IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13642 of 2014

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Ashok Kumar Son of Late Sadanand Prasad Resident of Mohalla- Gurhatta, P.S.- Mojahidpur, District- Bhagalpur, Presently residing near Patliputra Industrial Estate, P.S.- Digha, District- Patna

.... Petitioner

Versus

1. The State of Bihar through the Commissioner, Department of Industries, Govt. of Bihar, Patna.
2. The Principal Secretary, Finance Department Govt. of Bihar, Patna.
3. The Director of Industries, Bihar,Patna
4. The Director Upendra Maharathi, shilp Anusandhan, Santhan, Patliputra Industries Estate, Patna- 13
5. The D.D.O., Upendra Maharathi Shilp Anusandhan Sansthan, Patna.
6. The Accountant Genera, Birchand Patel Marg, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajendra Kumar Jain, Advocate

For the Respondents : Mr. Rajeev Shekhar, AC to GA-13.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL ORDER

3 16-09-2016 Heard.

The grievance of the petitioner is that after his retirement in the year 2011, suddenly, substantial deductions were made from his pension amounting to Rs.76,992/- which was totally unauthorized.

A counter affidavit has been filed on behalf of the State in which it is stated that in 2013, Finance Department while examining the case of petitioner found that his pay scale had wrongly been fixed while he was in service. Accordingly, they advised re-fixation of pay scale and consequential revision and retrial dues as a consequence thereof, it was found that Rs.76,992/- had been paid in excess to him which was ordered to be recovered in the year 2013 and, accordingly, from pension payable, the amount was deducted.

Having heard the learned counsel for the parties and learned counsel for the State, I can only hold that this entire exercise was without any jurisdiction. Firstly, there was no notice given to the petitioner and even though he was slapped with adverse civil consequences. There was no departmental proceeding at all initiated.

In that view of the matter, no deduction was possible on self determined facts which were not accepted by the petitioner. Secondly, even if there was at any mistake, with a right to correct the mistake, as has been held by the Apex Court in 2015(4) SCC 334, the recovery cannot be made after retirement of a government employee.

In that view of the matter, I have no option but to allow the writ application. The order and action of the State Government deducting an amount of Rs.76,992/- by order dated 17.10.2013 from the leave encashment is set aside. The State is directed to refund the amount within a fortnight to the petitioner.

The writ application is allowed to the extent above.

(Navaniti Prasad Singh, J)

B.Kr./-

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