IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7459 of 2011

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Punya Nand Mishra son of Late Narsingh Mishra , Resident of Mohalla- Kabilpur, Laherisarai, P.S.- Laheriasarai, District- Darbhanga

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Irrigation Department, Govt. Of Bihar, Patna
3. The Principal Secretary, Department Of Finance, Govt. Of Bihar, Patna
4. The Chief Engineer, Water Resources Department, Dehri, Rohtas
5. The Superintending Engineer, Flood Control Circle, Buxar
6. The Executive Engineer, Sone Canal Division, Buxar
7. The District Accounts Officer, Bhojpur At Ara

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha

For the Respondent/s : AC to SC No. 2

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 23-08-2016

Heard Sri Prashant Sinha, learned counsel for the petitioner and learned AC to SC No. 2.

The petitioner invoking writ jurisdiction of this Court under Article 226 of the Constitution of India has made a prayer for the following reliefs:-

> **(a) For issuance of writ in the nature of certiorari for quashing of office order No. 163 dated 29-03-2011 as contained in letter No. 761 dated 23-03-2011 whereby the petitioner has been held entitled for the pay scale of Rs. 5300/- plus RPP w.e.f. 25-07-2000 as the authorities have themselves admitted that the petitioner is entitled for the pay scale of Rs. 6350/- by adding basic salary, RPP and a promotional increment vide their memo No. 260 dated 18-03-2005.**
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> **(b) For issuance of writ in the nature of**

certiorari for quashing of letter No. 568 dated 28-02-2011 whereby the direction of recovery from the salary of the petitioner have been made and recovery of Rs. 5000/- has been made from the salary of February , 2011.

(c) For issuance of necessary direction to the respondent authorities to refund Rs. 5000/- , which have been recovered from the salary of the petitioner in the month of February , 2011 and further for refund of any other amount, which might be recovered by the respondent authority from the salary of the petitioner during the pendency of this writ application.

(d) For staying the operation of letter No. 568 dated 28-02-2011 and office order No. 163 dated 29-03-2011 during the pendency of this writ application

(e) For holding that the memo No. 260 dated 18-05-2005 was totally in accordance with law and it requires no interference as it has been issued pursuant to order of this Hon'ble Court passed in CWJC No. 13094/2001 in as much as any interference with Memo No. 260 dated 18-05-2005 amounts to contempt of court."

Short fact of the case is that the petitioner was initially appointed in the year 1969 as Moharir. His pay scale was subsequently revised with effect from 1.1.1996 in the scale of Rs. 3200-85-4900/-. The petitioner with effect from 1.4.1998 was granted first stagnation increment (of Rs. 85/-). His basic salary was increased to Rs. 4985 /- resultantly his RPP had come down to Rs. 1194/-. He was subsequently promoted to the post of Circle Officer. Lastly he was promoted to the post of Circle Officer in the pay scale of Rs. 5000-8000/- and his pay was fixed as Rs. 6350/- vide memo no. 07 dated 6.1.2001 issued by the Deputy Collector, Revenue Division, Buxar. The petitioner started to draw the pay of Rs. 6350/- regularly. However all of a sudden vide memo no. 603 dated 22nd September 2001 an Office Order was issued whereby his pay was reduced from Rs. 6350/- to 5300/- and also direction was given to recover the excess paid amount. Aggrieved with the action of the respondents the petitioner approached this court by filing a writ petition vide CWJC No. 13094 of 2001. This court was of the opinion that there was no allegation of misrepresentation or fraud and as such the authorities concerned were not at all authorized to pass an order for recovery. Accordingly the order relating to recovery part was set aside vide order dated 12.3.2004 and liberty was granted to the petitioner to file representation before the authority concerned regarding correction of his pay scale. It is the case of the petitioner that in compliance with the order of the writ court petitioner filed a representation and after due deliberation the same authority i.e. Deputy Collector , Revenue Division, Buxar restored the pay scale of the petitioner to Rs. 6350/- After re-fixation the petitioner again started to get the pay scale of Rs. 6350/-. It is stand of the petitioner that almost one year prior to retirement of the petitioner the Executive Engineer, Sone Canal Division, Buxar had come out with a fresh order contained in memo no. 761 dated 29.3.2011 whereby decision was taken to reduce the pay of the petitioner.

