IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7737 of 2008

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1. Sujata Jha, Wife of Late Sukhdeo Jha, resident of Mohalla- Gandhi Nagar, Madhubani, Police Station- K. Hat, District- Purnia.
2. Md. Abdur Rahman, Son of Late Md. Islam, residing at Koshi Colony, Court Station, Police Station- K. Hat, District- Purnia.

.... Petitioners

Versus

1. The State of Bihar through the Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Chief Engineer, Water Resources Department, Government of Bihar, Patna.
3. The Superintending Engineer, Water Resources Department, Government of Bihar, Patna, Canal Circle-I, Purnia.
4. Sri Sanjivan Choudhary, Son of Not known to the petitioner at present posted as Superintending Engineer, Water Resources Department, Canal Circle, Purnia.
5. The Executive Engineer, Irrigation Division No.1, Purnia.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. M. Chatterjee, Advocate
Mr. Madheshwar Singh, Advocate

For the Respondent/s : Mr. Sunil Kumar Mandal, SC15

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 15-01-2016

Heard learned counsel for the petitioner as well as Mr. Sunil Kumar Mandal, leaned Standing Counsel No. 24.

2. Late Sukhdeo Jha, husband of petitioner no. 1 and Md. Abdur Rahman, petitioner no. 2 were employees of Irrigation Department posted at Revenue Division, Purnea. They were promoted by order, dated 11.03.2005 issued under the signature Deputy Collector, Revenue Division, Water Resources Department. The petitioners were granted selection grade in the scale of Rs.1400-2600.

However, the selection grade scale was cancelled by the Chief Engineer, Water Resources Department vide No. 1113 dated 04.04.2008. The letter, dated 04.04.2008 of Chief Engineer was followed by consequential letters, dated 10.04.2008 and 15.05.2008 directing recovery of excess amount paid to husband of petitioner no.1 and petitioner no.2 from the pensionary benefits, as such a sum of Rs. 1,61,970/ inclusive of 11% interest was recovered from the widow of late Sukhdeo Jha and a sum of Rs.2,16,056/- was recovered from the retrial benefits of petitioner no. 2. It is relevant to state that the husband of the petitioner no.1 had died on 31.10.2007 and the recovery orders were issued much after his death on 04.04.2008. Similarly, recovery order in case or petitioner no. 2 was issued on 15.04.2008 about six months prior to his retirement.

3. The petitioner no.1, Sujata Jha, the widow of late employee Sukhdeo Jha and petitioner no. 2 Md. Abdur Rahman have assailed the impugned orders cancelling the selection grad scale as well as recovery of alleged excess amount with 11% interest.

4. The case of the petitioners' in short is that the impugned order cancelling the selection grade has been passed without issuing show-cause notice. They submit that there is no concrete evidence to establish that the two employees secured amount by misrepresentation or playing fraud. They submit that in any view

of the matter no recovery ought to have been made from the widow of a Class-III employee as well as from a Class-III employee six months prior to his retirement. In support of their submissions, the petitioners have relied upon the decision in case of **Syed Abdul Qadir Vs. State of Bihar, reported in (2009) 3 SCC 475 particularly para 28.** Reliance has also been placed on the latest Supreme Court judgment in case of State of Punjab & others Vs. Vakil Singh, reported in 2015 (1) PLJR SC 261, para. 12.

5. Counter affidavits have been filed on behalf of the State. In para.11 of the Supplementary Counter Affidavit, the respondents state that the husband of petitioner 1 and petitioner no.2 on the eve of abolition of the Revenue Division, influenced the then Deputy Collector, Revenue Division and got wrong, illegal and improper promotion in the same pay scale of Selection Grade Clerk with retrospective date i.e.01.01.1988 and accordingly they took payment of large amount as arrears of pay and allowances w.e.f. 01.01.1988 to 31.12.2003. He submits that the excess salary paid to the petitioners due to illegal and wrong pay fixation can always be recovered being public money. In support of his submission, learned counsel for the State has relied upon a decision in case of **Chandi Prasad Uniyal & Others Vs. State of Uttrakhand & Others , reported in (2012) 8 SCC 417**, particularly para.14. He controverts

the submission of the petitioners that no show-cause was given prior to recalling of the Selection Grade Scale granted to husband of petitioner no.1 and petitioner no.2 In support of his submission, he has referred to para 8 of the Supplementary counter affidavit.

