

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12661 of 2011

=====

Uma Nath Pandey Son of Late Sukhdeo Pandey Resident of
Raghunath Road, Chanduati More, House No. 264, Gaya, P.S. -
Rampur (Gaya), District - Gaya

.... Petitioner

Versus

1. The State of Bihar through Secretary, Department of Energy,
Govt. of Bihar, Patna
2. The Secretary, Department Of Energy, Govt. of Bihar, Patna
3. Bihar State Electricity Board, Patna, Vidyut Bhawan, Bailey Road,
Patna through its Chairman
4. The Chairman Bihar State Electricity Board, Bihar , Patna
5. The Secretary, Bihar State Electricity Board, Bihar , Patna
6. General Manager-Cum-Cheif Engineer, Magadh Electric Supply
Area, Gaya
7. Deputy Director of Personnel, Magadh Electric Supply Area,
Gaya
8. Deputy Director of Accounts, Magadh Electric Supply Area,
Gaya
9. Electrical Superintending Engineer, Electric Supply Circle, Gaya

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Lalan Kumar, Adv.
For the Respondent/s : Mrs. Namrata Mishra, Adv.
AC to GP - 5

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

7. 08-09-2015 Heard Sri Lalan Kumar, learned counsel for the
petitioner, Smt. Namrata Mishra, learned counsel, who has
appeared on behalf of respondent no. 3 to 9/Bihar State
Electricity Board (hereinafter referred to as 'Board') as well as
learned A.C. to Govt. Pleader - 5.

The petitioner, invoking writ jurisdiction of this



Court under Article 226 of the Constitution of India, has prayed for quashing of **Annexure - 10** to the writ petition i.e. communication made, vide letter no. 1454 dated 26-04-2011, by the Deputy Personnel Director, Magadh Electric Supply Circle, Gaya, whereby an instruction was issued to Electrical Superintending Engineer, Electric Supply Circle, Gaya, to recalculate the pay of the petitioner and recover the excess paid amount. The petitioner has further prayed for quashing of **Annexure - 11** i.e. letter no. 73 dated 31-05-2011, issued by the Electrical Superintending Engineer, Electric Supply Circle, Gaya. By the said communication, petitioner's pay-scale was reduced from the date of appointment. A further prayer has been made for directing the respondents not to recover the paid amount to the petitioner, which is excess to the pay-scale. Besides this, in the writ petition, the petitioner has prayed for direction for clearance of other retiral dues.

In this case, by an order dated 08-08-2011, while granting time to learned counsel for respondent no. 3 to 9/Bihar State Electricity Board (for short "Board"), this Court had directed the respondents to pay amount under Group Saving Scheme and G.P.F. Scheme, which had already been

sanctioned. This Court also passed an order for staying **Annexure - 10** to the extent of recovery.

Learned counsel for the petitioner accepts that the petitioner has already been granted other retiral dues and he is getting regular pension, however; he submits that a huge amount has been withheld by the respondent. By way of referring to counter affidavit, he submits that total amount of **Rs. 8,29,744/-** (Eight lacs twenty nine thousand seven hundred & forty four) has been withheld on the ground that petitioner was given salary on the pay-scale, which was not applicable to the petitioner. Learned counsel for the petitioner, by way of referring to **Annexure - 1** to the writ petition, submits that at the time of appointment of the petitioner, as Care-Taker, his pay-scale was prescribed in between Rs. 380-12-428-15-533-17-550/- plus all other allowance as admissible. He submits that on the basis of appointment letter, the petitioner drew salary from time-to-time and his scale was also enhanced. However, only four days before superannuation of the petitioner, the respondent/Board, vide letter no. 1454 dated 26-04-2011 (**Annexure - 10** to the writ petition) has come out with a case that the pay-scale of petitioner was incorrectly fixed and



