

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1510 of 2009

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Umesh Kumar Singh, son of Ram Swarath Singh, resident of Mohalla –
Gapha Niwas, Bahuar Chaura, P.S. Civil Lines Near Sindhi Dharamshala,
District – Gaya.

.... Petitioner

Versus

1. The Bihar State Electricity Board through its Chairman Vidyut Bhawan,
Bailey Road, Patna.
2. The Secretary, Bihar State Electricity Board, Vidyut Bhawan Bailey Road,
Patna.
3. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey
Road, Patna.
4. The Finance Controller, Bihar State Electricity Board, Vidyut Bhawan,
Bailey Road, Patna.
5. The Electrical Superintending Engineer Transmission Circle Chandauti,
Gaya.
6. The Electrical Executive Engineer Transmission Division, Chandauti,
Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dharmendra Kr.Sinha
For the Respondent/s : Mr. Anand K.Ojha
Mr. Ashok Kumar Karn

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 03-04-2017

Heard learned counsel for the petitioner and Sri Ashok
Kumar Karn, learned junior counsel to Sri Anand Kumar Ojha,
learned Standing Counsel for the respondent/Bihar State Electricity
Board (hereinafter referred to as the 'Board') (presently known as
Bihar State Power Holding Co. Ltd.).

2. The petitioner has approached this Court invoking its
writ jurisdiction under Article 226 of the Constitution of India, with a
prayer to quash an order dated 17-10-2008 (**Annexure – 9** to the writ



petition) passed by Electrical Executive Engineer, Transmission Division, Gaya, whereby; claim of the petitioner for payment of overtime work was partly allowed and major portion was rejected on the plea that overtime work for more than 50 hours in a quarter of a particular year and maximum 150 hours in concerned financial year was not permissible. The petitioner has also prayed for directing the respondents to pay him for his overtime work, which was taken by the respondents.

3. Short fact of the case is that the petitioner entered in the Board's service in the year 1984 and started to work as Assistant Operator in the office of Superintending Engineer Transmission Division, Chandauti Circle, Gaya. It has been claimed that from the month of December, 1997 to November, 2004, the respondents had taken over-time work from him and thereafter, the petitioner filed representation for payment of overtime dues for total working hours as overtime. A specific plea has been taken that the claim of the petitioner was earlier examined by the Electrical Executive Engineer and it was found that he had worked for total period of 5000 hours, as overtime, during the said period and he made recommendation to the Accounts Officer by its letter no. 556 dated 19-11-2005. Thereafter, the Accounts officer examined the claim and requested the Deputy Director of the Board to divert the fund. According to learned counsel



for the petitioner, the Accounts Officer had recommended to make total payment of **Rs. 3,41,540/-** (three lacs forty one thousand five hundred & forty) for overtime work of the petitioner. Since the claim of the petitioner was not earlier properly examined and redressed, the petitioner was constrained to approach this Court by filing a writ petition, vide C.W.J.C. No. 5435 of 2005 (**Annexure – 3** to the writ petition). A Bench of this Court by its order dated 19-05-2008 noticed the recommendation by the Accounts Officer of the Board in its letter no. 385 dated 02-12-2005 and disposed of the writ petition directing the Superintending Engineer of Transmission Circle, Gaya to examine the representation of the petitioner dated 15-12-2001 and consider the same in the light of recommendation of the Accounts Officer dated 02-12-2005. It was also directed to pay admitted overtime allowance to the petitioner within reasonable time.

