IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13448 of 2013

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Bihar State Electronics Development Corporation Ltd., Beltron Bhawan, Bailey Road, Patna- 800001 Through Its Assistant Manger Human Resources

.... Petitioner/s

Versus

1. The Employees State Insurance Corporation, Regional Office, Bihar, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 800001 Through The Regional Director
2. The Assistant Director, Employees State Insurance Corporation, Regional Office, Bihar, Panchdeep Bhawan, Jawahar Lal Nehru Marg, Patna- 800001

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Alok Kumar Sinha
For the Respondent/s : Mr. Sudhir Kumar Bijpuriyar

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

3 24-07-2015 Heard Sri Alok Kumar Sinha, learned counsel for the petitioner and Sri Sudhir Kumar Bijpuriyar, learned counsel, who has appeared on behalf of the respondents/ Employees State Insurance Corporation.

The petitioner, in the present writ petition has prayed for quashing of a communication contained in letter no. 12-A-12/16/Steno/2010 Establishment III (Part) /5752 dated 7.9.2011 issued by the Assistant Director, Employees State Insurance Corporation, Regional Office, Bihar, whereby decision was conveyed to the petitioner to deduct E.S.I. contribution on the basis of gross salary.

Learned counsel for the petitioner submits that the petitioner is an instrumentality of the State and there was a instruction of the Finance Department which specifies that such deduction should be made on basic salary and not on gross salary. He further accepts that earlier due to inadvertence the communication made by respondents vide Annexure – ‘A’ to the counter affidavit was not noticed by the deponent, and as such, inadvertently, a statement was made that as per agreement i.e. Annexure – ‘4’ deduction was to be made from basic salary.

Sri Bijpuriya, learned counsel for the respondents, in view of the provisions contained in Section 2(22) of the Employees’ State Insurance Act, 1948 submits that wage includes remuneration paid or payable in cash to an employee. He submits that in view of the provisions there is no point for arguing that such deduction was to be made from basic salary, but it is to be deducted on gross salary which means that it is to be deducted even on admissible allowances. Sri Sinha, learned counsel for the petitioner does not dispute the proposition of law.

In view of the fact that there is statutory provision under the Employees’ State Insurance Act, 1948 certainly no instruction issued by the State can override the said provision. Moreover, the agreement i.e. Annexure - ‘4’ was approved vide

Annexure - ‘A’ to the counter affidavit which in specific terms states regarding deduction on gross salary.

In view of the facts and circumstances, I do not find any ground for interference. Accordingly, the writ petition stands disposed of.

(Rakesh Kumar, J)

Praful/-

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