil Kumar Trivedi, S/o Ram Naresh Trivedi, R/o P.S. Beur, District -Patna.
6. Irfanul Hassan, S/o Israil Manzar, R/o P.S. Bahadurpur, District- Patna.
7. Rashidul Haque, S/o Anwarul Haque, R/o P.S. Sultanganj, District -Patna.
8. Shyam Prasad Upadhyay, S/o Bhim Prasad Updhyay, R/o P.S. Kotwali, District- Patna.
9. Sangita Sharma, W/o Suman Sharma, R/o P.S. Digha, District- Patna.
10. Srinivas Prasad, S/o Bishnudeo Prasad Yadav, R/o M.H. Nagar, P.S. Hasanpura, District- Siwan.
11. Sushil Kumar Kesri, S/o Dwarika Ram, R/o P.S. Patliputra, District- Patna.
12. Ranjan Kumar, S/o Ramdeo Prasad R/o P.S. Gandhi Maidan, District- Patna.
13. Michael Francis, S/o Louis Francis, R/o P.S. Beur, District- Patna.
14. Ashok Kumar Vishwash, S/o Shital Prasad Rai, R/o P.S. Patliputra, District-Patna.
15. Praveen Kumar Sinha, S/o Pramod Kumar Sinha, R/o P.S. Patrakarnagar, District-Patna.
16. Sudesh Kumar, S/o Shiv Shankar Choudhary, R/o P.S. Kadamkuan, District-Patna.
17. Baban Kumar, S/o Badri Sah, R/o P.S. Phulwarisharif, District- Patna.
18. Amar Kumar Verma, S/o Devendra Kumar Verma, R/o P.S. Kankarbagh, District-Patna.
19. Bhanu Pratap, S/o Thakur Ramayan Sharan Singh, R/o P.S. Kadamkuan, District-Patna.
20. Arun Kumar Jha, S/o Sonelal Jha, R/o P.S. Kotwali, District-Patna.
21. Ajay Kumar, S/o Gupteshwar Prasad Singh, R/o P.S. Buddh Colony, District-Patna.
22. Jitendra Prasad Jayswal, S/o Jagdish Prasad Jayswal, R/o P.S. Patliputra, District-Patna.
23. Arvind Kumar Yadav, S/o Chandeshwar Prasad Yadav, R/o P.S. Siwan, District- Siwan.
24. S.M. Jamilur Rahman, S/o Fazlur Rahman Afzal, P.S. Airport, District-Patna.
25. Nirmal Bishwas, S/o Anandi Prasad Yadav, R/o P.S. Kankarbagh, District-Patna.



26. Manoj Kumar Singh, S/o Srinarayan Singh, R/o P.S. Patliputra, District-Patna.
27. Shivpujan Kumar Singh, S/o Bindewshwari Prasad Singh, R/o P.S. Gardanibagh, District- Patna.
28. Rekha Kumari, W/o Manohar Prasad Sriwastav, R/o P.S. Danapur, District-Patna.
29. Dipak Kumar, S/o Jagannath Prasad, R/o P.S. Patrakarnagar, District-Patna.
30. Rajeev Ranjan Kumar, S/o Rajandhari Singh, R/o P.S. Danapur, District-Patna.
31. Pankaj Kumar, S/o Jai Das, R/o P.S. Pirbahor, District-Patna.
32. Dharamendra, S/o Madan Kumar, R/o P.S. Nardiganj, District-Nawadah.
33. Ranjay Kumar Singh, S/o Dinesh Singh R/o P.S. Rajiv Nagar, District-Patna.
34. Radha Sinha, W/o Yadunandan Prasad, R/o P.S. Danapur, District- Patna.

... .. Petitioners

Versus

1. The Bihar School Examination Board through its Chairman, Patna.
2. The Chairman, Bihar School Examination Board, Patna.
3. The Secretary, Bihar School Examination Board, Patna.
4. Deputy Secretary (Establishment), Bihar School Examination Board, Patna.