It has been argued by learned counsel for the petitioner that once decision taken in the year 2001 reducing the pay of the petitioner from Rs. 6350/- to 5300/- was withdrawn in the year 2005 itself then after about six year at least the Executive Engineer was not at all authorized to reduce the pay of the petitioner. Similarly it has been argued that even after noticing the order of this court i.e. order dated 12.3.2004 passed in CWJC No. 13094 of 2001 the Executive Engineer had passed order for recovery of the excess paid amount which was apparently in the teeth of the order of the earlier writ court. However this court vide order dated 3.5.2011 had restrained the respondents from recovery. Though recovery was stayed by a judicial order of this court, during the pendency of this writ petition the respondents had again come out with a peculiar stand. To adjust the amount from the leave encashment about Rs. 1,66,000/- and odd was illegally withheld by the respondents. Thereafter the petitioner was constrained to file an interlocutory application vide I.A. No. 7361 of 2014 which was partly allowed by this court and direction was given to immediately refund the withheld amount of Rs. 1,66,996/-. Learned counsel for the petitioner submits that in compliance with the earlier order the said amount has already been released in favour of the petitioner. It has been argued that once earlier action of the respondents reducing pay scale was withdrawn by the same authority i.e. Deputy Collector, Revenue Division, Buxar at much belated stage in the year 2011 the Executive Engineer was not having any authority to commit the same error which was committed long back in the year 2001. Accordingly a prayer has been made for quashing of the order reducing the pay scale as well as for quashing of the order whereby direction was given to recover the amount on the plea of excess payment.

In this case a counter affidavit has been filed on behalf of the respondent no. 4 to 6. Learned AC to SC No. 2 referring to the statement made in paragraph no. 19 and 23 of the counter affidavit tried to justify the action of the respondents and makes a prayer for dismissal of the writ petition.

Besides hearing learned counsel for the parties I have also perused the material available on record. Fact remains that long back in the year 2001 itself the pay scale of the petitioner was fixed as Rs. 6350/- which was subsequently in the year 2001 itself was reduced as Rs. 5300/-. The said order was assailed by the petitioner before this court and in compliance with the order of the writ court in CWJC No. 13094 of 2001 the petitioner filed representation and thereafter the Deputy Collector, Revenue Division, Buxar corrected the earlier error and restored the pay of the petitioner to Rs. 6350/-. This order was passed in the year 2005 and thereafter petitioner continuously drawn his salary in the same scale. From the material on record it is evident that during the pendency of this petition the petitioner superannuated with effect from 31st January 2012. Meaning thereby few months prior to retirement of the petitioner the Executive Engineer by the impugned order i.e. Annexure - 6 series had again passed an order reducing the pay scale of the petitioner and also issued direction for recovery on the plea of excess payment. It is not the case of the respondent /State that ever petitioner had misrepresented or committed fraud in getting the enhanced pay scale. Moreover the pay i.e. Rs. 6350/- was fixed by the competent authority and thereafter there was no occasion for the Executive Engineer to pass a contrary order that too after such a long time. So far stand of the respondents taken in paragraph no. 19 and 23 of the Counter Affidavit is concerned, the Court proposes to incorporate the same which are as follows:-

> **"19. That in reply to Para 7, it is stated that it is correct to the effect that the scale of the petitioner was fixed at Rs. 6350/- after giving increment of Rs. 85/- and after**

adding RPP in the basic pay, but the District Accounts Officer has stated that RPP cannot be added in the basic pay at the time of fixation of pay and thus, the fixation vide Memo No. 7, Dt. 06/01/2001 by Dy. Collector , Revenue Division, Buxur as contained in Annexure – 2 to the writ petition, is not correct and not in accordance with rule and regulations of the Finance Department.

