

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10325 of 2012

HIRDAYA NAND TIWARI S/o Late Dhanush Tiwari, resident of village
Ashok Pakari, P.S. Pipra, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Minor Irrigation Department, Bihar, Patna
3. Minor Irrigation Department, Bihar, Patna
4. The Co-ordinator-cum-Chief Engineer, Tubewell Project, Muzaffarpur
5. The Executive Engineer, Tube Well Division, Motihari

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Satish Kumar Sinha
For the Respondent/s : Mr.Rajesh Kumar

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 08-03-2019

Heard the parties.

2. In this case, the petitioner is challenging the order dated 07.05.2010 contained in letter no. 734 (Annexure-2) by which the scale of pay of the petitioner has been modified from Rs.4000-6000 to Rs.3050-4590 and has directed that the excess payment will be recovered from the petitioner.

3. The petitioner was appointed on the post of Fuse man on 12.05.1970, later on, he was promoted to the post of Armature Winder on 15.12.1977 and after creation of tubewell project, the service of the petitioner was taken over under the tubewell project on the post of Electrician in 1988. During the period of 01.01.1986 to 01.01.1996, he was getting pay scale of Rs.1200-1800 and after



recommendation of Pay Revision Commission Report, a Resolution no. 660 dated 25.02.1990 was issued, thereby the scale of pay of the employees of State was revised and also of the Electrician, on that basis, the scale of pay of the petitioner was revised in the pay scale of Rs.4000-6000, accordingly, after fitment in the pay scale, the pay of the petitioner was fixed at Rs.5900/-. It has been found, the wrong pay scale of Electrician was given to petitioner, the respondent-department vide letter no.734 dated 07/05/2010 (Annexure 2) rectified the pay scale of Rs.3050-4590 thereby the petitioner has been down graded in the pay scale of Rs.3050-4590 and accordingly the fitment has been made, further mentioned the excess payment would be recovered from petitioner and ultimately vide memo no. 1993 dated 30.12.2010 (Annexure-3), the recovery of Rs.1,80,000/- has been made from the retiral dues of the petitioner which is under challenge in the present case. It has been submitted that he was granted promotion in the pay scale of Rs.4000-6000 and the decision was wrongly taken by the State to grant the pay scale of Rs.3050-4590 and follow of action of recovery is bad in law and that too after superannuation from service and he has placed reliance on two judgments of Hon'ble Supreme Court, reported in 2014 (4) PLJR 36 [SC] (State of Punjab vs. Rafiq Masih [White



Washer]) and 2015 (1) PLJR 261 [SC] (State of Punjab vs. Rafiq Masih) where the Hon'ble Supreme Court has set out the guideline with respect to recovery of the amount on the plea of wrong fixation and excess payment and in paragraph 12 of the said judgment the Court has given the guideline which is as follow:-

“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 hereinabvoe, 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 belong to Class-III to 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.”

4. The State has filed a counter affidavit and has tried to explain that the petitioner was granted the wrong pay scale of Rs.1200-1800 rather entitled to pay scale of Rs.950-1400 of which replacement scale of pay is Rs.3050-4590 so under the wrong impression he was granted the pay scale of Rs.4000-6000. It has further been submitted that similar type of action was taken against the other Electrician such as Taufique Ahmad, Harendra Prasad Singh and Yogendra Narain and the matter was referred to the Finance Department and the Finance Department after examining all process pros and cons has arrived to an opinion that the Electrician will be entitled to the replacement pay scale of Rs.3050-4590, but neither in the counter affidavit nor any noting of the Finance Department has explained the reason as to why the Electrician will be granted pay scale of Rs.3050-4590 as the chart attached to counter affidavit reflects two scale of pay for electrician, First, at serial no. 86, the post has been identified as Electrician, pay scale has been provided Rs.950-1400, replacement pay scale has been mentioned Rs. 3050-4090 but at the same time,



item no.92, the scale of pay, post has been mentioned as Electrician there the pay scale has been provided Rs.1200-1800 and replacement pay scale of Rs.4000-6000. Neither in the counter affidavit nor in the proceeding of the Finance Department, it has been explained or given any reason, in what circumstance, person will be fitted in item no. 86 and in what circumstance, the person will be fitted in Electrician on higher pay scale at item no. 92.

5. On perusal of the proceeding it appears that the Finance Department is of opinion that those who are working in the work charge establishment, they will get the pay scale of Rs. 3050-4590 and those who are in the regular establishment will get Rs. 4000-6000, but that too also not very much clear in the counter affidavit nor in the proceeding, when on two places two pay scales have been provided for the same class of persons then there must be some reason and explanation as to under what circumstance, the person holding the post of Electrician will be granted the pay scale in what circumstance and that too it appears that the petitioner was granted the pay scale of Rs. 4000-6000 in the year 2003, allegation of fraud or misrepresentation has been alleged by the respondents.

6. Having considered the rival contentions of the parties, the petitioner was given pay scale of Rs.4000-6000 vide letter no. 323 dated 13.3.2013 (Annexure-1) while modifying earlier order,



no averment has been made that the petitioner has committed any misconduct in the nature of suppression or fraudulent act or misappropriation, but the Department of its own granted the pay scale of Rs.4000-6000, ultimately the order of recovery has been passed after superannuation from service that too after the gap of about seven years, but the counsel for the State has submitted, when the error was identified, a clear cut action in the terms correction has been made, accordingly the petitioner was given show cause so in that circumstance, the judgment which has been placed reliance by the petitioner is not applicable to the fact of this case. This submission cannot stand on the reason that the petitioner was granted pay scale of Rs.4000-6000 in 2003 by the department of its own in the year 2003 but after seven years, in year 2010 action has been taken which itself belied the submission of the State that corrective action has been taken quickly when the error was found to have been committed by the Department.

7. In view of the aforesaid discussion and placing reliance on the judgment passed in Rafiq Masih case, this Court cannot approve the order for recovery of the amount from the retiral dues of the petitioner and accordingly the letter no. 1993 dated 30.12.2010 (Annexure-3) is quashed but this Court is remanding the matter with regard to revisit the issue of fixation of



pay of the petitioner and to decide whether the petitioner is entitled to the pay scale of Rs.3050-4590 or Rs.4000-6000 with proper consideration.

8. With the above observation and direction, this petition is allowed to the aforesaid extent.

9. Any amount recovered from the petitioner will be returned back to him without any delay within a period of three months from the date of receipt/production of a copy of this order and the issue of pay scale will be decided within a period of six months from the date of receipt/production of a copy of this order.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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