... .. Respondents

Appearance :

For the Petitioners	:	Mr.Harsh Singh, Advocate
For the BSEB	:	Mr. Satyabir Bharti, Advocate
		Ms. Sushila Sharma, Adv.
		Mr. Abhishek Anand, Adv.
		Ms. Abhanjalli, AC to GA-12

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date : 19-04-2023

Heard Mr. Hash Singh, learned counsel for the petitioners and Mr. Satyabir Bharti, learned counsel for the Bihar School Examination Board (hereinafter referred to as the 'BSEB' or 'Board').



2. Petitioners in the present writ application pray
for the following reliefs:-

“1.a. For issuance of an appropriate writ, order or direction in the nature of writ of certiorari for quashing of departmental order contained in Memo No. 3407 dated 14.09.2019 whereby and whereunder the decision to grant salary of the post of Assistant to the Petitioners and others from the date of their attaining degree of graduation has been revoked and it has further been directed that in terms of Rule 22 of the Bihar School Examination Board Regulation, 1964 the salary be revised with retrospective effect from the date of joining on the post of Assistant and excess payment so made till the period the Petitioners joined in the substantial cadre of Assistant to be recovered in twenty installments or till realization of the excess payment whichever is less.

b. For issuance of an appropriate writ, order or direction in the nature of writ of certiorari for quashing consequential individual office orders of recoveries to be made in case of each of the Petitioners as contained in Annexure 18 Series, pursuant to which deductions have been made from salaries of petitioners with effect from January 2020 itself, in teeth of and contrary to the law laid down by the Hon'ble Apex Court in **State of Punjab & Others Vs. Rafiq Masih &**



Others reported in 2015 (4) SCC 334.

c. For issuance of an appropriate writ, order or direction in the nature of writ of mandamus commanding the Respondent authorities to treat the Petitioners as working on the post of Assistant from the date of their attaining graduation and to restore with penal interest any recoveries made from the salaries pursuant to the impugned orders.

d. For an ad interim writ, order or direction staying the operation of the impugned orders during the pendency of the writ application.

e. For an ad interim writ, order or direction restraining the authorities from making any further deductions/recoveries from the salaries, pay or other emoluments of the Petitioners during the pendency of the writ application.

f. For issuance of appropriate writ, order or directions granting any other relief(s) or moulding the above reliefs which the Petitioners may be found entitled to in the facts and circumstances of the case.

Brief Facts of the Case

3. The petitioners are employees of the BSEB who were initially appointed against the Class III/Grade C Post of routine clerks. They are currently working on the post of Assistant.



Background Facts

4. It is stated that upon abolition of Bihar Intermediate Education Council (hereinafter referred to as the 'Council') by virtue of the Bihar Intermediate Education Council (Repeal) Act, 2007, the employees of the Council remained in the employment, as if the Act was not repealed. The State Government constituted a committee of Secretaries consisting of three Secretaries to prepare a detail scheme of absorption, retirement, compulsory or voluntary retirement, screening appointment and other service conditions of the employees of the Council. The Government upon consideration of the recommendations of the Committee passed a resolution dated 12.07.2012 whereunder it was resolved that all such employees who fulfilled the criteria provided under the Resolution were to be absorbed on similar/analogous vacant posts in the Board. According to this Resolution, the concerned employee of the Council would be deemed to have been appointed in the Board from the date of their absorption. The employees being absorbed would be given pay protection on the lowest pay scale post from the date on which they are absorbed. Resolution of the State Government came to be challenged in C.W.J.C. No. 17414 of 2013 but the same did not



sustain as the writ application failed.

5. In terms of the scheme under which the employees of the Council were absorbed in the Board, the employees of the Council were to be placed in the bottom of the seniority list and juniors to persons already working and employed in the Board.

