

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22467 of 2014

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1. The Union of India through the General Manager, E.C. Railway, Hazipur
 2. The Divisional Railway Manager, E.C. Railway, Danapur
 3. The Senior Divisional Finance Manager, E.C. Railway, Danapur
 4. Sr. Divisional Operating Manager, E.C. Railway, Danapur

.... Petitioner/s

Versus

Md. Islam, Son of Late Mannu Mian, Ex-Station Supt. Grade - 1 E.C. Railway
Pandarak, Residtn of Sadar Gali, P.O.- Patna City, P.S.- Khajekala, District - Patna
(Bihar)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rishi Raj Singh, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 26-04-2016

The order dated 19th October, 2012 passed by the Central Administrative Tribunal, Patna Bench, Patna, in O.A.No. 156 of 2007 is the subject matter of challenge in the present writ petition. By the aforesaid order impugned in the present petition, the petitioners were directed to refund an amount of Rs.73,971/- recovered from the amount of death-cum-gratuity along with interest at the rate admissible on GPF amount.

The applicant-respondent attained the age of superannuation on 31st October, 2004 after putting more than 38 years of service. But two days before the retirement, the applicant



was served with a notice on 28.10.2004 so as to why anomaly of pay fixation as on 1.8.1992 be not reviewed and over-payment be not recovered from his retirement dues. In pursuance of such notice, recovery of Rs.73,971/- was effected from the death-cum-retirement benefits. Such an order has been found to be untenable and the petitioners have been directed to refund the same.

Learned counsel for the petitioners submits that show cause notice was issued to the applicant before attaining the age of superannuation by the applicant and, therefore, the same was justified and the recovery on account of wrong fixation of salary could be effected from the retirement benefits payable to the applicant. It is also argued that while the pension papers were being finalized, the anomaly in the payment due to wrong fixation of salary came to be noticed and show cause notice was issued.

We do not find any merit in the arguments raised by learned counsel for the petitioners. Admittedly, it was wrong fixation of pay which resulted into some over-payment which of course was not result of any fraud or misrepresentation on the part of the employee. In terms of the judgment of the Supreme Court in the case of **State of Punjab vs. Rafiq Masih [(2015) 4 SCC 334]**, recovery cannot be effected on account of wrong fixation of salary in the absence of any fraud or misrepresentation at the behest of the

employee. It has also been ordered that the recovery from the retirement benefits will cause hardship.

In view of the aforesaid judgment, we do not find any merit in the present writ petition. The writ petition is dismissed.

(Hemant Gupta, J)

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(Ahsanuddin Amanullah, J)

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