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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3401 of 2014

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Dilip Kumar Sinha S/O Late Kamleshwari Prasad Sinha R/O 220 A, Sri Krishnapuri P.S.- Sri Krishnapur, Dist.- Patna

.... Petitioner/s

Versus

1. The Punjab National Bank through Its Chairman and Chairman Director, Punjab National Bank, H.O.- 7, Bhikajicama Place, New Delhi 110068
2. Chairman and Managing Director, Punjab National Bank, H.O.- 7 Bhikajicama Place, New Delhi 110067
3. General Manager, Punjab National Bank, H.O.- Inspection And Audit Division, Rajendra Bhawan, Rajendra Place, New Delhi 110008
4. Asst. General Manager, Human Resources Development Division, Head Office, New Delhi
5. Deputy General Manager, Punjab National Bank, Zonal Audit Office, 2nd Floor, Chanakya Tower, R. Block, Patna- 800001
6. Chief Manager, Punjab National Bank, Audit Circle, Chanakya Tower, R. Block, Patna
7. Chief Manager (Bm), Punjab National Bank, Exhibition Road, Patna
8. Chief Manager (Bm), Punjab National Bank, New Market, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Madhuresh Prasad, Advocate.
Mr. Chaitanya Suaroop, Advocate.

For the Respondent/s : Mr. Suresh Prasad Singh No. 1, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

10 20-02-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:

> *"1. That this is an application praying for issuance of writ in the nature of a writ of certiorari quashing the letter dated 23.10.2013 whereby and whereunder the petitioner has been communicated the decision of the Head Office to recover the amount of Rs. 1,78,467/- and communicating the decision of the bank to mark lien on the fixed deposit account no. 2913000500000029 amounting to Rs. 7,50,000/- which is a joint F.D. alongwith his wife as also S.F. A/c No. 0380000200105603 amounting to Rs. 1,24,000/- which is in joint name of the petitioner and his wife; and further for issuance of appropriate consequential directions upon the respondent bank not to interfere with the petitioner's said fixed deposit and to allow the petitioner to operate his said account and immediately refund the amount of Rs. 1,20,000/- along with interest thereon at Bank deposit rate. As the respondent Bank cannot be permitted to direct for recovery of the said amount of L.F.C. which had duly been sanctioned prior to availing the same and since the same has been done*

in gross violation of the principles of natural justice."

2. Mr. Madhuresh Prasad, learned counsel for the petitioner, in support of the aforementioned prayer, though had initially sought to make submission on the merit of the application but then eventually has confined himself to the plea of violation of principle of natural justice. In this regard, he has submitted that the impugned order, which had sought to recover the amount of Rs. 1,78,467/- from the payable amount to the petitioner, was passed without even giving notice and/or opportunity of hearing to the petitioner. He in this regards explains that had the petitioner been given such notice and/or opportunity, probably, he could have satisfied the authorities by producing the materials to show that whatever amount of leave fare travel (L.F.T.) was already paid to him was infact as per Rules and part practice prevalent in the Bank since long and as such was not even refundable much less recoverable from him.

3. Learned counsel for the Punjab National Bank (hereinafter referred to as 'the Bank'), on the other hand, having filed counter affidavit and supplementary counter affidavit, has sought to justify the impugned order directing such recovery of L.F.T. by taking a plea that the Punjab National Bank Officers' Service Regulations, 1979-Leave Fare Concession, did not permit

the petitioner to draw the amount of L.F.T. which was earlier settled with him and as such the Bank had to follow the regulations by way of recovery of the amount in question. He, however, does not dispute the fact that the petitioner was not given any show cause notice and/or opportunity of hearing though he has tried to explain that since the petitioner was posted in that very Bank from where said amounts were recovered, he was very well aware of all the circumstances leading to recovery of L.F.T. amount which according to him ought to have refunded before the action of recovery was taken against him.

5. This Court however cannot proceed on the basis of an assumption. It is not in dispute that recovery of amount already settled and paid including the amount of L.F.C. is a penal action and therefore even if the authorities were satisfied that the regulations of the Bank did not permit the petitioner to get the payment which was already drawn by him and was required to be recovered from him he had to be given a show cause notice giving the effect to decision of such recovery of L.F.T. Admittedly, this was not done. The issue as to whether the determination was made earlier and the recovery was made later on, in any event will not change the situation because such action was taken against the petitioner without complying the principle of natural justice.

6. In that view of the matter, this Court would quash the impugned order dated 23.10.2013 as contained in Annexure-4 and remit the matter back to the competent authority of the Bank who may now issue a show cause notice to the petitioner and thereafter pass a fresh reasoned order as may be permissible in law but only after examining the defence taken by the petitioner in show cause reply.

7. This exercise however must be completed by the Bank within a period of three months from the date of receipt of a copy of this order and if the entire amount, which has already been recovered by the Bank, is found refundable or even part thereof becomes payable to the petitioner, the same must be paid back to the petitioner. On the other hand, if the petitioner is found liable for recovery and/or to pay some more amount for the recovery sought to be made against him the earlier interim order passed by this Court on 14.02.2014 will not stand in the way of the Bank to recover the said amount in accordance with law.

8. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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