6. It is the case of the petitioners that the employees of the Council were earlier granted promotion to the post of Assistant with effect from 23.09.1991 or from the date of their obtaining graduation degree whichever was earlier. They were absorbed as Assistant in the Board, including those who were provisionally promoted. It is stated that some of the employees of the Council in respect of whom the Council had withdrawn the decision to grant promotion from the date of their obtaining graduation degree in the year 2005 itself, approached this Court twice vide C.W.J.C. No. 14221 of 2006 and C.W.J.C. No. 1057 of 2009. During pendency, they became employees of the Board, therefore, the Board enclosed the Board filed a counter affidavit in the year 2012. With the counter affidavit the Board enclosed its decision contained in the order dated 12.09.2012 to treat the employees of the Council as promoted to the post of Assistant with effect from the order.



7. It is the case of the petitioners that discrepancies arose in the matter of salary of the employees of erstwhile Board including the petitioners who had been promoted on the post of Assistant in the year 2009 and 2012 but had obtained graduation degree much prior thereto. Unlike the employees of the Council, the employees of the Board were not given the same advantage of promotion from the date of their obtaining graduation degree or 23.09.1991 whichever was earlier.

Three Members Committee Constituted

8. To remove the anomalies in the matter of pay and other emoluments of the employees of the Board, a three Member Committee was constituted which in its report dated 25.03.2014 identified 44 employees of the Board including these petitioners who had been promoted to the post of Assistant in the year 2008 and 2012 but had completed their graduation much prior thereto. The Committee though took a view that the benefit of the post of Assistant was wrongly extended to the employees of the Council in absence of correct information to the absorption committee but the Committee took a view that because the Board has filed an affidavit in the Court in C.W.J.C. No. 1057 of 2009, the same benefit be allowed to the employees of the Board also with effect from the date of their becoming



graduates.

**Notional Promotion from the date of obtaining
Graduation Degree**

9. In the aforementioned background, acting on the Three Men's Committee Report, the Board vide its Memo No. 1955 dated 29.03.2014 took a decision to grant notional promotion to the employees of the Board including these petitioners to the post of Assistant from the date of their obtaining degree of graduation. It is stated that 27 employees of the Board who were not given the notional promotion to the post of Assistant with effect from the date of obtaining degree of graduation filed C.W.J.C. No. 10149 of 2017 which was disposed of vide order dated 16.04.2018 directing the Chairman of the Board to decide their representation and grievances within a period of four weeks.

10. In the light of the direction of this Court, the Chairman of the Board passed the order as contained in Memo No. 6810 dated 11.12.2018 rejecting the representation of those 27 persons and held that the benefit of notional promotion to the post of Assistant from the date of obtaining degree of graduation extended to the 44 employees of the Board earlier was contrary to the Rules and was required to be revoked after



issuance of show cause. The copy of the Memo No. 6810 dated 11.12.2018 is Annexure '10' to the writ application.

11. It is stated that the aforesaid memo No. 6810 dated 11.12.2018 has been impugned by 17 out of the 27 employees in C.W.J.C. No. 13909 of 2019.

12. It is stated that in terms of the Memo No. 6810 dated 11.12.2018 (Annexure '10') the show cause notice was issued vide Memo No. 24 dated 05.01.2019 by the Secretary of the Board calling upon the 42 employees (two have died in the meantime) to show as to why excess payment in terms of salary of the post of Assistant be not recovered for the period that the aforesaid employees were working on a lower post i.e. on the post of routine clerk. After submission of the reply of the petitioners by way of representation dated 17.01.2019 in response to the show cause, some documents were called for to enable the petitioners to file their show cause. It is stated that vide Memo No. 1087 dated 18.04.2019 the petitioners and others were directed to peruse the documents on 03.05.2019 in the office of the Board and were further directed to file their show cause reply within one week thereafter. It is stated that without affording any opportunity to peruse the documents sought for or affording another chance to file a show cause reply



in absence of such documents, the respondent no. 3 passed the impugned order contained in Memo No. 3407 dated 14.09.2019 (Annexure '15' to the writ application) whereby and whereunder the respondent directed that in terms of Rule 22 of the Bihar School Examination Board Regulation, 1964 the salary be revised with retrospective effect from the date of joining on the post of Assistant and excess payment so made till the period the petitioners joined in the substantial cadre of Assistant be recovered in twenty installments or till realization of the excess payment whichever is less.

