IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10888 of 2016

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Ranvijay Singh S/o Late Ram Sewak Singh Resident of Village- Maigra, P.O.- Maigra, P.S.-Dumariya, District-Gaya at Presently residing near Muni Masjid, Behind Devi Asthan, P.S.- Rampur, P.O.-Gaya, District-Gaya

.... Petitioner/s

Versus

1. The Bihar State Electricity Board Now Known As Bihar State Power Holding Company Limited through its Chairman Cum Managing Director Vidhut Bhawan, Bailey Road, Patna
2. The Managing Director, South Bihar Power Distribution Co. Ltd. Vidyut Bhawan, Bailey Road, Patna
3. The General Manager Cum Electrical Superintending Engineer, Magadh Electric Supply, Area, Gaya
4. The Senior Manager(Finance and Account), Magadh Electric Supply Area, Gaya
5. The Electrical Superintending Engineer, Supply Circle, Gaya
6. The Electrical Executive Engineer, M.R.T. Division, Gaya (Rural)

.... Respondent/s

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Appearance :
For the Petitioner/s :
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 24-11-2017

Heard learned counsel for the petitioner and respondents.

2. The petitioner has moved the Court for the following reliefs:

> *"i) For issuance of appropriate writ in the nature of mandamus seeking direction to respondents to pay him interest upon delayed payment of his G.P.F. amount as determined by the government under Rule 14 of Bihar General Provident Fund Rule 1948.*

(ii) For issuance of appropriate writ in the nature of mandamus seeking direction to respondents to pay him 10% compound interest on group saving amount for delayed payment as provided under clause 8 (1) of Group Saving Rule 1986.

iii) For issuance of appropriate writ in the nature of certiorari for quashing the office order No. 4 dated 19.03.2015 issued under signature of Electrical Executive Engineer, MRT Division, Gaya by which monthly pay drawn by the petitioner since 01.01.1996 till date of his retirement has been revised and reduced without issuing any notice to him and after lapse near about 3 years of his retirement.

iv) For issuance of appropriate writ in the nature of certiorari for quashing the order of reduction in monthly pension from 10665/- to 10590/- as contained in PPO No. 1015 dated 24.12.2015 issued under signature of Senior Manager (Finance and Accounts) Magadh Electric Supply Area, Gaya.

v) For issuance of appropriate writ in the nature of mandamus seeking direction to respondent to pay the recovered amount of petitioner from his pension and also recovered amount of petitioner from his DCR gratuity.

vi) For issuance of appropriate writ in the nature of mandamus seeking direction to *respondent to pay interest upon delayed payment of gratuity amount.*

vii) For any other relief or reliefs for which petitioner is entitled for."

3. The grievance of the petitioner is that not only his pension has been reduced but recovery has been made on the ground of alleged excess payment drawn by him to which he was not entitled.

4. Learned counsel for the petitioner submitted that petitioner retired from the post of Head Electrician while working in the office of the respondent no. 6 on 30.09.2012 and thereafter his pensionary benefits were fixed. However, by order dated 19.03.2015, the same was revised and recovery was also ordered, which has subsequently been done. Learned counsel submitted that the same is impermissible as even if any error had occurred while granting particular pay scale to the petitioner, there being no role of the petitioner in such fixing of payment, he cannot be penalised or recovery made. For such proposition, learned counsel relied upon a decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported as **(2015) 4 SCC 334**. It was submitted that once the payment has been made without any role of the petitioner, he is not liable for any recovery and that pensionary benefits are also required to be fixed on the basis of his last pay drawn.

5. Learned counsel for the respondents submitted that at

the time of revision of his pay, with effect from 01.01.1996, a higher amount was fixed to which the petitioner was not entitled and thus after correcting the pay scale to which the petitioner was entitled, the amount which has been drawn in excess of the entitlement of the petitioner has been recovered, which cannot be faulted. He further submitted that once the error is not disputed, the right of the petitioner can only be in accordance with his entitlement in law and he cannot insist that despite such error, he should be paid in terms of the erroneous pay drawn by him.

6. At this juncture, learned counsel for the petitioner submitted that as the difference in the pension amount is only Rs. 75/- per month, he shall not press his claim for being paid his pension as per the last pay drawn but would be satisfied with notional fixation of his pay as per his entitlement.

7. Having considered the matter and taking into account the judgment of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** (supra), the Court has no hesitation to hold that in the facts and circumstances of the present case, recovery from the petitioner is impermissible. Accordingly, the petitioner shall be paid whatever amount has been recovered from him. With regard to the second question as to whether payment of pension has to be made on the basis of actual last pay drawn, which was erroneous, or after

notionally fixing the last pay of the petitioner in the correct scale, the Court holds that the petitioner would be entitled to payment of his pension upon his salary being notionally fixed in the correct scale at the time of his retirement and not the higher and erroneous scale which he got at the relevant time. This position has also been accepted and agreed to by learned counsel for the petitioner.

8. Accordingly, the writ petition stands disposed off with a direction to the respondent no. 6 to ensure that the recovered amount is credited into the account of the petitioner within one month from the date of production of a copy of this order before him. The petitioner shall be paid his pension on the basis of notionally fixing his pay in the scale to which he was entitled and not on the basis of what he may have actually received at the time of his superannuation.

(Ahsanuddin Amanullah, J)

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