

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.273 of 2022

In
Civil Writ Jurisdiction Case No.186 of 2020

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1. The State of Bihar through the Principal Secretary, Department of General Administration, Govt. of Bihar, Patna.
 2. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna.
 3. The District Magistrate, Bhojpur, Ara.
 4. The District Account Officer, Bhojpur, Ara.
 5. The Deputy Collector (Establishment), Bhojpur, Ara.
 6. The Treasury Officer, Bhojpur, Ara.

... .. Appellant/s

Versus

1. Yugeshwar Prasad Singh son of Late Raghubansh Singh, Resident of Mohalla-Nagri, Police Station-Charpokhari, District-Bhojpur.
2. Jai Siya Ram Pathak, son of Late Govind Pathak, Resident of Mohalla-Pandeydih, Police Station-Charpokhari, District-Bhojpur.
3. Ram Darsh Singh, son of Late Ramshrya Singh, Resident of Village-Chanda, Police Station-Krishnagarh, District-Bhojpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Md. Nasrul Hoda Khan, SC-1
		Mr. Md. Harun Quareshi, AC to SC-1
For the Respondent/s	:	Mr. Aditya Narain Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NANI TAGIA)

Date : 19-07-2024

Heard Mr. Md. Nasrul Hoda Khan, learned SC-1,
representing the appellants and Mr. Aditya Narain Singh,
representing the respondents.

Re:- I.A. No. 01 of 2022

2. The instant interlocutory application has been filed



with a prayer for condonation of delay in filing L.P.A. No. 273 of 2022. Though, the number of days of delay in filing the L.P.A. has not been mentioned in the interlocutory application, for the reasons stated in the interlocutory application, delay in filing L.P.A. No. 273 of 2022 is hereby condoned, in the interest of justice.

3. Accordingly, I.A. No. 01 of 2022 is allowed.

Re:- L.P.A. No. 273 of 2022

4. This Letters Patent Appeal is directed against the judgment dated 26.03.2021, passed by learned Single Judge, in C.W.J.C. No. 186 of 2020, whereby the orders dated 06.01.2017, 13.06.2017 and 04.10.2019, issued by the Deputy Collector (Establishment), Ara seeking to recover the excess amount paid to the petitioners on account of grant of higher grade-pay by holding that the petitioners were not entitled to higher grade-pay, have been set aside and quashed.

5. The respondent nos. 1, 2 and 3/petitioners had filed C.W.J.C. No. 186 of 2020, challenging the orders dated 06.01.2017, 13.06.2017 and 04.10.2019, issued by the Deputy Collector (Establishment), Ara, whereby it has been directed to recover the excess amount paid to the petitioners on account of grant of higher grade-pay to the petitioners by holding that the



petitioners were not entitled to a higher grade-pay.

6. The petitioners were superannuated from service on 29.02.2016, 31.01.2017 and 30.04.2019, respectively.

7. The learned Single Judge, by relying on the decision rendered by the Supreme Court in the case of **State of Punjab Vs. Rafique Masih; (2015) 4 SCC 334**, has set aside the orders dated 06.01.2017, 13.06.2017 and 04.10.2019, issued by the Deputy Collector (Establishment), Ara and directed the respondent authorities to refund the amount recovered from the respondent nos. 1, 2 and 3/petitioners.

8. The State authorities have preferred the instant appeal by contending that in view of the later judgment of the Supreme Court, rendered in the case of **High Court of Punjab and Haryana Vs. Jagdev Singh; (2016) 14 SCC 267**, learned Single Judge ought to have dismissed the writ petition and allowed recovery of the excess payment made to the petitioners as per the orders dated 06.01.2017, 13.06.2017 and 04.10.2019, issued by the Deputy Collector (Establishment), Ara.

9. In **Jagdev Singh (supra)**, it was the case of recovery of excess payment made to an Additional Civil Judge, who was allowed senior pay scale under the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service



Revised Pay Rules, 2001, wherein, the officer was required to submit an undertaking that any excess payment which may be found to have been paid, will be refunded to the Government either by adjustment against future payments due or otherwise.

10. It was in the aforesaid context that the Supreme Court in of the case of **Jagdev Singh (supra)**, in paragraph nos. 10 and 11 has held as under:-

“10. In State of Punjab v. Rafiq Masih [State of Punjab v. Rafiq Masih, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:

(i) Recovery from employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from 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.

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

11. From the decision rendered in the case of **Jagdev Singh (supra)** itself, it has been found that the Supreme Court, in the case of **Rafiq Masih (supra)** has held that the recovery



by the employer from the employees which has been mistakenly paid, would be impermissible in law, inter alia (i) from employees belonging to Class-III and Class-IV service (or Group C and Group D service) and (ii) from retired employees, or employees who are due to retire within one year of the order of recovery.

12. In the instant case, though, the description of the nature of posts, the petitioners were holding, have neither been described in the impugned judgment passed by the learned Single Judge, nor in the memo of appeal preferred by the appellant-State. However, on perusal of paragraph nos. 16 and 18 of the writ petition, it appears that the petitioner nos. 1 and 2 were Class-III (Assistant), whereas petitioner no.3 was Assistant. The petitioners, therefore, are found to be Class-III (or Group-C) employees and they were superannuated from service on 29.02.2016, 31.01.2017 and 30.04.2019, respectively.

13. In that view of the matter, it appears that the petitioners' case is squarely covered by the decision rendered by the Supreme Court in the case of **Rafiq Masih (supra)**. On the other hand, in **Jagdev Singh (supra)**, which has been relied on by the appellant, wherein the proposition enunciated in the case of **Rafiq Masih (supra)** has been held by the Supreme Court to



be not applicable, it is found that the distinguishing feature in the case of **Jagdev Singh (supra)** was that unlike in the case of **Rafiq Masih (supra)**, the employee from which the recovery was sought to be made was not either Class-III or Class-IV employee, but was an Additional Civil Judge. That apart, the employee, Jagdev Singh was clearly placed on notice that any payment found to have been made in excess, would be required to be refunded. To that effect, the officer had also furnished an undertaking for refund while opting for the revised pay-scale, which was not the case in **Rafiq Masih (supra)**. It was on the above distinguishing features in the case of **Jagdev Singh (supra)** that the Supreme Court has held that the proposition enunciated in the case of **Rafiq Masih (supra)** will not be applicable therein.

14. In that view of the matter, we find that in the facts of the instant case, the ratio laid down in the case of **Rafiq Masih (supra)** will be applicable and not the ratio laid down in the case of **Jagdev Singh (supra)** relied on by the learned counsel for the appellant.

15. Under the circumstances, we find no error in the impugned judgment dated 26.03.2021, passed by learned Single Judge in C.W.J.C. No. 186 of 2020, setting aside the orders



dated 06.01.2017, 13.06.2017 and 04.10.2019, issued by the Deputy Collector (Establishment), Ara relying on the ratio laid down by the Supreme Court in the case of **Rafiq Masih (supra)**, inasmuch as, the respondent nos. 1, 2 and 3/petitioners are all retired Class-III (or Grade-C) employees.

16. Resultantly, the appeal is dismissed being devoid of merit.

Re:- **I.A. No. 02 of 2022**

17. This interlocutory application has been filed for stay of the order dated 26.03.2021, passed by the learned Single Judge in C.W.J.C. No. 186 of 2020.

18. In view of the order passed today in the L.P.A. No. 273 of 2022, the instant interlocutory application is disposed of as infructuous.

(K. Vinod Chandran, CJ)

(Nani Tagia, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.07.2024
Transmission Date	N/A

