IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 14629 of 2011

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Meena Devi Wife of Late Binod Jha, Resident of Parn Kutir, Mohalla Balbhadra Pur, P.O. & P.S.- Laheria Sarai, District- Darbhanga.

.... Petitioner/s

Versus

1. The Bihar State Electricity Board through its Chairman, Bailey Road, Patna.
2. The Chairman, Bihar State Electricity Board, Bailey Road, Patna.
3. The Secretary, Bihar State Electricity Board, Bailey Road, Patna.
4. The General Manager-cum-Chief Engineer, Mithila Area Board, Darbhanga.
5. The Electrical Superintending Engineer, Electric Supply Circle, Darbhanga.
6. The Electrical Executive Engineer, Electrical Supply Division (Urban), Darbhanga.
7. The Assistant Electrical Engineer, Electric Supply Sub-division Darbhanga (Urban), Darbhanga.
8. The Director (Terminal Benefits), the Bihar State Electricity Board, Patna.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL ORDER

6 12-08-2015 Heard learned counsel for the parties.

The present writ application has been filed for quashing of Memo No. 1331 dated 03.12.2010 withholding Rs. 38,072/- from the death-cum-retiral gratuity amount, payable to the petitioner on the death of her husband late Binod Jha, Ex-Accounts Assistant on the ground of excess pay drawn in his service period. The further prayer of the petitioner is to pay the statutory interest on the Provident Fund which was paid to her in May, 2007 but with interest calculated only till January, 2006.

Learned counsel for the petitioner submits that the petitioner was promoted to the post of Accounts Assistant with effect from 16.07.1982 and thereafter his pay was fixed giving him double pay benefit as per the Board's Standing Order dated 07.05.1976. It is further submitted that while drawing the amount the petitioner's husband died in harness on 30.01.2006 from the post of Senior Selection Grade Accounts Assistant in the office of Electric Supply Circle (Urban) Darbhanga. It is submitted that thereafter the retiral benefits were granted to the petitioner being the widow under Office Order No. 1331 dated 03.12.2010 in which sum of Rs. 38,072/- is sought to be recovered. Learned counsel submits that even with regard to Provident Fund paid, the same though paid in May, 2007, the statutory interest has been calculated only till January, 2006 which is improper. Learned counsel has stated that though no formal reason has been indicated for the said recovery of Rs. 38,072/- but according to him the ostensible reason is that the petitioner has been granted double pay fixation, which lateron was modified by the respondents only in the year 1983. It is submitted that the circulars of the respondents were not given effect to in the case of the petitioner till he died and only in the year 2010, the respondents are seeking recovery. Learned counsel submits that even for the sake of argument, the stand of the Board is not tenable in view of the issue having been decided by a Bench of this Court in the case of **Nawal Kishore Prasad vs. Bihar State Electricity Board** reported in **2012(3) PLJR 269**, by which the Court has held that at least from 07.05.1983, when the matter was clarified, the double pay fixation benefit would be payable and only for the period prior to that adjustment can be made. Learned counsel submits that as of now the law relating to recovery post retirement or post death has been settled by the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported in **(2015)4 SCC 334**, the relevant being at Paragraph-18(i), by which recovery has been prohibited from employees belonging to Class-III and Class-IV service, if the amount paid to the petitioner was not on account of fraud or misrepresentation by him.

Learned counsel for the respondents has filed counter affidavit and submits that initially promotion of the petitioner granted with effect from 16.07.1982 was modified to be effective from 07.12.1981 by order dated 02.07.1990 in which there was a clear cut stipulation that the promotion would be treated notionally with effect from 07.12.1981 till 16.08.1988 and actual monetary benefit would be effective from 17.06.1988. Learned counsel has also referred to a decision of a Bench of this Court in the case of **Shivpayari Devi v. State of Bihar** reported in **2005(1) PLJR 236**, in which it has been held that recovery cannot be stopped only on the ground that the writ petitioner has died in absence of any extraordinary reason.

Upon considering the facts and circumstances of the case and submissions of learned counsel for the parties, this Court is inclined to agree with the submissions made by learned counsel for the petitioner. The husband of the petitioner having died in the year 2006 and the promotion being given with effect from 07.12.1981 and also payments received by him till he died, there cannot be any recover at such a belated stage in the year 2010 when the petitioner being the widow had moved the authorities for seeking death-cum-retiral benefits.

Even on merits, this Court finds that the judgment of this Court in the case of **Nawal Kishore Prasad** (supra) covers the case of the petitioner and at best the respondents can have a case that instead of the petitioner having given the benefit from 07.12.1981 it should start from 07.05.1983. However, this Court again finds that the judgment in the case of **State of Punjab v. Rafiq Masih** (supra), covers the issue at hand where recovery relating to excess payment cannot be made from employees belonging to Class-III and Class-IV service. It is not in dispute that the petitioner's husband was working on a Class-III post with the respondents. As far as the case of **Shivpayari Devi** (supra), relied upon by learned counsel for the respondents, is concerned, the same was in a different factual background where the petitioner had continued beyond his date of retirement due to recording of two different dates of birth. Moreover, in view of the subsequent decision of the Supreme Court in the case of **State of Punjab v. Rafiq Masih** (supra), this Court does not find that the aforementioned decision in the case of **Shivpayari Devi** (supra) is of any help to the respondents.

Coming to the issue of payment of statutory interest on the Provident Fund, this Court cannot sustain the act of the respondents in not granting interest from February, 2006 till April, 2007 i.e., the end of the last preceding month when actual payment has been made.

Accordingly, the impugned order contained in Memo No. 1331 dated 03.12.2010 stands quashed to the extent that recovery of Rs. 38,072/- is held unsustainable. The competent authority is directed to refund the same within four weeks from the date of production of a copy of this order before the respondent no. 4 (as has been suggested by learned counsel appearing for the respondents). The petitioner shall further be entitled to payment of statutory interest on the Provident Fund for the period February, 2006 to April, 2007. The same shall also be paid by the respondent no. 4 within the same period.

The application stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

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