

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.545 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 5365 of 2011**

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Dukhi Singh, aged about 74 years, Retired Assistant Store Keeper, Super Selection Grade, Electric Circle Dumka, S/o Late Subedar Singh, at presently residing at Village Barodih, P.S. Chitvishram, District Daltanganj, Jharkhand.

.... Appellant

Versus

1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
2. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
3. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
4. The Director Terminal Benefit, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
5. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
6. The General Manager-cum-Chief Engineer, Saharsa Electric Supply Area, Saharsa.

.... Respondents

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Appearance :

For the Appellant : Mr. R.K. Sinha, Advocate.
Mr. Nilesh Kumar Nirala, Advocate.
For the Board : Mrs. Nivedita Nirvikar, Advocate.

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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: 27-06-2016

Re.:I.A. No. 2414 of 2015

The application is for condonation of delay of 45 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellant has shown sufficient cause to seek condonation of delay of 45 days in filing the present

Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 2414 of 2015 is allowed and delay of 45 days in filing the Letters Patent Appeal is condoned.

Re.: L.P.A. No. 545 of 2015

Heard learned counsel for the parties.

2. The order dated 20th of November, 2014 passed by the learned Single Bench of this Court in C.W.J.C. No. 5365 of 2011 is subject matter of challenge in the present Letters Patent Appeal, whereby the writ application challenging recovery of Rs. 1,20,000/- said to be paid in excess on account of not qualifying Hindi Noting and Drafting Examination was dismissed. Such order was passed on 15th of October, 2009 after the appellant attained the age of superannuation on 31st of March, 2001.

3. The appellant qualified Hindi Noting and Drafting Examination on 15th of May, 1994 but he has drawn advantage of additional increments etc. from 1979. Therefore, a decision was taken to recover a sum of Rs. 1,20,000/- from the retiral dues payable to the appellant.

4. The question as to whether the recovery can be effected from the retiral dues has been examined by the Hon'ble Supreme Court in a recent judgment reported as State of Punjab Vs. Rafiq

Masih, (2015) 4 SCC 334 wherein it has been held that recovery from the retiral dues will cause undue hardship and that such amount cannot be recovered. In paragraph 18 of the judgment in the above case, the Supreme Court has given the following direction :-

“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, summarize 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.”

5. The Hon'ble Supreme Court has considered the judgment referred to by the learned Single Bench i.e. Chandi Prasad Uniyal & others versus State of Uttarakhand and another, (2012) 8

SCC 417 and thereafter issued the above directions.

6. The sole argument raised by learned counsel for the respondents is that the appellant has himself written a letter that the payment of retiral dues be paid after deductions from the gratuity.

7. We do not find any merit in the said argument. The writing was given by the appellant having no option so as to have the retiral benefits which were not being disbursed by the department. Once recovery is not permissible, any writing will not amount to waiver of rights on the part of the appellant.

8. In view thereof, the order passed by the learned Single Bench is set aside and the order for recovery of Rs. 1,20,000/- is quashed. Consequently, the respondents are directed to pay the said amount within three months from the date of receipt/production of a copy of this order.

9. The Letters Patent Appeal is, thus, allowed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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