

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6977 of 2016

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Sushil Kumar Son of L. Shiv Shankar Prasad, Resident of Mohalla Sarvodaya Nagar,
P.S. Chatauni, District- East Champaran (Motihari) at working on the post of
Accountant (Investigation and Planning Division), G.A.D.A. Motihari

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department,
Govt. of Bihar, Patna
2. The Deputy Secretary, Command Area Development Authority, Water Resources
Department, Patna
3. The D.D.C.-cum-Chairman, Gandak Command Area Development Authority,
Muzaffarpur
4. The Superintending Engineer I & II, G.A.D.A., Muzaffarpur
5. The Executive Engineer, Investigation and Planning Division, Gandak C.A.D.A.,
Motihari
6. Assistant Engineer (Planning), Incharge Accounts, Gandak C.A.D.A.,
Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Naresh Chandra Verma, Adv.
Mr. Ajay Kumar Verma, Adv.
For the Respondent/s : Mr. Satish Chandra Jha-3, Adv.
Mr. Ram Naresh Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 26-03-2018

The petitioner is aggrieved by the order bearing Memo No. 214 dated 17.2.2016 of the Deputy Development Commissioner cum Chairman, Gandak Command Area Development Authority (hereinafter referred to as 'the GADA'), Muzaffarpur whereby an order for recovery of excess amount paid to the petitioner as an Accounts Clerk on revision of pay, has been ordered after stay of operation of Memo No. 1008 dated 25.9.2013. The petitioner also prays for grant of revision with effect from 1.5.1980 and for making payment of arrears thereof. Copies of the order dated 25.9.2013 and



17.2.2016 are enclosed at Annexures 4 and 8 respectively to the writ petition.

It is while the writ petition is pending that the final decision has been taken by 'the GADA' as present in the office order bearing Memo No. 853 dated 5.8.2016 whereby the office order bearing Memo No. 1632 dated 23.9.1983 and the order bearing Memo No. 1008 dated 25.9.2013 has been cancelled.

The facts as noted in the writ petition briefly stated is that the petitioner was appointed on the post of Junior Accounts Clerk vide order bearing No. 547 dated 20.3.1980, a copy of which is enclosed at Annexure 1 to the writ petition. The Board of Director in its 16th meeting held on 13.8.1983 decided to bifurcate the cadre of Clerks and resultantly a cadre of Clerk (Correspondence) and Typist and Clerk (Accounts) was created vide office order bearing Memo No. 1632 dated 23.9.1983, a copy of which is at Annexure 2. There was a merger of the cadre of Accounts Clerk in the State Government with effect from 1.5.1980 with the demerger coming on 28.9.1999. The issue arising thereunder was resolved under the resolution of the Finance Department, Govt. of Bihar dated 25.3.2015, a copy of which is at Annexure 3 to the writ petition. The merger had its reflection even in 'the GADA' and vide office order bearing Memo No. 1008 dated 25.9.2013 the pay scale of Accounts Clerk was revised with



effect from 1.4.1981 and w.e.f. 1.1.1996, the scale was fixed at Rs.4500-7000. It is not in dispute that the petitioner was drawing his salary in the scale of Rs.4000-6000 and it is following the office order dated 25.9.2013 that the petitioner started drawing his salary in the scale of Rs.4500-7000 as also manifest from the pay fixation, a copy of which is enclosed at Annexure 5. The petitioner continued to draw his salary in the said scale until passing of the impugned order dated 17.2.2016, whereby the office order dated 25.9.2013 at Annexure 4 was stayed. It is feeling aggrieved by the stay order that the petitioner approached this Court and alongside also prayed that the revision should be made effective from 1.5.1980 as given to similarly placed Clerks in the Accounts Department of the State of Bihar.

It is while the writ petition is pending that the petitioner has superannuated on 31.1.2017. The writ petition was admitted for hearing on 23.11.2016 and the recovery so stipulated in the order impugned at Annexure 8 was made subject to the final outcome of the writ petition but due to inadvertence the admission order was not mentioned in the order recorded on 23.11.2016 which was clarified by the Bench by recording an order to such effect on 30.11.2016.