13. Learned counsel for the petitioners assailed Annexure '15' to the writ application on various grounds including on the ground of violation of principle of natural justice, however, in view of the fact that Annexure '15' to the writ application had already been set-aside by a learned co-ordinate Bench of this Court in C.W.J.C. No. 22060 of 2019 (Ram Bahadur Mochi & Ors. Vs. The State of Bihar & Ors.) on the ground of violation of principle of natural justice alone and the matter having been remitted to the competent authority to reconsider the petitioners' grievance and the fact that upon reconsideration of the case of those petitioners, the competent authority had already rejected their case, learned counsel for



the petitioners in the present case took time to seek instruction as to how to proceed in this writ application in view of the facts that the impugned order has already been set-aside by learned co-ordinate Bench of this Court on the ground of not being speaking order.

Supplementary Affidavit of the Petitioners

14. The petitioners have filed a supplementary affidavit in which a plea has been taken in paragraph '3' that the petitioners do not wish to take the plea of violation of principles of natural justice i.e. the order having been passed without opportunity of hearing to the petitioners and the order being a non-speaking order. It has been submitted that the petitioners would confine their challenge to the impugned order on its merits and undertake not to agitate the ground of violation of principle of natural justice at any stage in any proceeding before any court of law.

Challenge Limited to the Recovery

15. In fact in course of hearing of this writ application Mr. Harsh Singh, learned counsel has categorically submitted that the scope of hearing in the present writ application is not as to whether the petitioners were rightly given the benefit of the post of Assistant from the date of their



obtaining the graduation degree or the benefits were wrongly given to them. Learned counsel, in his endeavour to assail the recovery of the benefits already disbursed to the petitioners, submits that the petitioners would proceed on a premise that the benefits were wrongly given to them, still, their submission would be that they being Class III employees and there being no undue role played by them in getting the benefits, no recovery of benefits be made at this stage.

16. Learned counsel submits that the petitioners are not looking for continuation of the benefits, it may be stopped but what has already been given to them cannot be recovered.

17. Learned counsel for the petitioners has sought to assail the impugned order (Annexure '15') on the ground that Annexure '15' has selectively applied the judgments of the Hon'ble Supreme Court in the case of **State of Punjab & Others Vs. Rafiq Masih & Others** reported in **(2015) 4 SCC 334**. It is his submission that paragraph 2 of the Annexure '15' shows that the action towards recovery of the benefits already disbursed would not be taken against the retired/dead and those employees who were going to retire within the period of one year. Learned counsel submits that this selective application of the judgment of the Hon'ble Supreme Court in the case of



Rafiqu Masih (supra) is not based on any *intelligible differentia*.

18. Learned counsel further submits that the office order as contained in Memo No. 3399 dated 14.09.2019 (Annexure '16') is referring the judgment of the Hon'ble Apex Court in **Rafiq Masih (white washer) (Civil Appeal No. 11527 of 2014)** and this Annexure '16' still exists.

19. Learned counsel submits that in the case of **Ram Bahadur Mochi & Ors. Vs. The State of Bihar & Ors. (C.W.J.C.No. 3962 of 2022)** this Court has delivered its judgment on 18.03.2023. That case relates to the employees of the Council. They had moved this Court against the order contained Memo No. 123/2022 dated 27.01.2022 issued under the signature of the Secretary of the Board whereby the decision to grant salary for the post of Assistant to the petitioners from the date of obtaining the graduation degree has been revoked and it was directed that in terms of the Rule 22 of 1964, the salary be revised with retrospective effect and excess payment so made till the period the petitioners joined in substantial cadre of Assistant should be recovered in 20 installments or till finalization of the excess payment whichever is earlier.

