IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6231 of 2013

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Suresh Prasad Son Of Late Kedar Nath Prasad Resident Of Village - Parsawani Dewahit P.O. Mehsi P.S. - Mehsi District - East Champaran

.... Petitioner/s

Versus

1. The State Of Bihar Through The Secretary Water Resources Department, Bihar
2. The Secretary Tubewell, Central Work Shop Department And Training Institute, Shekhpura, Bihar, Patna Vikash Bhawan, New Secretariat, Patna
3. The Chief Engineer, Tubewell Central Workshop Development And Training Institute Water Resources Department, Shekhpura, Patna
4. The Superintending Engineer, Tube Well Central Workshop And Training Institute, Bihar, Patna
5. The Executive Engineer, Tubewell Central Workshop Development And Training Institute Shekhpura Bihar, Patna
6. The Assistant Engineer, Tubewell Central Workshop Development And Training Institute, Shekhpura, Bihar, Patna
7. Junior Engineer, Tubewell Central Workshop Development And Training Institute, Shekhpura, Bihar, Patna
8. Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar No.III, Adv.

For the Respondent/s : Mr. Ashok Kr. Choudhary, AAG-13,
Mr. Reema Kumar, AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 15-03-2016

I.A. No. 2001 of 2016

Learned counsel for the petitioner has filed this interlocutory application with a prayer to modify the prayer made in paragraph no.1 as also the prayer portion of the main writ application to the extent that the expression "quashing the letter no. 1035 dated 10.11.2012 issued by the respondent no.3" may be read as "to quash the official order vide letter no. 1122 dated 14.12.2012 passed by the respondent no.3".

In view of the above, the I.A. No. 2001 of 2016 is allowed to the extent indicated above.

Heard learned counsel for the parties on merit.

In this case, the learned counsel for the petitioner is seeking a relief of quashing the order dated 14.12.2012 by which the Chief Engineer vide order dated 14.12.2012 has directed for recovery of excess amount paid to him. The necessary fact in this case is that the petitioner was appointed as a Work Charge Establishment as a Store Keeper on 30.3.1973. He was sent on deputation in Central Workshop Development and Training Institute, Shekhpura and from there he has superannuated from service on 31.1.2010. After superannuation, the petitioner was moving from pillar to post but was not getting any retiral dues. Forced with the situation, the petitioner approached this Court in CWJC No. 22663 of 2011 whereby and whereunder the Court had directed to the respondents to ensure payment of all retiral dues to the petitioner which led to issuance of show-cause notice by the Chief Engineer vide letter no. 1035 dated 10.11.2012 asking the petitioner as to why the excess payments which were made to the petitioner during service period be not recovered from the pensionary benefit. The petitioner gave reply to the show-cause and submitted that he has not played fraud, has not suppressed or misrepresented the fact. He has been paid what he was entitled to. The Chief Engineer was not satisfied with the show-cause filed by the petitioner and passed an order for recovery the excess amount paid to him which is under challenge before this Court.

Learned counsel for the petitioner submits that during service period, whatever he was entitled has been paid. He has not suppressed or misrepresented or played fraud in fixation of pay or increment including benefit of ACP. The respondents, on their own, have fixed salary of the petitioner from time to time and the petitioner received the same. He has also submitted that the consistent view of the Hon'ble Apex Court and this Court is that even if any excess amount has been paid without any intervention of any fraud or misrepresentation from the side of the petitioner, the employer should not recover the amount which has been paid to him on equitable consideration as on retirement in take of amount has been made half. If the amount would be allowed to be recovered, it will be very difficult to a retired person to survive in the world when the price rise is at height and that too from a person who belongs to Class-III and Class-IV post. It will not appropriate and equitable to realize the excess amount paid to him. Learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in the case of ***Syed Abdul Quadir Vs. State of Bihar*** reported in ***2009(3)SCC 475***, in the case of ***Col. B.J. Akkara (Retd.) Vs. Govt. of India*** reported in ***(2006)11 SSC 709*** and in the case of ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer)*** etc. reported in ***2015(1) SC 261***. In the case of Rafiq Masih (supra), all the earlier judgments were taken into consideration and the Hon'ble Apex Court has passed order where the Court has held that it will not be equitable to recover excess amount from the employee of Class-III and Class-IV post whose salary is in a lower side.

Learned counsel for the State has submitted that even if a mistake has been committed by the respondent in fixing the salary of the petitioner but, the fact that excess amount has been made, there is no law that if any excess payment has been made, the same will not be recovered from the retiral dues of the petitioner. It is a taxpayer money. If any excess payment has been made on account of any reason like negligence, inaction, carelessness or favoritism which ultimately does not belong to payer and payee will not make him entitled to get that money and the State will be at liberty to ask the person to return the amount otherwise it will be unjust enrichment to the petitioner. In support of the statement, the learned counsel for the State has placed reliance in the case of ***Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors.*** reported in ***2012(8) SCC 417***.

Having considered the rival submissions, this Court would find that there is no dispute that the petitioner was granted salary in higher side not because of any action done by the petitioner but the respondents on their own had wrongly or rightly fixed the salary of the petitioner and also granted the relief of ACP from the wrong date but the fact remains that the petitioner is now a retired person and during service period, the respondents did not take any action for recovery of the excess amount paid to the petitioner. The respondents remained in deep slumber, after retirement, when intake amount has been made half and the price rise is at a height, the order of recovery has been passed. The Hon'ble Apex Court in the case of Rafiq Masih (supra), which is the latest judgment and all the past judgments have been considered has taken a view that it will be inequitable to recover the amount from the Class-III and Class-IV employee after superannuation.

In that view of the matter, placing reliance on the judgment of Rafiq Masih (supra), the order dated 14.12.2012 is quashed.

It is, however, made clear that if already any recovery has not been made, no further recovery will be made from the pensionary benefit of the petitioner and any amount recovered from the pensionary benefit of the petitioner, the respondents would return the same with interest at the rate of 6% per annum. However, the respondents will be at liberty to fix the pension at the correct pay-scale.

In the result, this application is allowed to the aforesaid extent.

(Shivaji Pandey, J)

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