

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6775 of 2018

Prithvi Paswan, S/o Late Bhojan Paswan, Resident of Village-Nababganj,
Post-Nababganj, P.S.-Manihari, District-Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Home Secretary, State of Bihar, Patna.
3. The Joint Secretary, Home Police, State of Bihar, Bihar, Patna.
4. The District Magistrate, Katihar.
5. The Superintendent of Police, Katihar.
6. The Sub Divisional Officer, Katihar,
7. The Circle Officer, Manihari, Katihar.
8. The Officer-in-Charge, Manihari Police Station, Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Akhilesh Kumar Sinha, Adv.

Mr. Sanjay Kumar Mandal, Adv.

For the Respondent/s : Mr. Sheo Shankar Prasad, (SC-8)

Mr. Anil Kumar, (AC to SC-8)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL ORDER

3 13-03-2024 Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ petition has been filed for quashing the Memo No.627 dated 21.06.2010 (annexed as Annexure-3) issued by the Respondent no.6 (The Sub Divisional Officer, Katihar) by which the order of recovery of amount paid to the petitioner under the heading Salary from the month of May, 2010 to July, 2010 has been made.

3. Learned counsel for the petitioner submits that admittedly, the petitioner was working on the post of *Chowkidar vide Chowkidar* Circle No.5/7, Manihari P.S.,



District-Katihar showing his date of birth as 01-05-1950 and retirement date as 30-04-2010. But, he has served in the office up to July, 2010 and payment has been made mistakenly by the employer which is in excess of his entitlement. Counsel also submits that the petitioner has received the said payment not sitting ideal, but discharging his duties. Counsel further submits that the petitioner is a Class-IV employee and the amount of Rs. 34,445/- has been forcefully directed to be deposited, which the petitioner has deposited.

4. Learned counsel for the petitioner submits that in the case of *State of Punjab & Ors. Vs. Rafiq Masih & Ors.* with other analogous cases, the Hon'ble Supreme Court order dated 18.12.2014 in Civil Appeal No.11527 of 2014 arising out of SLP(C) No. 11684 of 2012 reported in *(2015) 4 SCC 334* bars from recovery.

5. Learned counsel for the State submits that the State has only directed to recover the excess amount and the said amount has already been deposited by the petitioner and thereafter, he has filed the writ petition and hence, this case becomes infructuous as the petitioner has already deposited the said amount.

6. After hearing the pleadings, it transpires to this



Court that in the case of ***State of Punjab & Ors. Vs. Rafiq Masih & Ors (supra)***, Hon'ble Supreme Court has described the postulates as mentioned in paragraph no.12 which states as follows:-

“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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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.”

7. In the light of the present facts and circumstances, this Court is of the firm view that the State ought not to recover the said amount from the petitioner and therefore, Memo No.627 dated 21.06.2010 (annexed as Annexure-3) is hereby set aside. And in result, The Circle Officer, Manihari, Katihar (respondent no.7) is directed to refund the said amount to the petitioner within 90 days from the date of production of the order.

8. With the aforesaid observations and directions, this writ petition is hereby disposed off.

(Dr. Anshuman, J.)

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