

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2048 of 2016

In

Civil Writ Jurisdiction Case No.21079 of 2011

Kamlesh Prasad, S/O late Yadunandan Prasad, Resident of Mohalla- Magadh Colony, Road No.-1, P.S.- Magadh Medical, District- Gaya.

... .. Appellant

Versus

1. The Bihar State Electricity Board, through, the Secretary, Vidyut Bhawan, Bailey Road, Patna. (Now South Bihar Power Holding)
2. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna. (Now South Bihar Power Holding)
3. The Financial Controller, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna. (Now South Bihar Power Holding)
4. The Director (Terminal Benefit), Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna. (Now South Bihar Power Holding)
5. The General Manager-cum- Chief Manager, Bihar State Electricity Board, Transmission Zone(iii), Gaya, District- Gaya. (Now South Bihar Power Holding)
6. The Electrical Executive Engineer, Bihar State Electricity Board, Transmission Zone(iii), Gaya, District- Gaya. (Now South Bihar Power Holding)
7. The Legal Supervisor, G, Gr-I, Bihar State Power Transmission Company Limited. (Now South Bihar Power Holding)

... .. Respondents

Appearance :

For the Appellant	:	Mr. Ravindra Kumar Sinha, Advocate
For the Respondents	:	Mr. Vinay Kirti Singh, Senior Advocate
		Mr. Akhileshwar Singh, Advocate
		Mr. Vijay Kumar Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

4 18-12-2017 Prima facie we are not satisfied with the reason which has been assigned for delay of almost one year and 30 days in preferring the appeal, however, in the interest of justice, the said delay is condoned. I.A. No. 8493 of 2016 is allowed. The appeal is thereafter taken up on the merits.



Submission of the counsel for the appellant is that once the recovery has been set aside by the Court then the pension and gratuity all should be calculated on the basis of the last pay drawn which is not being done by the respondents. Learned senior counsel for the respondents submits that recovery is one aspect of the matter, but when it comes down to the actual entitlement based on which the pension and gratuity has to be calculated it has to be in terms of the actuals what the appellant is entitled to by way of salary has to be the basis for working out the pension and gratuity and not what he was drawing by whoever mistake it may have.

Recovery part is generally interfered with by the Court for many a reason, especially when the employee is a low paid employee, is on the verge of superannuation if not already superannuated, but using that as the reason for holding on to the wrong fixed pay is inequitable and no employee can hang on to the benefit of the wrongly fixed pay when it is found that it was so and was held to be so.

That is the reason why the learned single Judge refused to give any relief to the appellant with regard to fixation of his pension and salary on the basis of the last pay drawn which in our opinion is not an erroneous decision.



Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

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