IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15663 of 2013

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Nand Kishore Prasad, S/O late Chotan Prasad, Resident of Mohalla- Babu Bazar, P.S- Arrah Town, District- Bhojpur.

.... Petitioner

Versus

1. The Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna Represented through its Chairman- Cum- Managing Director.
2. The Chairman- Cum- Managing Director, The Bihar State Power (Holding Company Limited), Vidyut Bhawan, Bailey Road, Patna.
3. The Director (Human Resources), Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road, Patna.
4. The Deputy General Manager (Human Resourcess), Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road, Patna.
5. The Deputy General Manager (Finance & Accounts), Terminal Benefits, Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road, Patna.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Kumar Ravish, Adv.

For the Respondent/s : Mr. Vinay Kirti Singh, Senior Adv.
Mr. Akhileshwar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 06-12-2016

Heard learned counsel for the petitioner and learned counsel for the Bihar State Power Holding Company Limited.

2. In this case, the petitioner is challenging the order containing Memo No.2674 dated 13.06.2012 passed by the Director (Terminal Benefits) of the erstwhile Bihar State Electricity Board, now the Bihar State Power Holding Company, whereby it has been directed to recover an amount of Rs.1,80,057/- from the death-cum-retiral Gratuity of the petitioner on the ground of wrong fixation was made during the period of 1983.

3. The petitioner has entered into the service of erstwhile Bihar State Electricity Board as Junior Accounts Clerk on 26.05.1970 in the pay scale of Rs.70-155/-. Time to time his pay scale was enhanced and was promoted to the post of Accounts Assistant with effect from 1.12.1980 and the pay scale was made Rs.570-1015/-. Ultimately, he was superannuated from the active service with effect from 31.07.2011 from the Board's Headquarter at Patna from the post of Accountant.

4. After the retirement, the erstwhile Bihar State Electricity Board has calculated his retiral dues and found that his pay was wrongly fixed during the period of 1983, which resulted into excess payment to the petitioner and recorded that the excess payment of Rs.1,80,057/- which was paid to the petitioner be deducted from the Gratuity amount.

5. Learned counsel for the petitioner submits the fixation of pay was done in a proper manner, but illegally the respondentauthorities without considering the entitlement of the petitioner has arrived to a conclusion that excess amount was made to the petitioner.

6. So far as the deduction of Rs.1,80,057/- that has been deducted from the gratuity amount of the petitioner is concerned, the same is *per se* illegal in view of the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and Others vs. Rafiq Masih (White Washer) and Others,*** reported in ***2015(1) PLJR (S.C.), 261***. There the Hon'ble Supreme Court has considered in what circumstances and on which category of employees can be placed for recovery of the excess amount from the retiral dues or from the salary. The Hon'ble Supreme Court has held that it will be inequitable to recover excess amount from the retiral dues of class-III and class-IV employees. Admittedly, in the present case, the petitioner belongs to class-III employee.

7. It will be relevant to quote paragraph No.12 of the said judgment, wherein the details have been given from whom deductions can not be made, the petitioner squarely fall in the categories mentioned in the said judgment, which reads as under:-

> *"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."*

8. In such view of the matter, the order containing Memo No.2674 dated 13.06.2012 is modified to the extent that the direction of recovery of excess amount is hereby set aside. If any amount has been recovered, the respondents will be obliged to return the same within simple interest at the rate of 6% per annum within a period of two months from the date of receipt/production of a copy of this order.

9. So far as the fixation part is concerned, liberty is granted to the petitioner to approach the Deputy General Manager (Finance & Accounts), Terminal Benefits, Bihar State Power Holding Company Limited by filing a representation. If such a representation is filed, the Deputy General Manager shall consider the same and after hearing the petitioner pass a reasoned order in accordance with law within a period of three months from the date of filing of such representation.

10. With the aforesaid observations and directions, this writ application is disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	09.12.2016
Transmission Date	