IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4880 of 2017

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1. Rajnish Thakur, Son of Late Buddhilal Thakur, Resident of Village & Post Achara, Police Station Phulkaha, District Araria.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Minor Irrigation Department, Government of Bihar, Patna
2. The Chief Engineer, Minor Irrigation Department, Bhagalpur
3. The Superintending Engineer, Minor Irrigation Circle, Water Resource Department, Saharsa
4. The Executive Engineer, Tubewell Division, Minor Irrigation Division, Water Resource Department, Madhepura
5. The Treasury Officer, Madhepura
6. THe District Provident Fund Officer, Madhepura

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar Singh, Adv.
For the Respondent/s	:	Mr. Anjani Kumar, Sr. Adv., AAG Mr. A.C. to S.C.-14

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 22-06-2017

Heard Mr. Sanjeev Kumar Singh, learned counsel for the petitioner and Mr. Anjani Kumar, learned Additional Advocate General for the State.

2. The prayers of the petitioner in paragraph- 1 of the writ application are as under:-

> "1. That the present writ application is being filed on behalf of the petitioner above named for the following relief/reliefs :-
>
> (i) For issuance of a writ of mandamus seeking direction to respondent authorities to make payment of post-retiral dues i.e. pension, gratuity, earn leave, group insurance as well as remaining part of GPF dues with statutory

interest, which have not been paid by authorities on non-est grounds, even after authorization from Accountant General, Bihar, Patna.

(ii) For further issuance of writ of certiorari quashing letter no. 65, 66 & 67 all three dated 06.02.2017 issued by Executive Engineer, Madhepura, whereby direction has been issued to recover the alleged excess payment made to the petitioner after fixation of pay in the reduced pay scale for the period from 1981 to 2006, while the petitioner has already superannuated from the service on 30.09.2016 itself.

(iii) For any other writ/writs, order/orders which the petitioner may found to be entitled in the facts and circumstances of the case."

3. The petitioner was appointed as Electrician on 01.12.1979 in Tube-well Division of Bihar Water Development Corporation, which was later merged in Minor Irrigation Division, Madhepura. The Finance Department vide resolution, as contained in letter no. 6021 dated 18.12.1989, specifically fixed the pay scale of Electrician in the pay scale of 1200-1800 with effect from 01.01.1989. Again the pay scale of Electrician was revised to 4000-6000 with effect from 01.01.1996 vide Finance Department resolution no.660 dated 08.02.1999. The petitioner was granted the revised pay scale of 580-860 with effect from 01.04.1981, 1200-1800 with effect from 01.01.1986 and 4000-6000 with effect from 01.01.1996 in view of Finance Department Resolution dated 18.12.1989 and 08.02.1999.

4. After almost 27 years, office order nos. 143, 142 and 141 all dated 22.02.2008 were issued by respondent no.4 whereby the pay scale of the petitioner was fixed in the reduced scale of 425-605 with effect from 01.04.1981, 950-1400 with effect from 01.01.1986 and 3050-4590 with effect from 01.01.1996 respectively.

5. The petitioner represented before the authorities highlighting the fact that reduction in pay scale was not in accordance with law. However, his representation was rejected vide order dated 09.09.2014 by the Chief Engineer concerned and the said rejection order has been challenged by the petitioner by way of filing another writ application before this Court vide C.W.J.C. No. 15610 of 2015, which is still pending for adjudication.

6. The petitioner superannuated on 30.09.2016. As he was getting reduced pay scale at the time of superannuation, his pension, gratuity and earned leave have been calculated on the same reduced pay scale. Accordingly, Pension Payment Order and Gratuity Payment Order have been issued by the Accountant General, Bihar, Patna on 21.11.2016.

7. It is stated by the learned counsel for the petitioner that so far payment of provident fund is concerned, on the basis of deductions made from the salary of the petitioner for the period November, 1990 to September, 2016, authority slip dated 15.12.2016

was issued pursuant to which he has been paid Rs.2,17,049/-. However, the deductions made under the head of G.P.F. for the period December, 1979 to October, 1990 have not been taken into account. He submitted that the petitioner has represented before the Executive Engineer, Madhepura to take appropriate action for including the deductions made prior to November, 1990 but no positive action has been taken so far and the petitioner has been deprived of the his legal dues. He submitted that even the Group Insurance amount has been calculated on the basis of deductions made from the period November, 1990 till the date of his retirement and the previous period has not been taken into account. He submitted that even under the Group Insurance Scheme the required deductions were made from December, 1979 onwards but still the respondents have not taken into account the said deductions while paying the amount of Group Insurance.