20. Learned counsel submits that this Court has



held in the case of **Ram Bahadur Mochi** (supra) that the impugned action of recovery from the petitioners cannot be interfered with. Learned counsel submits that in the present case a limited argument would be that the petitioners would be covered by the judgment of the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) hence no recovery be ordered.

21. Learned counsel has also drawn the attention of this Court towards the format of the undertaking obtained from the petitioners which simply says that in case of any mistake in calculation of the fixation of salary and the paid salary, the difference amount shall be adjusted from the salary. It is submitted that in the present case, undertaking obtained from the Class III employees would not be sufficient to go for recovery against them.

Stand of the Board

22. On the other hand, Mr. Satyabir Bharti, learned counsel for the Board submits that so far as the order as contained in Memo No. 3407 dated 14.09.2019 (Annexure '15') is concerned, it has already been set aside by learned Co-ordinate Bench of this Court in the case of **Ram Bahadur Mochi** on the ground of it being a non-speaking order and thereafter in the light of the direction of the learned Co-ordinate



Bench, the Board considered the case of the petitioners in the said case and ultimately passed a reasoned order as contained in Memo No. 123 dated 27.01.2022 (Annexure 'D' to the supplementary counter affidavit of the Board). Learned counsel submits that the order contained in Memo No. 123 dated 27.01.2022 (Annexure 'D' to the supplementary counter affidavit of the Board) was under challenge in the case of Ram Bahadur Mochi in C.W.J.C.No. 3962 of 2022. The said writ application has already been dismissed vide judgment dated 18.03.2023.

23. Learned counsel, therefore, submits that the petitioners who are sailing in the same boat with the employees of the Council cannot be allowed to take a plea that in their case the recovery should not be affected.

24. Learned counsel submits that the circumstances under which Three Men Committee was constituted by the Board may be found from the various letters and representations which were received from the petitioners and Bihar Vidyalaya Examination Board Employees Union. Learned counsel has taken this Court through such letters and representations which are parts of Annexure 'A series' to their supplementary counter affidavit. It is submitted that from the various letters it may be



easily gathered that the petitioners had threatened to go on strike leaving the examination work on 25.02.2014 if the Board does not take a positive consideration as regards their claim. It is submitted that in such circumstance when the Three Men Committee was constituted, they went through the records and were of the view that the recommendations made to grant benefit of the post of Assistant to the employees of the Council w.e.f. the date of their obtaining graduation degree was not correct. Learned counsel has taken this Court through Annexure '7' to the writ application which is the Inquiry Report dated 14.03.2014 of the Three Men Committee constituted by the Board to consider the claims of the employees of the Board. It is pointed out that even as the Three Men Committee found that the recommendation in favour of the employees of the Council was not correct and the employees of the Establishment Section of the Higher Secondary Department of the Board are required to be identified and proceeded against, the Committee observed that because the Board has already filed a counter affidavit regarding the absorption of the employees of the Council, in the matter of 44 employees of the Board now no option remains but to allow them similar benefits of the pay scale of the post of Assistant w.e.f. the date they obtained their graduation degree.



Learned counsel submits that the manner in which the Board was pressurised by the petitioners and their Union and then Three Men Committee despite having noticed that the employees of the Council were wrongly conferred with the benefits from the date of their obtaining graduation degree recommended the same for the petitioners also under a plea that the Board had filed a counter affidavit in the case of the employees of the Council in their favour.

