

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6427 of 2014

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Krishna Mohan Pathak Son Of Late Jagarnath Pathak, resident of Paraiya Road,
Mahadev Asthan, P.O. + P.S.- Gararu, District- Gaya

.... Petitioner

Versus

1. The Bihar State Electricity Board, Patna through its Chairman, Vidhut Bhawan,
Bailey Road, Patna
2. The Chairman, Bihar State Electricity Board, Vidhut Bhawan, Bailey Road,
Patna
3. The General Manager-Cum-Chief Engineer, Central Electric Supply Area,
Bihar State Electricity Board, Vidhut Bhawan, Bailey Road, Patna
4. The Deputy Director Of Accounts, Central Electric Supply Area, Bihar State
Electricity Board, Vidhut Bhawan, Bailey Road, Patna
5. The Superintending Engineer, Nalanda Electric Supply Circle, Biharsharif,
Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar, Advocate
Mr. Shailendra Kumar, Advocate
For the Respondent/s : Mr. Ajay Kumar Gautam, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-02-2017

The prayers of the petitioner as mentioned in the
present writ application are as under :-

- “(i) For issuance of an appropriate writ, order or
direction for quashing the order dated
04.04.2011 issued under the signature of
General Manager-cum-Chief Engineer,



Central Electric Supply Area, Patna whereby and whereunder after lapse of about eight months of retirement i.e. 30.04.2007, a sum of rupees one lakh twenty five thousand three hundred and fifty three out of total Rs.3,19,605/- sanctioned gratuity amount recovered from the petitioner has been refused to be refunded.

- (ii) For issuance of an appropriate writ, order or direction for payment of entire recovered amount as mentioned above with interest for unnecessary delay in release of entire gratuity amount.”

2. The petitioner was appointed as Switch Board Operator in the year 1972. In the year 1981, he was promoted as Electrician w.e.f. 10.03.1976 without giving financial benefit for the period between 10.03.1976 and 17.12.1981. Subsequently, he was given selection grade and super selection grade with effect from 31.10.1986 and 11.06.1992 treating him in service since 31.10.1972 and accordingly the pay was revised in lieu of pay revision with effect from 01.01.1996 and fixed by the Board. He continued to discharge his duties and received salary and finally, superannuated on 30.04.2007.

3. After retirement, the respondent- authorities



issued letter dated 07.12.2007 revising the date of selection grade from 30.10.1986 to 18.12.1991 and super selection grade from 11.06.1992 to 18.12.1999. However, his pension was fixed on the basis of last pay drawn and he also started getting pension on month to month basis and received entire retiral dues like, leave encashment, group insurance and general provident fund etc. but Rs.1,25,353/- was recovered from the gratuity payment order on account of excess pay drawn by him.

4. It is submitted by the learned counsel for the petitioner that there is no misrepresentation or fraud alleged on the part of the petitioner and whatever benefit of promotion was given to him while he was in service was on the basis of decision taken by the respondent authorities themselves. It is stated that no departmental proceeding was initiated against the petitioner while he was in service for any act of omission or commission. Even after retirement no proceeding under the Pension Rules has been initiated against him. He submitted that under such circumstances, the respondents could not have recovered any amount from the retiral dues of the petitioner in view of the law laid down by the Supreme Court in *State of Punjab & Ors. vs. Rafiq Masih (White Washer)* [AIR 2015 SCC 696].

5. *Per contra*, learned counsel for the respondent-



South Bihar Power Distribution Company Ltd submitted that the petitioner was wrongly given selection grade and super selection grade pay of electrician by counting his service rendered as Switch Board Operator Grade-I, which deserved to be modified in order to maintain conformity in decision taken in all such cases. He submitted that once a benefit was granted to an employee wrongly and mistake came to the notice of the employer, later on, no illegality can be found with the action of the respondents whereby recovery has been made from the retiral dues of the petitioner.

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

7. I find substance in the argument advanced by the learned counsel for the petitioner. There is no averment in the counter-affidavit that the fixation of pay of the petitioner in selection grade or super selection grade was made wrongly in his favour because of any misrepresentation or fraud on his part. Further, in view of the recent pronouncement of the Supreme Court in the case of *State of Punjab vs. Rafiq Masih* (supra), it would be iniquitous to make recovery of excess amount paid to the petitioner.

8. Paragraph 12 of the said decision of the Supreme Court is relevant and is being quoted hereinbelow :-

“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 as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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.”

9. In view of the ratio laid down by the Supreme Court in *State of Punjab vs. Rafiq Masih* (supra), the impugned action of the respondent authorities whereby they have recovered Rs.1,25,353/-(rupees one lakh twenty five thousand three hundred and fifty three) from the payment of gratuity of the petitioner cannot be approved.

10. Accordingly, I direct the respondent authorities to release the recovered amount of Rs.1,25,353/-(rupees one lakh twenty five thousand three hundred and fifty three) to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

11. With the aforesaid observation and direction, the writ application is disposed of.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	...
Uploading Date	22.02.2017
Transmission Date	

