

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15497 of 2015

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Smt. Bina Sinha, aged about 61 years wife of late Girish Kumar Sinha Retired Accountant, Transmission Circle Dehri-on-Sone, resident of Mohalla 32, Shambhu Bhawan, New Godown, P.O. Gaya (R.S.), P.S. Kotwali, District Gaya- 823002.

.... Petitioner

Versus

1. The Bihar State Power Holding Company Ltd. through its Chairman cum Managing Director, Vidyut Bhawan, Bailey Road, Patna- 800021
2. The Managing Director, Bihar State Power Transmission Company Ltd. Vidyut Bhawan, Bailey Road, Patna- 800021
3. The Deputy General Manager (Finance), Bihar State Power Transmission Company Ltd. Vidyut Bhawan, Bailey Road, Patna- 800021
4. The Deputy General Manager, Transmission Zone-1, Punaichak, Electricity Board Colony, Patna
5. The Electrical Superintending Engineer, Transmission Circle Dehri-on-Sone, District Rohtas

.... Respondents

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Appearance :

For the Petitioner : Mr. Ramnandan Kr. Sinha, Advocate
Mr. Nitesh Kumar Nirala, Advocate
For the Respondents : Mr. Vinay Kirti Singh, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 12-07-2017

Heard Mr. R. K. Sinha, learned Advocate for the petitioner and Mr. Vinay Kirti Singh, learned Senior Advocate for the respondents.

2. In the present writ petition, originally filed by the



husband of the petitioner Girish Kumar Sinha, who died during the pendency of the writ petition on 01.09.2016 and the petitioner being his wife was substituted vide order dated 05.07.2017, prayer was for quashing of the order of recovery dated 24.05.2012 by which a sum of Rs.1,90,482/- had been recovered from the gratuity of the petitioner on account of excess pay drawn by him during his service period. It was also prayed for quashing of the order dated 14.11.2013 passed by the DGM (HR & Adm), Bihar State Power Transmission Company Limited whereby the representation filed by the petitioner in compliance of the order of this Court dated 24.06.2013 passed in CWJC No. 22586 of 2012 had been disposed of without interfering with the aforesaid order of recovery dated 24.05.2012.

3. The facts of the case are not in dispute.

4. The original petitioner was appointed as Bill Clerk in the Bihar State Electricity Board on 06.08.1968. Later on, he was promoted to the post of Accounts Assistant with effect from 15.01.1977. On promotion to the post of Accounts Assistant with effect from 15.01.1977, three advance increments allowed on account of passing the departmental examination of Bill Clerk was not finally withdrawn as per Board's Standing Order No. 385 dated 22.03.1973 in course of fixation of pay. As per the aforestated



Standing Order three increments granted in lieu of promotion after passing departmental examination has to be withdrawn on promotion to the post of Accounts Assistant. Thus, the pay of the petitioner was wrongly fixed at Rs.588 as on 15.01.1997. After re-fixation of pay, as per rule the pay ought to have been Rs.570 and not Rs.588. On account of such error in fixation of pay over a period of time Rs.1,90,482/- was paid in excess to what the original petitioner was entitled to during his service period. He, however, superannuated from service as Accountant on 28.02.2010 from Transmission Circle Dehri-on-sone. Thereafter, vide order dated 24.05.2012, respondent no. 3 directed for recovery of Rs.1,90,482/- from his gratuity on account of excess pay drawn by him due to wrong fixation of pay. The aforesaid order dated 24.05.2012 was challenged in CWJC No. 22586 of 2012. The said writ petition was disposed of vide order dated 24.06.2013 granting liberty to the petitioner to file representation before respondents in order to show that additional increments ought not to have been withdrawn in accordance with law and the respondent no. 3 was directed to dispose of the same by a speaking order. Thereafter, he filed his representation before the Company Secretary, Bihar State Power Transmission Limited on 9.07.2013 stating therein that the recovery of amount on account of wrong fixation of pay was not



permissible in view of the ratio laid down by this Court as well as the Supreme Court as there was no misrepresentation or fraud on the part of the petitioner. Thereafter, vide order dated 14.11.2013, the DGM (HR & Adm), Bihar State Power Transmission Company Limited disposed of the representation of the petitioner holding that the aforesaid recovery of Rs.1,90,482/- from the gratuity of the petitioner was under the norms and rules prevailing in the Code.