25. Learned counsel submits that the fact was that in case of the employees of the Council, the Board having considered the claim of the employees of the Council rejected the same by a reasoned order contained in Memo No. 154/07 dated 08.11.2007. The said order was challenged in CWJC No. 3524 of 2009 and in CWJC No. 1057 of 2009. The said writ applications remained pending, during pendency, the writ petitioners had become eligible to the post of Assistant, thereafter, the Board came out with Memo No. 854 dated 12.09.2012 whereby the Board absorbed the petitioners of the said case on the post of Assistant in the light of the report of the earlier Committee constituted by the Board for purpose of absorption of the employees of erstwhile Council in the service of the Board. In paragraph '7' of the order contained in Memo



No. 854 dated 12.09.2012, it is stated that this order will be effective from the date of issuance. Thus, learned counsel submits that Three Men Committee while submitting its report dated 25.03.2014 (Annexure '7') could not appreciate that the order dated 08.11.2007 issued by the Board was never interfered with by this Court and the subsequent order dated 12.09.2012 conferring the benefit of promotion to the employees of the Council was effective from the date of issuance and not from the date of their obtaining graduation.

26. Learned counsel further submits that in the case of **Ram Bahadur Mochi** (supra), this Court has noticed that how despite the presence of Memo dated 12.09.2012, the Board came out with an office order dated 25.04.2013 which was passed on completely false and non-existing fact.

27. This Court has held that the maker of the office order dated 25.04.2013 took the help of the word “अस्पष्ट” which is definitely a fraudulent attempt to incorporate something which is not there in the office order dated 12.09.2012. It is submitted that the payments made to the employees of the Council by virtue of the order dated 25.04.2013 are being recovered and this Court has refused to interfere with the impugned order in **Ram Bahadur Mochi**



(Supra). It is submitted that the judgment of the Hon'ble Supreme Court in the case of **Rafiq Masiah** (supra) has been discussed and it has been held that the judgment in the case of **Rafiq Masiah** (supra) would not be applicable in the fact situation of the said case.

Consideration

28. Having heard learned counsel for the petitioners and the Board as also on perusal of the records, this Court finds that so far as the impugned order (Annexure '15') is concerned, the same has already been set-aside by learned co-ordinate Bench of this Court in the case of **Ram Bahadur Mochi** on the ground that the said order is not a speaking order. Learned counsel for the petitioners in this case, however, has taken a plea that he is confining his submission limited to the recoveries which have been either made or are being made from the petitioners. In paragraph '3' of the supplementary affidavit it is stated as under:-

“3. That in view of the facts noticed in order dated 20.03.2023, particularly with regard to fresh orders passed by the Respondent authorities on remand by this Hon'ble Court, reiterating their decision with respect to recovery of the amount paid in excess, the Petitioners do not wish to take the plea of



violation of principles of natural justice i.e. the order having been passed without opportunity of hearing to the petitioners and the order being a non speaking order, while assailing the impugned order the impugned action of the Respondents in effecting recovery from the petitioners.”

29. Learned counsel for the petitioners has, however, sought a writ in the nature of writ of mandamus commanding the respondent Board and its authorities to refrain from making recovery of the amount already disbursed to the petitioners. Learned counsel has categorically stated that the petitioners would not seek any further benefit but the fact remains that the petitioners have already availed the benefit of the post of Assistant from the date of their obtaining graduation degree when they were working on the post of clerk. They are on record in the writ application that they had been promoted to the post of Assistant in the year 2008 and 2012 but they got the benefits of the post of Assistant with effect from the year 1991, 1992, 1994, 1995 etc., while rendering service on the post of clerk. This has been rightly argued as “loot of public money” in the case of **Ram Bahdur Mochi** which this Court has taken note of in the judgment dated 18.03.2023.

30. The petitioners admittedly agitated their claim for



the benefits of the post of Assistant from a date prior to their promotion and they claimed their benefits from the date they obtained their graduation degree because the same benefits were granted to the employees of the Council who had been absorbed in the service of the Board and were placed in the seniority list below the employees of the Board.

