

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2821 of 2001

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Muntaz Begam, widow of late Sayed Mohamad Sadiqul Islam resident of Urdu Bazar, Mohalla Rahimkhan, P.O. Lalbagh, P.S. Darbhanga, District Darbhanga

.... Petitioner/s

Versus

1. The Bihar State Electricity Board through its Chairman, Vidyut Bhawan, Bailey Road, Patna
2. The Financial Controller, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
3. The Deputy Director of Accounts, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
4. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
5. Chief Accounts Officer, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajnandan Prasad Singh
Mr. Surendra Kishore Verma

For the Respondent/s : Mr. Vijay Kumar Verma

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 26-06-2015

Heard learned counsel for the petitioner and Sri Vijay Kumar Verma, learned counsel, who has appeared on behalf of all the respondents.

The petitioner, whose husband after retirement died in the year 2001 approached this court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to quash the memo no. 299 dated 3.3.2000 issued by the Financial Controller, Bihar State Electricity Board, Patna (Annexure - 2 to the writ petition). By the said order it was directed to recover Rs. 54,733.87

from the gratuity amount of the husband of the petitioner. The said order was passed on the ground that the husband of the petitioner had not passed Hindi Noting and Drafting Examination.

Learned counsel for the petitioner has placed heavy reliance on a judgment of this court passed in CWJC No. 8292 of 1996, which was disposed of with CWJC No. 31 of 1997. Copy of the said order has been brought on record as Annexure – 1 to the writ petition. It has been argued on behalf of the petitioner that it was not a case that by way of suppression of fact or making incorrect statement the husband of the petitioner got increment. He submits that the question raised in the present writ petition has already been set at rest by this court in CWJC No. 8292 of 1996 against which Board had preferred an appeal vide LPA No. 1361 of 1998. The said LPA stood dismissed due to non compliance of peremptory order. Thereafter, restoration petition was filed, which too stood dismissed. Finally, the petition for review, which was filed that was also dismissed as withdrawn. Learned counsel for the petitioner submits that the order of the single bench has already attained its finality and keeping in view the fact that the case of the petitioner stands on similar footing, the petitioner, is also entitled to get the same relief.

Learned counsel for the respondent /Board has opposed the prayer of the petitioner. He submits that it is not a case that after



retirement of the husband of the petitioner or even after death of the husband of the petitioner step was taken for recovery of the excess amount but during the service period of the husband of the petitioner after noticing the defect steps were taken to recover the said amount and till his retirement about Rs. 16,000/- and odd was already recovered. On this ground a prayer has been made to reject the petition.

Fact remains that issue raised in the present writ petition has already been decided by this court, which has taken its finality. Learned counsel for the petitioner has pointed out that in the writ petition which was filed earlier the husband of the petitioner was also one of the petitioners. This court while allowing the said writ petition has observed: **“Following the said decision, I would dispose of these writ petitions with a direction that no recovery shall be made from the salary of the serving employees and, in cases of those who have already superannuated, from their retiral dues of the excess amount already paid to them”**. After the specific direction of this court, at least there was no authority on the respondents to issue the impugned order. Even then, after the said order the respondents have recovered the amount from the gratuity amount of the husband of the petitioner. The action of the respondents appears to be contemptuous, however, in view of peculiar facts and

circumstances of the present case, the court is refraining from passing any adverse remarks against the respondents.

The writ petition stands allowed. The order impugned i.e. Annexure - 2 is hereby set aside with a direction to the respondents to refund the deducted amount i.e. Rs. 54733.87 Paise, to the petitioner within a period of two months from today with interest at the rate of 4% which is to be calculated from the date of deduction of the said amount from the gratuity till the date of payment.

(Rakesh Kumar, J)

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