6. I will now consider one by one the grounds taken by the petitioners in support of their submissions. The first ground of petitioner is that the selection grade granted to the employees have been cancelled without issuing a show-cause. However the respondents in their counter affidavits controverts the submissions of the petitioners that no show-cause was given prior to recalling of the selection grade. As the issue involves question of facts, this Court in writ jurisdiction would not dwelve into these matter, when factual claims of the parties are diametric opposite. Besides this, I am of the view that the employer can always rectify the pay scale, if it has wrongly been given to its employees. The petitioners have not brought any material on record to establish that they were entitled to the selection grade scale and the same was illegally withdrawn. In view of the above, I find no illegality with the impugned order, dated 04.04.2008 of Chief Engineer Water Resources Department cancelling the selection grade granted to the husband of petitioner no.1 and the petitioner no.2.

7. This takes us to the main issue arising in this case

whether the respondents were correct in recovering excess amount from the widow of a Class-III employee eg. petitioner no.1 as well as from petitioner no.2, who too was a Class-III employee on the verge of retirement.

8. The issue in hand was subject of consideration before a Full Bench of this Court in case of **Ram Binod Singh Vs. The Bihar State Electricity Board & others**, reported in **2007 (3) PLJR 398 (FB)**. 26. The Full Bench observed that provisions of Contract Act, particularly Section 72, covers cases of mistake of fact as well as law and provide for recovery. Furthermore, the principle of restitution in case of unjust enrichment is also accepted principle for ensuring justice in appropriate case. The Full Bench observed that there is no legal bar in ordering for recovery from retired employees where they have received money benefits on account of mistake at the ministerial level in the matter of fixation of pay and grant of increments. It was further observed that theory of simple mistake or error to justify recovery will not hold good, where the grant did not suffer on the ground of illegality or perversity and was on account of a possible interpretation of a provision of procedure or law. Similarly whether decision has been followed for a long years, in such cases also the recovery would not be advisable.

9. The issue also came for consideration in case of

Syed Abdul Qadir Vs. The State of Bihar & Ors., reported in (2009) 3 SCC 475. In the aforesaid case, the Hon'ble Apex Court was dealing with the case of Assistant Teachers, majority of whom were retired or on the verge of retirement. The case of the State was that these teachers wrongly received payment in Matric trained scale. The Hon'ble Apex Court observed that there should not be recovery of excess amount so paid to these teachers, most of whom had retired or on the verge of retirement.

However, the Hon'ble Apex Court in case of Chandi Prasad Uniyal & Others Vs. State of Uttrakhand & Others , reported in (2012) 8 SCC 417, particularly in para. 14 and 15 observed that excess payment of public money, which is often described as "taxpayers' money" belongs neither to the officers who have effected overpayments nor the recipients**.** Merely because there was no fraud or misrepresentation could not be a ground to retain the money, to which one would not be entitled. The Hon'ble Apex Court further observed that except few instance pointed out in case of Syed Abdul Qadir case and Col. B.J. Akkara Vs. Government of India, reported in (2006) 11 SCC 709, the excess payment made due to wrong/irregular pay fixation can be always recovered**.** Para 14 and 15 of the judgment in the case of Chandi Prasad Uniyal (supra) is quoted herein below:

"14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case and in Col. B. J. Akkara case, the excess payment made due to wrong/irregular pay fixation can always be recovered."

10. The matter recently came for consideration in case of State of Punjab and Ors. etc. Vs. Rafiq Masih (White Washer) etc, reported in 2015(1) PLJR SC 261. After considering conspectus of judgment on the issue, the Hon'ble Apex Court laid down some broad circumstances in which recovery from employees would not be permissible. Para 12 of its judgment, which is quoted herein below:

> "12. It is not possible to postulate all situations of hardship, which would govern employees on issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:-
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> (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
>
> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
>
> (iii) Recovery from employees, when the excess payment has made for a period in excess of five years, before the order of recovery is issued.
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> (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even

though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

11. In the light of the law laid down by the Hon'ble Apex Court on the issue, I will now consider the case of the petitioners. The petitioner no.1 is widow of a late employee belonging to Class-III service. The husband of petitioner no.1 was granted selection grade scale on 11.03.2005 with retrospective effect and he died on 30.01.2007 and recovery order was issued much after his death on 04.04.2008. The case of petitioner no.1 would squarely come within the criteria laid down in case of State of Punjab and Ors. etc. Vs. Rafiq Masih (White Washer) (supra) as her husband died prior to order of recovery, who was also a Class-III employee. The respondents would refund the excess amount recovered from the family pension or retiral dues of late Sukhdeo Jha.

12. So far as petitioner no.2 is concerned, it will be open for him to file a representation before respondent no.2 and if he finds that his case is covered under the grounds mentioned in the case of State of Punjab and Ors. etc. Vs. Rafiq Masih (White Washer), he

would direct refund of the amount recovered from him also.

13. With the direction aforesaid, this writ application is allowed to the extent mentioned above.

(Samarendra Pratap Singh, J.)

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