31. This Court has noticed from the submissions of learned counsel of the Board that these petitioners had been regularly agitating their claim and at some point of time they threatened the Board that in case their demands are not positively accepted, they would go on strike on a short notice and will not participate in the conduct of the examination. It is, in these circumstances the Board constituted three Member Committee. The Committee in its report dated 25.03.2014 (Annexure '7') has categorically held that the earlier recommendations made in favour of the employees of the Council granting them the benefits of post of Assistant with effect from the date of their obtaining degree of graduation was not correct and had the absorption committee been informed of the office order contained in Memo No. 154 dated 08.11.2007, the said Committee would not have recommended for their absorption on the post of Assistant with effect from the date of



their obtaining degree of graduation. The Committee went on saying that for these laches the employees of the Establishment Section of the Higher Secondary Department be identified and proceeded against.

32. To this Court, it appears that the three Men Committee having taken a view that the recommendation made in favour of the employees of the Council was not correct, erred in taking a view that because an affidavit has been filed in the Hon'ble High Court regarding the said employees, no option remained with the Board but to confer the same benefits to the 44 employees of the Board from the date of their obtaining the graduation degree. This was a completely misplaced approach on the part of the three men Committee. This has perpetuated a wrong which was committed in the case of the employees of the Council.

33. This Court further finds that so far as the affidavit filed in the High Court in the case of the employees of the Council is concerned, the said affidavit was filed in C.W.J.C. No. 1057 of 2009 (Amit Kumar Shukla & Ors. Vs. The State of Bihar & Ors.). With the said counter affidavit the Board had enclosed Memo No. 854 dated 12.09.2012. This Court has examined the said Memo dated 12.09.2012 which was Annexure



‘A’ to the counter affidavit of the Board in C.W.J.C. No. 1057 of 2009. The consideration given by this Court in the case of **Ram Bahadur Mochi (Supra)** in paragraph 24 and 25 read as under:-

“**24.** It is this Annexure ‘A’ which was filed with the counter affidavit of the Board in CWJC No. 1057 of 2009 (Amit Kumar Shukla versus The State of Bihar and Ors.) and the Hon’ble Court has recorded as under:-

“... In view of the aforesaid order dated 12.09.2012, Annexure ‘A’ to the counter affidavit, learned counsel for the petitioner seeks permission to withdraw this writ application. However, he submits that the petitioner is entitled for some more reliefs, and for that he may be permitted to file a detail representation before the Secretary, Bihar School Examination Board (Senior Secondary), Budha Marg, Patna.

Permission is accorded.

This application stands disposed as withdrawn with the liberty aforesaid.

It is clarified that if any representation is filed on behalf of the petitioner before the respondent no. 3, then the same shall be considered strictly in accordance with law and shall be disposed of by a reasoned and speaking order expeditiously.”

So far as CWJC No. 3524 of 2009 is concerned, the same was listed on 16th July, 2013 and on the said date, learned counsel for the petitioner sought withdrawal of the writ petition



with a statement that grievances of the petitioner have already been redressed. The writ petition was dismissed as withdrawn.

25. Neither in Annexure 'A' in front of the names of the petitioners any date of absorption is indicated nor this anywhere states that they would be entitled for the benefits of the promotion to the post of Assistant with effect from the date of their attaining the graduation. Similarly, the order of this Court as contained in Annexure 'B' to the counter affidavit of the Board nowhere directs the respondents to confer benefit of the post of Assistant to the petitioners with effect from the date of their attaining the graduation."

34. In the above view of the matter, this Court is of the considered opinion that the recommendation made by the three men Committee in its report dated 25.03.2014 was not in accordance with the Memo No. 854 dated 12.09.2012 which was issued in the case of the employees of the Council. The Committee failed to appreciate the said memo and by ignoring the Memo No. 154 dated 08.11.2007, without any basis they assumed as if the employees of the Council have been given the benefit of post of Assistant with effect from the date of their obtaining graduation degree, therefore the Board had no other option but to confer same benefit to these petitioners.