23. That in reply to Para 11, it is stated that the same is fully correct and true to the effect that the deponent has fixed the pay scale of the petitioner vide Office Order No. 163, dt. 29/03/2011 at Rs. 5300/- and RPP of Rs. 879/- was added over it and directed for recovery from pay of the petitioner at Rs. 5000/- vide letter No. 568, dt. 28/02/2011."

The petitioner by way of filing reply has categorically dealt with the stand of the respondents in its paragraph no. 4 and 5 which are quoted herein below:-

"4. That with regard to the statements made in Paragraph No. 3, 7, 8, 10, 12, 14, 15, 19 , 23, 24 & 27 of the counter affidavit under reply, it is stated that the Finance Department vide its letter No. 660 dated 08-02-1999 revised and fixed the pay scale of Irrigation Revenue Inspector w.e.f. 01-01-1996 in the pay scale of Rs. 3200-85-4900/-. In the light of the aforesaid letter of the Finance Department, the salary of the petitioner should have been Rs. 6179/- (after adding basic salary, dearness allowance admissible on that date, two installments of interim relief and 40% waitage of fitment). Since the highest pay scale of Irrigation Revenue Inspector was fixed at Rs. 4900/- , which was less than Rs. 6179/-, i.e., the

salary admissible to the petitioner, as such, RPP of Rs. 1279/- was granted to the Petitioner. The Petitioner vide letter No. 672 dated 01-07-2000 was promoted to the post of Circle Officer in the pay scale of Rs. 5000-8000/- and he submitted his joining on the post on 25-07-2000. Now, since the salary admissible to the petitioner was well within the pay scale of the Petitioner, there was no requirement of RPP and as such, the Deputy Collector, Revenue Division, Buxar rightly fixed the pay of the Petitioner at Rs. 6350/- after treating RPP as part of the basic pay.

5. That in the light of the above, it is humbly stated and submitted that the rational behind the RPP is to fill up the gap between the admissible salary to an employee and the maximum limit of his pay scale. If the admissible salary of an employee is well within his admissible pay scale, then there is no rational in giving RPP to an employee. Literally, Personal Pay is the additional pay granted to a Govt. Servant to save him from a loss of substantive pay in respect of a permanent post other than a tenure post due to a revision of pay. Thus, the petitioner required the support of RPP till he was in the pay scale of Rs. 3200-4900/-. After getting promotion in the pay scale of Rs. 5000-8000/- , there is no requirement of the safeguard of the personal pay. It amounts to treating the Petitioner still in the pay scale of Rs. 3200-4900/- while the Petitioner has got the promotion of post as well as scale in the pay scale of Rs. 5000-8000/-. Actually, no other benefit, such as, D.A., House Rent Allowance etc. are given on RPP. As such, if the RPP is added in the salary of the Petitioner, that would amount to still treating him in the pay scale of Rs. 3200-4900/- while the Petitioner is in the pay scale

of Rs. 5000-8000/-"

In view of position clarified by the petitioner in its reply and particularly the fact that pay of Rs. 6350/- of the petitioner was fixed by the competent authority i.e. Deputy Collector, Revenue Division, Buxar in the year 2005 after earlier order of the writ court the Court is of the considered opinion that the Executive Engineer in the year 2011 has committed a serious error in reducing the pay scale of the petitioner by the impugned order. Accordingly the order dated 29.3.2011 i.e. Annexure- 6 to the writ petition whereby pay scale of the petitioner was reduced is hereby set aside. Consequently the subsequent order whereby recovery was directed is also set aside.

The petition stands allowed.

It is made clear that if pursuant to the impugned order any deduction has been made the respondent authorities are required to refund the said amount forthwith.

The writ petition is allowed with all consequential benefits.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29-08-2016
Transmission Date	N.A.