

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.422 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 20589 of 2011

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1. The State of Bihar Through its Chief Secretary, Govt. of Bihar, Patna
 2. The Principal Secretary-Cum-Commissioner, Department of Water Resources, Govt. of Bihar, Patna
 3. The Engineer in Chief, Water Resources Department, Govt. of Bihar, Patna
 4. The Chief Engineer, Tube Well Division (North Bihar), Water Resources Department, Ratwara, Muzaffarpur
 5. The Executive Engineer, Tube Well Division, Department of Water Resources, Muzaffarpur

.... Respondents/Appellants

Versus

Gangadhar Singh, Son of Late Ram Charitra Singh, Resident of Village- Patel Nagar, Masurahi, P.O. + P.S.- Masurahi, District- Patna

.... Writ Petitioner /Respondent/s

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Appearance :

For the Appellant/s : Mr. M N H Khan, SC 1
Mr. Md. Irshad, AC to SC 1
For the Respondent/s : Mr. Chitranjan Sinha, Sr. Advocate
Mr. Shailendra Kumar Siugh

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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: 16-08-2016

The challenge in the present Letters Patent Appeal is to an order dated 8th August, 2013 passed by the learned Single Bench of this Court in CWJC No. 20589 of 2011, whereby the writ application filed by the respondent was allowed and the order of re-fixation of salary and the consequent recovery was set aside and the pay scale which was being paid to the writ applicant at the time of his superannuation was restored.

The challenge in the writ petition was to an order of revising the pay scale payable to the applicant. Earlier, the applicant was appointed by Bihar Water Development Corporation which Corporation went into liquidation and the employees therein including the writ applicant were absorbed by the State Government in the Water Resources Department.

The assertion in the writ application is that he was granted pay scale of Rs.4500-7000 which has been reduced to Rs.4000 - 6000 without notice to the writ applicant and that the recovery of the alleged excess amount was ordered to be effected from the dues payable to the writ applicant. It is said grievance, which has since been set aside by learned Single Judge.

Learned counsel for the appellant has raised two fold arguments. Firstly, that the learned Single bench erred in law in setting aside the order of recovery. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of ***Chandi Prasad Uniyal vs. State of Uttarakhand [(2012) 8 SCC 417]***. The other argument is that restoration of pay scale to the applicant is not fair as the applicant cannot be granted such pay scale and in any case the State Government shall revise the salary after granting opportunity of hearing to the applicant.



On the other hand, Mr. Chitranjan Sinha, learned Senior Counsel appearing on behalf of the applicant relies upon the Supreme Court judgment in the case of *State of Punjab vs Rafiq Masih [(2015) 4 SCC 334]*. He contends that the Hon'ble Court has considered the judgment *Chandi Prasad Uniyal's* case (supra) and held as follows:-

“18. It is not possible to postulate all situations of hardship which would govern employees on the 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, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (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."

In view of the aforesaid judgment of the Hon'ble Supreme Court, any payment made to the writ applicant on account of fixation of salary would cause hardship to the writ applicant after his superannuation. Consequently, such recovery cannot be sustained. To that part of the order, we do not find any error passed by the learned Single Bench.

However, the order of restoration of pay scale without considering the legality and validity of the pay scale granted to the applicant cannot be sustained. The order of fixation of scale of Rs.4000-6000 was passed without giving any opportunity of hearing to the applicant. Consequently, we set aside the order of fixation of pay scale of the respondent-writ applicant to Rs.4000-6000 but giving

liberty to the State Government to re-fix the pay of the writ applicant after giving him the opportunity of hearing in accordance with law.

With the said liberty, the present Letters Patent Appeal stands disposed of.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

mrl.

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	22.08.2016
Transmission Date	N.A.