

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12613 of 2015

=====

Ashok Kumar, son of late Ganesh Prasad, resident of Magadh Colony, Road
No.- 12, Kanhaiya Kunj, Chandaui, P.S.- ANMCH, Gaya, District- Gaya

.... Petitioner

Versus

1. The Chairman, Bihar State Power Holding Company Ltd., Patna
2. The Chairman, South Bihar Power Distribution Company Ltd., Patna
3. The Managing Director, South Bihar Power Distribution Company Ltd., Patna
4. The Deputy General Manager (Accounts), South Bihar Power Distribution Company Ltd., Patna
5. The Deputy General Manager (Finance), South Bihar Power Distribution Company Ltd., Patna
6. The Deputy General Manager (Terminal Benefits), South Bihar Power Distribution Company Ltd., Patna
7. The Electrical Executive Engineer, Electric Supply Division, Bihta, Patna

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Prashant Sinha

For the Respondent/s : Mr. Vikash Chandra Srivastava

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 24-07-2017

Heard Sri Prashant Sinha, learned counsel for the petitioner and Sri Vikash Chandra Srivastava, learned counsel, who has appeared on behalf of all the respondents i.e. South Bihar Power Distribution Company Ltd. (hereinafter referred to as "Power Company Ltd.")

2. The petitioner, who superannuated as Meter-Reader from Power Company Ltd. with effect from 31-05-2013, has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to quash an order, contained



in Memo No. 509 dated 08-12-2014, issued by the Deputy General Manager (Accounts) to the extent whereby **Rs. 66,590/-** (Sixty six thousand five hundred & ninety) was directed to be recovered from the Gratuity amount of the petitioner on the plea that said excess amount was incorrectly paid to the petitioner. It has further been prayed to direct the respondents to refund the recovered amount i.e. Rs. 66,590/-.

3. It was submitted by learned counsel for the petitioner that it was not a case that by way of making any misrepresentation, mis-statement or committing fraud, the petitioner had got the excess amount, but it was fault on the part of the respondents itself, whereby incorrectly pay-fixation was done. The petitioner was not at all aware regarding incorrect decision taken by the respondents and he had received payment, but after more than one & half year of his superannuation, the respondents/Power Company Ltd. came out with the impugned order. According to learned counsel for the petitioner, the issue has already been set at rest by the Hon'ble Apex Court in a case reported in **2015 (1) PLJR (SC) 261 {State of Punjab and others Vs. Rafique Masih (White Washer)}**, which categorically states that in case of retirement of Class III or Class IV employee, no recovery can be effected. He has specifically referred to paragraph 12 of the said judgment, which is quoted here-in-below:-

“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 hereinabove, 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 out weigh the equitable balance of the employer's right to recover."



4. Accordingly, it has been argued that respondents may be directed to refund the recovered amount of Rs. 66,590/- alongwith interest.

5. Sri Vikash Chandra Srivastava, learned counsel for the respondents has vehemently opposed the prayer of the petitioner. He submits that before issuance of the impugned order, appropriate notice was given to the petitioner, which was not at all replied and finally, the impugned order was passed. He submits that it is an admitted fact that incorrectly petitioner was paid the excess amount and immediately after noticing such error, an order was passed for deducting the said amount from the Gratuity amount and after adjustment of Rs. 66,590/-, the remaining amount of Gratuity i.e. Rs. 6, 96, 997/- (Six lacs ninety six thousand nine hundred & ninety seven) has already been paid to the petitioner. According to him, the order impugned requires no interference.

6. Besides hearing learned counsel for the parties, I have also perused the materials on record, including counter affidavit. The law on the point of recovery was settled that in case of excess payment, without any misrepresentation or mis-statement, recovery may not be effected. Now, the Apex Court in **Rafique Masih's case (supra)** has already clarified the position. Accordingly, in view of law settled by the Apex Court, there is no reason to allow the respondents to withhold the recovered amount.



7. Accordingly, the writ petition is allowed, with a direction to refund the recovered amount i.e. Rs. 66,590/- to the petitioner within a period of eight weeks from the date of receipt/production of a copy of this order. It is made clear that if within eight weeks, the recovered amount is not paid to the petitioner, the petitioner shall be entitled to get the said amount with simple interest @ 8% per annum, which shall be calculated from the date of recovery i.e. from the date of order i.e. 08-12-2014 till the date of payment and in such situation, the South Bihar Power Holding Co. Ltd. shall be at liberty to recover the interest amount from officer/employee responsible for non-payment of the amount to the petitioner within time.

8. The writ petition is allowed.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	26.07.2017
Transmission Date	N/A

