

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15366 of 2017

Amrendra Kumar Son of Shranti Kumar, Resident of Mohalla- Nehru Nagar
Mainpura, Bishal Hanuman Mandir, Town/Village- Patna, Anchal Patna
Sadar, Patna- 800013.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Education Department Govt. of Bihar, Patna.
3. The Director, Primary Education Govt. of Bihar, Patna.
4. The Regional Deputy Director of Education, Patna Pramandal, Patna.
5. The District Education Officer, Nalanda.
6. The District Programme Officer Establishment, Nalanda.
7. The District Public Grievances Redressal Officer, Nalanda.
8. The Block Development Officer-cum-member Secretary, Prakhand, Niyojan
Unit, Bind, Nalanda.
9. The Block Education Officer- Bind, Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mritunjay Kumar, Advocate Mr. Ram Ganesh, Advocate
For the State	:	Mr. Prabhat Ranjan Singh, A.C. to AAG-15.

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
ORAL ORDER

6 12-01-2026 Heard learned counsel for the petitioner and learned
counsel appearing for respondent-State.

2. The petitioner in the present writ application has
prayed for grant of following relief :-

*“I. To quash the order containing issued no.
42711-05608 dated 14.06.2017 passed by respondent no.7
by which the respondent no.8 has been directed to lodge
an F.I.R. against the petitioner and to insure his removal
from his service as Prakhand teacher middle school Bind,
district Nalanda and to made recovery of the amount of
salary which has been received by him in service period.*



(II) For quashing the order contain in Memo no.858 dated 12.08.2017 issued by the respondent No.8 by which the petitioner has been removal from his service as Prakhand teacher in middle school Bind, District Nalanda as well as a decision has been taken to recover all amount of salary which has been received by the petitioner in his service period with interest. Further, the respondent be directed to reinstate the petitioner in his service and not to recover any amount of salary from him which has been revived by him ins service period.

3. The learned counsel for the petitioner submits that already an F.I.R. has been lodged against the petitioner and his service has already been terminated. He, therefore, submits that he is confining his relief only to the extent of challenging the order dated 14.06.2017 by which order has been passed for recovery of the amount of salary which has been received by the petitioner during the service period. He relies upon the judgment of the Hon'ble Supreme Court in the case of **State of Punjab and Ors. vs. Rafiq Masih (2015) 4 SCC 334**, paragraph 18 of the said Judgment is quoted hereinbelow for needful :-

“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."

4. Learned counsel for the petitioner submits that the petitioner was a class-III employee duly appointed as Assistant Teacher, Middle School, Bind in the District of Nalanda.

5. Without commenting of the legality and illegality of the appointment of the petitioner, this Court deems fit to dispose of writ application in the light of the law laid down of the Hon'ble Supreme Court in the case of **State of Punjab (supra)** wherein the Hon'ble Supreme Court has completely barred recovery of salary from the employees belonging to Class III service.

6. In such view of the matter the impugned order dated 14.06.2017 (Annexure-1) is hereby set aside and quashed to the extent it has ordered for recovery of amount of salary



from the petitioner.

7. This writ application stands allowed to the extent indicated above.

(Alok Kumar Sinha, J)

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