35. This Court has, in the case of the employees of the



Council has taken a view that the recovery order against them need not be interfered with. So far as the present case is concerned, this Court finds that in this case the petitioners have given undertaking and one of the format of the undertaking is being reproduced hereunder:-

“मैं मानवेय किस्कु पदनाम सहायक एतद् द्वारा घोषित करता हूँ कि निर्धारित वेतन की अंतर राशि का भुगतान की गणना में किसी तरह की त्रुटि पाई जाती है या अधिक भुगतान की राशि को मेरे वेतन या अन्य पावनाओं से प्रतिपूर्ति कर ली जाएगी ।”

36. This Court further finds from Memo No. 1955 dated 29.03.2014 (Annexure ‘8’) that while giving benefit to these petitioners and others the Board put a note in the memo as under:-

“1. उपर्युक्त कम वरीयता का कम नहीं माना जायेगा एवं आर्थिक लाभ से वरीयता पर प्रभाव नहीं पड़ेगा ।

2. वेतन निर्धारण में त्रुटि पाये जाने पर यथोपेक्षित वसूली/प्रतिपूर्ति कर ली जायेगी ।

3. इस आदेश को पूर्वोदाहरण नहीं माना जायेगा ।

4. यह आदेश निर्गत के तिथि से प्रभावी होगा ।”

37. In the case of the petitioners, even as they are said to be Class III employees, the steps for recovery of illegally paid money was taken with the passing of the order contained in Memo No. 6810 dated 11.12.2018 (Annexure ‘10’) and a show



cause notice was issued to the petitioners vide Memo No. 25 dated 25.01.2019 (Annexure '11'), therefore, the recovery has been initiated well within five years. It is not a case where the petitioners were required to discharge duties on a higher post and have been paid for that. It is a case in which the petitioners have been paid the benefits attached to the post of Assistant from a date prior to the date of their actual promotion and joining on the post of Assistant. They have been granted the benefits from the date of their obtaining graduation degree which even they are not defending before this Court. This concept is completely foreign to service jurisprudence.

38. In the case of **Rafiq Masih (supra)** the Hon'ble Supreme Court has held in paragraph '18' as under:-

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year,



of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

39. In the case of **Ram Bahadur Mochi (supra)**, this Court has noticed that in paragraph ‘18’ of the judgment in **Rafiq Masih** the Hon’ble Supreme Court has held that where payments have ‘mistakenly’ been made by the employer, the recovery of same would be made impermissible in law in the given circumstance. The basic fact which is required to be looked into is as to whether this case may be taken as one in which payments have been made ‘mistakenly’. The judgment of the Hon’ble Supreme Court is not to be read as an absolute bar in the matter of recovery from a Class III or IV employees.

40. In the facts of this case huge public money has been disbursed to the petitioners and others, the petitioners have



obtained the benefit of post of Assistant with effect from the date of their obtaining graduation degree even as they were not promoted/working on the said post by filing several representations and pressurizing the Board to take a positive decision in their favour. They threatened the Board to go on strike leaving the examination work from the same date, therefore, they cannot be held innocent. They cannot claim reliefs on equitable grounds in the facts of this case.

41. This Court, therefore, finds no reason to interfere with the recoveries. So far as the case of the petitioners that the Board has not made any recovery from the retired/dead employees or those who are going to retire within one year, this Court would not go into that aspect save and except to say that the petitioners in the facts of the present case cannot succeed by pleading negative equality. This Court has been informed that the recoveries have already been effected from a large number of petitioners giving them benefit of 20 to 30 installments.

42. This Writ application fails.

(Rajeev Ranjan Prasad, J)

avin/-

AFR/NAFR	AFR
CAV DATE	17.04.2023
Uploading Date	19.04.2023
Transmission Date	