4. Learned counsel for the petitioner submits that in compliance with the order of this Court, the Electrical Executive Engineer Transmission Division, Gaya has further directed to pay a meagre amount of Rs. 23,118/-. It has been argued that the Executive Engineer had considered that petitioner was entitled for payment of Rs. 78,010/- and earlier Rs. 54,892/- was already paid and thereafter, after deducting the said amount, it was decided to pay Rs. 23,118/-. It was submitted by learned counsel for the petitioner that major claim



of the petitioner for overtime due was rejected by the Executive Engineer taking shelter of an office order of the year 1995 of the Board, which prescribed the period of overtime i.e. 50 hours in a quarter of a year or maximum 150 hours in the said financial year. Learned counsel for the petitioner submits that this issue has already been set at rest by this Court as well as Hon'ble Jharkhand High Court. Learned counsel for the petitioner has placed reliance on **Annexure – 11** to the writ petition i.e. an order passed in W.P.(S) No. 7200 of 2005 dated 05-05-2006, in which, same circular was also examined and thereafter, Hon'ble Jharkhand High Court had held that the worker shall be entitled to receive payment for the overtime, which was done by him irrespective of restriction of 50 hours in a quarter of a year or 150 hours in a financial year.

5. Learned counsel for the petitioner has also placed reliance on an order passed by a Bench of this Court in C.W.J.C. No. 4034 of 2008 dated 23-07-2009 (**Annexure – 12** to the supplementary affidavit). He submits that in the said case, though recovery process was initiated, but fact remains that earlier payment was made for actual over time for the period during which the employee had worked irrespective of restriction of 50 hours or 150 hours. The said judgment was approved by a Division Bench of this Court in L.P.A. No. 1655 of 2009 dated 04-01-2010 (**Annexure – 13** to the



supplementary affidavit). According to learned counsel for the petitioner, the petitioner is entitled to get entire amount, as was recommended by the Accounts Officer, on the basis of extra work done by the petitioner.

6. Learned counsel for the Board has opposed the prayer of the petitioner. By way of referring to fact disclosed in the counter affidavit filed on 13th April, 2015, it has been reiterated that overtime work period was already fixed i.e. 50 hours in a quarter of a year and maximum 150 hours in a financial year and as such, he tried to justify that Rs. 23,118/- i.e. remaining amount was rightly directed to be paid and the impugned order requires no interference.

7. Besides hearing learned counsel for the parties, I have also perused the materials on record. In the counter affidavit, it has not been disputed that the Accounts Officer has recommended for payment of Rs. 3,41,540/-, but only a plea has been taken that as per office order, there was restriction of 50 hours and 150 hours. On examination of the Single Bench order of the Jharkhand High Court i.e. **Annexure – 11** to the writ petition, it appears that the office order i.e. Circular of the Board of the year 1995 was further modified by the Board in the year 1999 and thereafter, a decision was taken that if overtime work is more than specified period, as specified in the year 1995, is taken, then in that event, the extra payable amount shall be



recovered from the pocket of the officer responsible for taking such overtime work from the employee. This was the reason that the Hon'ble Jharkhand High Court had held that in such eventuality, the entire payment is required to be made, however; it was left open to the Board to take action or take step for recovery of the said amount from the pocket of officer responsible for taking extra work from the worker. Similar is the situation in the present case. In the present case, since it has not been disputed that the extra work was taken from the petitioner, which was examined by the Accounts Officer and recommendation was made for total amount of Rs. 3,41,540/-, there is no reason to deny the claim of the petitioner.

8. Accordingly, in view of issue settled by Hon'ble Jharkhand High Court, this Court and approved by the Division Bench, vide order 04-01-2010 in L.P.A. No. 1655 of 2009, there is no reason to pass a different order.

9. Accordingly, the writ petition is allowed with a direction to the respondents to pay the amount, as earlier recommended by the Accounts Officer, however; it will be open to the respondents authorities to take action against the officer/employee responsible for taking extra work from the petitioner. In any event, the entire payment is required to be made within a period of three months from the date of receipt/production of a copy of this order,



failing which, the petitioner shall be entitled to get interest @ 9% per annum on the claimed amount. The interest is required to be calculated from the date when claim was raised by the petitioner and in that eventuality, the respondents may recover the interest amount from the pocket of officer/employee responsible for non-compliance of the order of this Court within time.

10. With above observation and direction, the writ petition is allowed.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07-04-2017
Transmission Date	N/A