A counter affidavit is filed on behalf of 'the GADA' and Mr. Jha in reference thereto has submitted that the pay scale had been sanctioned without obtaining approval of the State Government and



when this fact transpired that initially vide order dated 17.2.2016 the operation of pay revision order dated 25.9.2013 was stayed and the matter was considered by the Board of Director of GADA who have chosen to recall the refixation order in absence of approval from the State Government. In reference to the proceedings of the Board of Director in 39th Special meeting held on 21.7.2016, a copy of which is at Annexure-H to the counter affidavit, he submits that the issue is discussed at Agenda No.3 and the Board of Director have resolved to not only recall the decision of bifurcation of the Accounts Clerk Cadre done through the order dated 23.9.1983 but also recall the order dated 25.9.2013 in absence of approval given by the State Government. He in reference to the office order dated 5.8.2016 at Annexure-I to the supplementary counter affidavit submits that a formal order has since been issued in conformity with the resolution of the Board of Director and the interim order of stay has since been confirmed.

I have heard the learned counsel for the parties and have perused the records.

Since the petitioner has superannuated with effect from 31.1.2017, the rigours of the impugned order is limited to the recovery aspect of the matter and not beyond. That the grant of pay scales vide office order dated 25.9.2013 did not have an approval of the State Government and taking note of the matter, 'the GADA' has decided



to cancel the same, no infirmity can be found in the exercise. Yet the issue posed would be, whether there can be a recovery of the amount already paid to the petitioner because it is neither on his misrepresentation nor any fraud committed by the petitioner that he has been paid higher salary rather it is by virtue of an office order issued by 'the GADA' itself that this revision was granted to all in the Accounts Clerical Cadre. Where a revision of pay scale has been made effective on the employees of 'the GADA' by the respondents themselves on their understanding of the situation, even if this revision was subsequently stayed under the impugned order dated 17.2.2016 at Annexure 8 and has been subsequently cancelled by the order dated 5.8.2016 at Annexure-I, it yet cannot have a retrospective effect to make recovery from those who have derived the benefit under the orders so issued by 'the GADA'.

In the nature of the circumstances taken note of, I do not intend to enter into any exhaustive discussion on the issue rather for the purpose would simply rely on the legal position settled by the judgment of the Supreme Court rendered in the case of **State of Punjab & ors. v. Rafiq Masih**, reported in (2015)1 PLJR (SC) 261, more particularly paragraph-12 thereof which would squarely apply to the case of the petitioner in so far as the issue of recovery is concerned and is quoted hereinbelow for ready reference:

“12. It is not possible to postulate all stipulations 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, summarize 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 retiral 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 employees 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 employees, would be iniquitous or harsh or arbitrary to such an extent, as would be far out-weigh the equitable balance of the employer's right to recover."

It is not in dispute that the Clerical cadre comes under Group-C in the hierarchy ladder and thus, in view of the position so settled by the Supreme Court in the case of **Rafiq Masih** (supra) even



if this Court would not express any opinion on the merits/ demerits of the orders impugned and whether or not the employees of ‘the GADA’ were entitled to such pay scale which issue is left open for discussion in an appropriate case, for the present this Court is satisfied that in any event a subsequent decision of ‘the GADA’ would not vest any authority in the authorities of ‘GADA’ to make recovery from the salary of its employees and to such extent the order dated 17.2.2016, impugned at Annexure 8, whereby a recovery has been stipulated, is quashed and set aside.

Since the recovery from the petitioner had been made subject to outcome of the writ petition vide order passed on 23.11.2016, as a consequence the respondent no.4 the Superintending Engineer or the appropriate authority concerned is directed to ensure repayment of the amount recovered from the salary of the petitioner within a period of three months from the date of receipt/ production of a copy of this order.

The writ petition is allowed with the directions aforementioned.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.04.2018
Transmission Date	NA

