

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 13232 of 2011

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Rameshwar Choudhary, aged about 70 years, S/O Late Harkhil Choudhary
Vill.-Mananpur, P.O.-Banwaripur, P.S.-Bhagwanpur, Distt.-Begusarai.

... .. Petitioner/s

Versus

1. The Bihar State Electricity Board through its Chairman, Vidyut Bhawan, Bailey Road, Patna
2. Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
3. Member (Administration), Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
4. Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
5. Electrical Superintending Engineer, Electric Supply Circle, Samastipur
6. Electrical Superintending Engineer (Stores Verification), Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
7. Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
8. Electrical Executive Engineer, Electrical Central Stores, Samastipur
9. Electrical Executive Engineer, MRT Division, Samastipur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Mahesh Kumar, Advocate
For the Respondent/s : Mr Ranjit Sinha, Assistant Standing Counsel

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 29-07-2019

Heard learned counsel for the petitioner and the respondents.

2 Petitioner has challenged the Communication dated 08.03.2011 in purported exercise of powers under Rule 139 of the Bihar Pension Rules whereby a sum of Rs 4,23,860.19 P has been directed to be recovered from pensionary benefits of the petitioner



about eleven years after his retirement. Petitioner has retired on 31.12.2000.

3 The factual background is that the petitioner was served with a show cause purporting to be under Rule 139 of the Bihar Pension Rules asking him to show cause for loss caused to the Board on account of discrepancy in the material kept at Central Store, Samastipur where the petitioner, at the time of his retirement, was posted as Store Assistant. The allegation was that there was some discrepancy in the amount of material available in the Store which was less than the quantity he had taken over while assuming charge. On account of such difference, the liability was sought to be fastened on the petitioner for loss caused at the time of handing over charges.

4 Learned counsel for the petitioner submits that the purported recovery of alleged loss is not sustainable under Rule 139 of the Bihar Pension Rules. He submits that Rule 43 (b) of the Pension Rules provides specific procedure for recovery of such loss as has been alleged against the petitioner. The procedure under Rule 43 (b) of the Pension Rules is subject to a time limit. Only to get over the limitation, respondent-authorities have issued the order after giving a show cause in purported exercise of power



under Rule 139 of the Bihar Pension Rules which is impermissible.

5 Learned counsel for the Board, on the other hand, submits that the petitioner had occasioned loss to the Board. After giving him an opportunity and in accordance with the procedure prescribed under Rule 139 of the Bihar Pension Rules, after due show cause, the order of recovery has been issued. The Board's counsel in support of the Board's action has placed reliance on a Division Bench judgment of this Court in the case of Smt Bachchi Devi -Versus- State of Bihar & Others, 2012 (2) PLJR 170.

6 Petitioner's counsel has placed reliance in support of his submissions on a judgment of this Court in the case of Muneshwar Prasad Sinha -Versus- State of Bihar & Others, 2004 (3) PLJR 708. The said case deals with recovery on account of loss as has been done in the instant case. In the said case also, action of the Board is in issue and this Court has specifically held that the Authority cannot be permitted to take recourse to Rule 139 of the Bihar Pension Rules only to get over the bar of time limit imposed under Rule 43 (b) of the Pension Rules. The judgment relied upon by the learned counsel for the Board is upon different set of facts. The action on the said fact is not under Rule 139 of the Bihar Pension Rules and is not in respect of a retired



employee. Factually, this case is not covered by the decision relied upon by the learned counsel for the Board, in the case of Smt Bachchi Devi (supra).

7 Having considered this aspect of the matter and in view of the specific pronouncement of this Court in the case of Muneshwar Prasad Sinha (supra), this Court would allow the writ petition.

8 The order of recovery dated 08.03.2011 under Rule 139 of the Bihar Pension Rules is hereby quashed.

9 As a result, the petitioner is entitled to refund of amount which has been recovered.

10 Consequential benefit of this order should be made available to the petitioner expeditiously without any undue delay preferably within three months from the date of receipt/production of a copy of this order.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.08.2019
Transmission Date	NA