5. Assailing the aforesaid order dated 14.11.2013 passed by the DGM (HR & Adm) and the order dated 24.05.2012 passed by respondent no. 3, Mr. Ramnandan Kumar Sinha, learned counsel for the petitioner has submitted that recovery of the aforesaid amount is bad in law as well as on fact. He has submitted that no proceeding for recovery of amount was ever initiated against the deceased husband of petitioner under Rule 43(b) of the Bihar Pension Rules and even without issuance of any notice, a *suo motu* decision has been taken by the respondents to recover the amount from his gratuity on account of wrong fixation of pay. He has submitted that the fixation of salary was made in the year 1977 and the husband of the petitioner had superannuated in the year 2010 and for almost 33 years the respondents raised no objection in respect of fixation of salary of the petitioner. He has submitted that in view of ratio laid down by the Supreme Court in the *State of*



Punjab & Ors. Vs. Rafiq Masih (While Washer) [AIR 2015 SC 696], the recovery made from the gratuity of a Class-III employee after his retirement is impermissible in law.

6. *Per contra*, Mr. Vinay Kirti Singh, learned Senior Advocate appearing for the respondents has submitted that when pension paper submitted by the petitioner was sent to the Auditor for final checking, he noticed the discrepancy in the pay fixation of the employee. He has submitted that the Auditor found that the husband of the petitioner was appointed as Bill Clerk on 06.08.1968. Later, he was promoted to the post of Accounts Assistant with effect from 15.01.1977. On promotion to the post of Accounts Assistant with effect from 15.01.1977, three advance increments allowed on account of passing the departmental examination of Bill Clerk was not finally withdrawn as per Standing Order No. 385 dated 22.03.1973 in course of fixation of pay. Subsequently, the last basic pay of the husband of the petitioner was revised and the excess amount drawn by him was calculated to the tune of Rs.1,90,482/- and, thus, the said excess amount has been ordered to be recovered from his gratuity.

7. Mr. Singh, learned Senior Advocate for the respondents contesting the claim of the petitioner has submitted that it is not correct to state that no notice was ever served to the



concerned employee. He has submitted that the fact of the matter is that notice was issued to him with regard to excess payment made on 27.07.2011 pursuant to which he had also submitted his reply, whereafter the order for recovery was made. He has submitted that since it was a case of adjustment of account, there was no necessity of initiating any proceeding against the concerned employee under Rule 43(b) of the Bihar Pension Rules.

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

9. It is not in dispute that the husband of the petitioner was a Class-III employee of the respondent Bihar State Transmission Company Limited at the time of his retirement.

10. The issue relating to recovery of wages when paid in excess to the employee by the employer was addressed by the Supreme Court in ***Rafiq Masih (white Washer)*** (Supra). In that case, the respondent employees were given an excess monetary benefit than what they were entitled due to oversight made by the employer while determining payments. Thus, the respondents became beneficiary to an unintentional mistake committed by the employer. The question to be answered by the Supreme Court in ***Rafiq Masih (white Washer)*** (Supra) was that whether the employees should be exempted in law from the reimbursement of



the excess payment made to them. The Supreme Court answered the question holding that recovery of excess amount paid to Class III and Class IV employees due to the employers' mistake is not permissible in law. It ruled that it could cause extremely harsh consequences to them who are totally dependent on their wages to run their family. The Supreme Court held that the employees in lower rungs of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. It directed that an employer cannot recover excess amount in case of a retired employee or one who is to retire within one year and where recovery process is initiated five years after excess payment. The Supreme Court summarized the following five situations wherein the recoveries of the employees were held to 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.

11. Keeping in mind the ratio laid down by the Supreme Court in *Rafiq Masih (white Washer)* (Supra) the recovery of excess amount paid to the original petitioner by the respondents cannot be justified. Here also the petitioner was not guilty of any fraud or misrepresentation. The wrong fixation of pay was due to unintentional mistake committed by the employer. The recover of excess amount at this stage would certainly cause extreme harsh



consequences to dependants of the deceased employee. The action of the respondents being unfair, improper and unwarranted cannot be sustained in law. Accordingly, the impugned order of recovery dated 24.05.2012 as contained in Annexure-1 and impugned order dated 14.11.2013 as contained in Annexure-2 cannot be sustained. They are set aside. The respondents are directed to pay Rs.1,90,482/- to the petitioner, which they have already recovered from admissible gratuity of the deceased employee within a period of two months from the date of receipt/production of a copy of this order. In case, they fail to pay the amount within the period stipulated hereinabove, the petitioner would be entitled interest @ 8 per cent per annum over the dues amount from today till the date of actual payment.

12. With the aforesaid observation and direction, the writ petition is disposed of.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.07.2017
Transmission Date	NA

