

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16653 of 2015

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Nirmal Kumar Srivastava, Son of late R.M. Lal, Resident of Mohalla -B. Mithapur ,
Area Kanu Lal Road , P.S Jakkanpur district Patna -1

.... Petitioner

Versus

1. The Union of India through the General Manager East Central Railway, Hajipur district Vaishali.
2. The Divisional Railway Manager, Danapur Division , Danapur.
3. The Senior Personnel Officer Danapur Division Danapur.
4. The Senior Divisional Account Finance Manager Danapur.
5. Senior Divisional Electrical Engineer (General)

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ebrahim Kabir
Mr. Ram Ishwar Prasad
For the Respondent/s : Mr. Naresh Dixit
Mr. Vivek Anand Amitesh

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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: 24-06-2016

The challenge in the present writ petition is to an order dated 14th March 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna, whereby an Original Application filed by the petitioner challenging recovery from his retirement benefits was dismissed.

The petitioner superannuated from the post of Senior Technical Assistant on 31st August, 2008. The applicant was appointed as ELC 'B' on 25.01.1975 in the scale of Rs.425-700/- in Dhanbad Division and was thereafter promoted to the higher post of



ELC 'A' on 10th February, 1984. But he was subsequently transferred to Danapur Division as ELC 'B' as per his option. As per the respondent, though he was reverted to ELC 'B' his pay was wrongly fixed at Rs.650/- in place of Rs.545/-. Therefore, for wrongful fixation of salary recovery was to be made. The relevant findings of the Tribunal is at paragraph-12 of its judgment which reads as follows:-

“12. In the present case also, the applicant was very much aware of his reversion to ELC 'B' since he was working as ELC 'A' on officiating basis at Dhanbad Division and when he was reverted and transferred to Danapur Division his pay was wrongly fixed as Rs.630/- in place of Rs.545/- which continued in subsequent fixation also. When it was detected at the time of his retirement, he was noticed with show cause and ample opportunity was given to him. After considering his representation, the order dated 26.08.2008 was issued whereby his pay was retarded. It is admitted fact that no representation has been made by the applicant against the said order dated 26.08.2008 and subsequently recovery was made from his retirement benefits. As all the course of actions had been taken prior to his retirement, in the facts and circumstances of the case, we do not find any reason to interfere with the decision of the respondents.”

Learned counsel the petitioner refers to the judgment of the Supreme Court in the case of *State of Punjab vs. Rafiq Masih [(2015)4 SCC 334]*, which has laid down the parameters for recovery from the salary of the employees. It has been held that recovery from pensionary benefits will cause hardship and is not warranted. 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.”

We find that recovery from the retiral benefits of the petitioner was under Clause (ii) of the said direction. In view thereof, the order passed by the learned Tribunal cannot be sustained and is set aside. Consequently, recovery from the retirement benefits payable to the petitioner on account of excess amount, if any, paid as ELC 'A' shall stand quashed and any amount recovered shall be refunded to the

petitioner within six months from today.

However, we may clarify that pension of the petitioner shall be fixed as per the pay scale to which he was entitled to in accordance with law.

The writ petition is allowed accordingly.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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