8. He submitted that in view of the office orders as contained in letter nos. 65, 66 and 67 dated 06.02.2017 whereby pay scale of the petitioner has been re-fixed from 1981 onwards and a direction has been given to recover the excess amount in one go from the petitioner, the payments of pension, commuted value of pension, gratuity and earned leave have not been made to the petitioner so far inspite of the fact that payments under those heads have already been

sanctioned. He contended that there is no allegation that the petitioner had misrepresented or committed fraud and has been instrumental in obtaining enhanced pay scale or revised pay scale. He contended that withholdment of retiral dues of the petitioner by the respondents in the name of recovery of excess amount paid is highly illegal and impermissible in view of the judgment of the Supreme Court in the matter ***of State of Punjab and others Vs. Rafiq Masih (White Washer) [2015 (1) PLJR (SC) 261].***

9. On the other hand, Mr. Anjani Kumar, learned Additional Advocate General appearing for the State submitted that since the petitioner was posted in Minor Irrigation Division, Purnea between the period December, 1979 to October, 1990, details regarding deductions made against Group Insurance have been called for from the office of the Executive Engineer, Minor Irrigation Division, Purnea and after receipt of the same, action for payment of the balance amount to the petitioner would be taken. He submitted that the Accountant General, Bihar, Patna has already issued Pension Payment Order fixing pension of the petitioner at the rate of Rs.7,470/- and requesting for payment of the commuted value of pension amounting to Rs.2,93,804/-. He also contended that gratuity amounting to Rs. 5,54,648/- has also been sanctioned and authorized to be paid but the payments have been withheld on account of order

of recovery of excess amount taken by the petitioner due to wrong fixation of scale of pay. He submitted that for the same reason the sanctioned earned leave amount of Rs.3,46,610/- has also been withheld and, after adjusting the excess amount, whatever amount would be found due to the petitioner would be paid to him.

10. I have heard learned counsel for the parties and perused the record.

11. The facts are not in dispute. Admittedly, the petitioner has been paid only part of the admissible G.P.F. and Group Insurance amount. The payments under these heads for the period December, 1979 to October, 1990 are yet to be made. It is also not in dispute that the petitioner is not guilty of misrepresentation or fraud due to which any excess payment of salary was made to him. The revised pay scale was paid to the petitioner pursuant to the recommendations of the pay revision committee. Hence the impugned action of the respondents in making recovery of the excess payment cannot be justified.

12. Learned counsel for the petitioner has rightly placed reliance in this regard on the decision of the Supreme Court in the matter of ***State of Punjab and others Vs. Rafiq Masih*** (Supra). In the said case, the Supreme Court has considered the issue of recovery of excess payment made to the employee and, after considering various decisions, it has summarized the following five situations under which

recovery from the employee would be impermissible in law :-

> "(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
>
> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
>
> (iii) Recovery from 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."

13. In my considered opinion, the case of the petitioner is squarely covered under three circumstances mentioned above as the petitioner is a Class III employee and has already retired from service and the recovery has been ordered after several decades of the alleged excess payment said to have been made to the petitioner due to erroneous fixation of pay.

13. In view of the discussions made hereinabove, the impugned orders whereby recovery of excess payment made to the petitioner have been ordered are set aside. The respondents are directed to release the sanctioned amount of pension, commuted value

of pension, gratuity and earned leave to the petitioner forthwith. The respondent no.4 is directed to obtain deduction statements of Group Insurance and G.P.F. from the place/places where the petitioner was posted prior to October, 1990 and make payment of the due amount of Group Insurance and G.P.F. within three months from the date of receipt/production of a copy of the order. In case of any delay in payment of the balance amount of G.P.F. and Group Insurance beyond the period of three months stipulated hereinabove, apart from the statutory interest, the petitioner would also be entitled to receive interest at the rate of 8% over the due amount from the date of order till the date of actual payment.

14. With the aforesaid observations and direction, this writ application is allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28-06-2017
Transmission Date	