subsequently, **Annexure - 11** has been issued, wherein, detail has been mentioned to show that excess pay was paid to the petitioner right from the date of his appointment till the date of superannuation. By way of referring to **Annexure - A** to the counter affidavit i.e. Office Order No. 4788 dated 27th November, 1972, learned counsel for the petitioner has drawn my attention to the revised pay-scale of Care-Taker, which was revised in the year 1972 itself. He submits that it is not a case of the Board that the petitioner ever misrepresented or by way of concealment of fact had got the pay-scale of Rs. 380-12-428-15-533-17-550/-. Relying on a recent judgment of the Apex Court, reported in **(2015) 4 SUPREME COURT CASES 334 [STATE OF PUNJAB AND OTHERS -Vs.- RAJIF MASIH (WHITE WASHER) AND OTHERS]**, he submits that as per the guideline of the Supreme Court, in such situation, no recovery can be effected. He further submits that even a Division Bench of this Court in L.P.A. No. 126 of 2003 long back in the year 2003 itself had held that in a case, where there is no allegation of suppression of fact or misrepresentation by an employee, no recovery can be effected subsequently. He submits that in view of Division Bench Judgment of this Court

and now, recent adjudication by the Apex Court in the case of **State of Punjab** (supra), the action of the respondent is completely illegal and as such, direction may be given to refund the withheld amount i.e. Rs. 8,29,744/-.

Learned counsel for the petitioner further submits that the petitioner was appointed as Class III employee and without any fault of the petitioner, he continued to get the said pay-scale. Only four days before the date of superannuation, the respondent/Board had come out with a case that pay-scale was initially incorrectly given to the petitioner and step has been taken for recovery of a huge amount from a poor Class III employee after his retirement.

Smt. Mishra, learned counsel for the Board opposing the prayer of the petitioner submits that it is true that in the appointment letter, the pay-scale of the petitioner was given as Rs. 380-12-428-15-533-17-550/-, but fact remains that the said pay-scale was wrongly fixed, which was subsequently revised by **Annexure - B** to the counter affidavit i.e. order dated 15th March, 1973. According to Smt. Mishra, the correct pay-scale was of Rs. 260-09-334-10-414-EB-11-425/-. According to learned counsel for the Board, at the time of

issuance of appointment letter itself, an error was committed and due to said error, the petitioner continued to get excess pay-scale. According to learned counsel for the Board, the action of the respondent/Board is legal and in accordance with law, which is not required to be interfered with.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is not in dispute that the petitioner had got the pay-scale not on any misrepresentation committed by him.

While the petitioner was on the verge of retirement, there was no reason for the authority concerned to come out with a case for recovery of an amount, which has been directed to be recovered from the date of initial appointment of the petitioner i.e. 05-11-1973. At this juncture, it would be appropriate to quote relevant portion of order dated 07-11-2003 passed in L.P.A. No. 126 of 2003, which is as follows:-

“Even assuming that the appellant had to pass the aforesaid examination of Hindi Noting and Drafting, the question arises as to whether at this stage recovery can be made or not. Law is well settled that if there is no misrepresentation on the part of the employee and the benefit of higher pay scale is given to him wrongly by the employer for which there is no fault on the part of the employee, then the same cannot be recovered. The act of recovery

cannot be said to be in consonance with equity, good conscience, justice and fairness."

Thereafter, subsequent view was taken that employer can take steps for recovery of excess pay from an employee, but now on this issue, law has already been set at rest by the Apex Court in a recent case of **State of Punjab** (supra). The petitioner was a Class III employee and he superannuated on 30th April, 2011, whereas, in this case, directions were issued for taking steps for recovery on 26th April, 2011 and after retirement of the petitioner, order was issued for recovery.

In view of law set at rest by the Apex Court in a recent case of **State of Punjab** (supra), the Court is of the opinion that action of the respondent/Board was unwarranted and as such, impugned order i.e. order contained in **Annexures - 10 & 11** are, hereby, set aside with a direction to the respondent/Board to take immediate step so that withheld amount i.e. **Rs. 8,29,744/-** be paid to the petitioner within a period of eight weeks from the date of receipt/production of a copy of this order, failing which, the petitioner shall be entitled to get simple interest at the rate of 12% per annum

from the date of retirement of the petitioner on withheld amount.

The writ petition stands allowed.

(Rakesh Kumar, J.)

Anay

U			
---	--	--	--