

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8900 of 2013

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Anil Kumar Singh, retired Accounts Assistantm Gaya Electric Circle, son of late Kamlesh Kumar, resident of Sharda Kutir, Maksudpur Kothi, At And P.O. Tutbari, Near Balti Factory, new Godown, P.S. Kotwali, Gaya, District - Gaya

.... Petitioner

Versus

1. The Bihar State Power (Holding) Company Limited through Its Chairman-Cum- Managing Director, Vidyut Bhawan, Bailey Road, Patna
2. The Secretary Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna
3. The Deputy General Manager (Retirement Benefit), Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna
4. The General Manager - Cum - Chief Engineer, Magadh Area Electric Supply, Katari Road, Gaya
5. The Electrical Superintending Engineer Gaya Electric Circler, Gaya Katari Road, Gaya
6. The Joint Secretary, Bihar State Electricity Board (Now Holding Company) Vidyut Bhawan, Bailey Road, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. R.K. Sinha, adv.
: Mr. Nilesh Kumar Nirala, adv.
For the Respondent/s : Mr. Ranjit Sinha, adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 15-07-2016

1. Heard learned counsel appearing for the parties.
2. The challenge has been made to the order No.1120

dated 08.02.2012, by which it has been directed to recover an amount of Rs.19,409/- from the gratuity amount of the petitioner on the ground that excess payment has been made to the petitioner during his service career.

3. The petitioner was inducted in the service of Bihar State Electricity Board, was posted as Accounts Assistant in South Bihar Power Distribution Company, Gaya and superannuated from the service on 31.01.2010. As has been stated by the petitioner that he has been paid the retiral dues in the year 2014, but explanation has been offered by the South Bihar Power Distribution Company that a departmental proceeding was pending against the petitioner and after conclusion of the same, he has been granted the retiral dues, so the allegation of the petitioner to have been paid the retiral dues after a long delay is not correct.

4. In reply, learned counsel for the respondents submits that there is no law which prevents the Board to pay the retiral dues during the pendency of a departmental proceeding. This aspect is not required to be looked into in the present proceeding as in the present proceeding the petitioner is challenging the order of recovery.

5. It has been claimed by the petitioner that while he was



in service from time to time his pay was fixed, he had no occasion to be instrumental in fixation of his pay in past, rather the competent authority on the basis of the Standing Orders issued from time to time fixed the revision of pay of the petitioner and there is no allegation against the petitioner to have suppressed, misrepresented or committed fraud in fixation of his pay, and as such, the respondents are not justified to recover the amount in the name of excess payment after superannuation.

6. In support of his submission, learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *State of Punjab and Ors. vs. Rafiq Masih (white wahster)*, reported in *2014 (4) PLJR, (S.C.) 37* and *State of Punjab and Others vs. Rafiq Masih (white Washer) and Others*, reported *2015(1)PLJR, (S.C.)261*. In both the cases, the Hon'ble Supreme Court held that if there is no suppression, fraud or misrepresentation on the part of the employee and payment has been made and after the retirement of the employee it is found that excess amount has been made; the same cannot be recovered from the retiral dues of the employee. The Hon'ble Supreme Court has also considered the judgment of *Chandi Prasad Uniyal and Ors. vs. State of Uttarakhand* reported in *(2012) 8 SCC, 417* and finally

came to the conclusion that the recovery of excess amount is completely impermissible, especially with respect to class III and Class IV employees.

7. Learned counsel for the respondents has placed reliance on the judgment of the Full Bench in the case of ***Ram Binod Singh vs. Bihar State Electricity Board*** reported in ***2007(3) PLJR, 398***.

8. After the case of *Ram Binod Singh (supra)* large number of cases of the Hon'ble Supreme Court has already occupied the field and in one of the cases namely *Rafiq Masih (supra)*, the Hon'ble Supreme Court in paragraph No.12 has held as follows:-

“12. 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 at 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."

9. Paragraph No.12 of the aforesaid decision itself suggests that excess payment cannot be recovered from the employees when the excess payment has been made for a period in excess of five years, before the order of recovery is passed. Admittedly, in the present case, the excess payment has been paid to the petitioner long before and there is no allegation against the petitioner to have suppressed, misrepresented or committed fraud in fixation of his pay.

10. In such view of the matter, the order No.1120 dated 08.02.2012, direction for recovery of excess amount, is not sustainable and the same is hereby set aside. If any amount has been

recovered, the respondents will be obliged to return the same with simple interest at the rate of 6% per annum within a period of one month from the date of receipt/production of a copy of this order.

11. With the aforesaid observations and directions, this writ application is allowed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	
Uploading Date	19/7/2016
Transmission Date	