

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10220 of 2014

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1. Malti Prasad wife of Late Suresh Chandra Prasad
2. Dhires Chandra Son of Late Suresh Chandra Prasad Both residents of Mohalla Chandmari, Near Lal Bunglow, P.S- Motihari Town, P.O AND Town, Motihari, District- East Champaran Petitioners

Versus

1. The State of Bihar.
2. The Secretary, Department of Law, Govt. of Bihar, Patna.
3. The Deputy Secretary, Finance Department, Govt. of Bihar, Patna.
4. The Accountant General, Bihar, Birchand Patel Path, Patna.
5. The District Judge, Civil Court, Motihari, District- East Champaran.
6. The Registrar, Civil Court, Motihari, District- East Champaran Respondents

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Appearance :

For the Petitioners : Mr. Shakti Suman Kumar, advocate
For the State : None
For the AG :
For the Civil Court, Motihari : Mr. Satyavir Bharti, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 20-08-2016

Petitioner no.1 is a widow of Late Suresh Chandra Prasad (herein after referred to as 'Sri Prasad'), whereas petitioner no.2 is their son. They pray for quashing Letter no. 290A dated 10.11.2008, contained in Annexure 4, issued by respondent no.5, whereby he was directed to deposit the excess amount of Rs.1,36,237/- drawn with due interest, allegedly received by him because of wrong fixation of pay.

2. Facts, giving rise to the instant writ petition, are as

follows:-

Sri Prasad superannuated from the post of Shristadar, Civil Court, East Champaran at Motihari on 30.6.2008. Thereafter his provisional pension and gratuity was fixed and his service book was forwarded to the office of the Accountant General for confirmation. AG office vide letter no. 23.10.2008 communicated that pay fixation of Sri Suresh Chandra Prasad, now deceased, with effect from 1.2.1999 is not in accordance with rules and issued instruction to fix salary in accordance to the contents of the said letter. After receipt of the letter, dated 23.10.2008 of the AG office, the Registrar, Civil Court, Motihari (respondent no.6) in turn vide letter, dated 10.11.2008, addressed to the employee, informed him of the objection of the AG office with respect to wrong pay fixation. The employee was asked to return the excess amount received by him by 15.11.2008. Pursuant to the letter dated 10.8.2008, Sri Prasad deposited Rs.1,36,237/- through challan, the excess amount withdrawn by him. After four and a half years thereafter, Sri Prasad died on 17.3.2013.

3. Petitioners, who are heirs of Late Sri Prasad, have filed the instant writ petition seeking refund of the excess amount paid to Sri Prasad pursuant to demand notice dated 10.11.2008 of respondent no.6. They submit that excess



amount paid to a Class III or Class IV employee ought not to be recovered after his retirement in absence of any culpability in fixation of pay scale. They submit that many other employees of the Civil court from whom recovery was sought, filed writ petition in the High court. The matter ultimately travelled to the LPA bench, being LPA No.1884 of 2012. This Court while disposing of the LPA vide order, dated 5.12.2012 observed that in view of Full bench decision in case of Ram Binod Singh Vs. Bihar State Electricity Board, 2007(3) PLJR 398, the respondents are not entitled to recover any alleged excess amount paid to the writ petitioner upon revision of his pay scale. They submit that it is not that Sri Prasad made an application to pay the excess amount on his own, rather he expressed his willingness to refund the amount pursuant to the letter, dated 10.11.2008 of respondent no.6 stating that he should refund the excess amount received on account of wrong revision of pay.

4. Mr. Satyavir Bharti, learned counsel for respondents no. 5 and 6 submits that the case of petitioners is distinguishable from the case which came for consideration in LPA No. 1884 of 2012. He submits that in fact Sri Prasad volunteered to return payment of excess amount drawn because of wrong fixation of pay. Besides this, no grievance or protest was made by him, though he survived for four and

a half years. However, after his death, his legal heirs, filed writ petition on 23.6.2014 i.e. one year and three months after the death of the principal recipient on 17.3.2013 for refund of Rs.1,36,237/- deposited by the late employee pursuant to letter, dated 10.11.2008.

5. Heard Mr. Rajesh Ranjan, learned counsel for the petitioner, learned counsel appearing for the Accountant General, Bihar and Mr. Satyavir Bharti, learned counsel representing the Civil court, Motihari. None appeared for the State.

6. Generally, an extra amount paid to a Class III or IV employee, consequent upon revision of pay pursuant to conscious decision, ought not to be recovered after his retirement or death from the respective widow, if no culpability of the employee is involved in such fixation of pay or grant of extra amount and there was conscious decision with respect to change in pay. However, the facts of the instant case is different. In the present case, the petitioner who retired as shristadar pursuant to the demand notice, contained in Letter no.290/A, dated 10.11.2008 deposited the excess payment of Rs.1,36,237/- consequent upon wrong fixation of pay through challan no. 573, dated 25.11.2008 without protest. The employee never questioned the demand or sought refund of the said amount during his life time, though he survived for more

than four years after making payment of excess amount received by him. As the principal recipient did not make any grievance with respect to refund of excess amount paid to him, it is not open to his successors to raise such grievance which was not raised by the principal recipient in his life time. The petitioners as such have made out no case for refund of the excess amount deposited by the late employee on account of wrong fixation of pay. In LPA No.1884 of 2012, the employees had moved this Court against the very recovery of excess payment sought, whereas in this case, the principal recipient volunteered to refund the excess amount received and did not make any protest during his life time, though he survived for about four and a half years. As such, the order in LPA No.1884 of 2012 would not be of any aid to the petitioners.

7. Before parting with the order, this Court would observe that if any amount legally due, including retiral benefits of Late Sri Prasad, has not been paid to the petitioners, the same should be paid to them within a period of three months from the date of receipt of a copy of this order, failing which they would be entitled to 8% interest on the due amount, *pendente lite*.

8. The writ petition is accordingly disposed of.

(Samarendra Pratap Singh, J)

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