

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4528 of 2020

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1. Awadh Kishore Prasad, Son of Late Nageshwar Prasad Resident of Flat no. 302, Madhu Kunj Apartment, Nehru Nagar, P.S. Patliputra, Town and District Patna-800013.
 2. Hem Chandra Mishra, Son of Late Sushil Mishra, Resident of Flatno. 403, Shivam Vihar Apartment, Anandpuri, West Boring Canal Road, P.S. S.K.Puri, Town and District Patna-800001.

... .. Petitioner/s

Versus

1. Bihar State Minorities Financial Corporation Ltd. a Government of Bihar Yndertaking/ Public Limited Company registered Under the Companies Act. 1956 having its office at 34, Harding Road, Haz Bhawan, P.S. Sadhiwalayan, Town and District Patna-through its Managing Director,
2. Managing Director, Bihar State Minorities Financial Corporation Ltd., a Government of Bihar Undertaking/ Public Limited Company 34, Harding Road, Haz Bhawan, P.S. Sachiwalaya, Town and District Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sidharth Prasad, Advocate Mr. Kumar Rajeev, Advocate
For the Respondent/s	:	Ms. Anukriti Jaipuriyar, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 21-09-2020 Heard Mr. Siddharth Prasad, learned counsel for the

petitioners and Ms. Anukriti Jaipuriyar for the respondents.

2. Initially, petitioners have prayed for release of post-retiral, who retired in 2017 and 2019 respectively.

3. During the pendency of the writ petition respondents issued Memo No. 54 and Memo No. 55 dated 30.04.2020. By way of I.A. No. 1 of 2020, the petitioners have challenged the same.

4. Mr. Siddharth Prasad, learned counsel for



petitioners submits that the action of the respondents is arbitrary and without jurisdiction. He submits that with open eyes, the respondents have fixed the pay scale and allowed the petitioners to receive that pay scale after approval of the Board of Directors and after retirement of the petitioners in 2017 and 2019 they become wiser and now they have decided on the advice of the Finance Department to recover/adjust the amount allegedly paid in excess to the entitlement of the petitioners.

5. Manifolds arguments have been advanced on behalf of the writ petitioners as well as respondents. However, there is no dispute on the fact that the petitioners were initially posted in the Corporation on deputation and later on they were absorbed in the service of the Bihar State Minorities Financial Corporation Ltd.

6. Learned counsel for the petitioners submits that the petitioners were rightly granted the pay scale whereas Ms. Anukriti Jaipuriyar, learned counsel for the Corporation with reference to the counter affidavit and other documents submits that the petitioners were not entitled to the pay scale admissible to the post of account officer in the Government job, as they were not on deputation from Government Department, but they were on deputation from the Corporation and for the purpose of



their entitlement, the pay scale admissible in the parent Board and Corporation where from they have come to Corporation is relevant and as such they were not entitled to higher pay scale but corresponding scale admissible and paid to the employees of the Board and Corporation where from the petitioners have been drawn in the service of Bihar State Minorities Financial Corporation Ltd.

7. Mr. Siddharth Prasad, counsel for the petitioners submits that time and again the respondents have consciously decided with the approval of the Board of Directors to grant pay scale admissible to their counterpart in the Government department and as such the pay scale and salary paid to the petitioners are legal and valid. There is no dispute that the petitioners have been paid salary as per the pay fixation with approval of Board of Directors. The dispute whether the pay scale in the parent department and in the Government department was the same pay scale or different pay scale, it is not open for discussion at this stage when the petitioners, who came on deputation in 1999 and retired in 2017 and 2019 after serving almost 18 and 20 years of their deputation and absorption in the Bihar State Minorities Financial Corporation Ltd. The action of the respondents to find fault with the pay



fixation after superannuation of the petitioners and adjustment/ recovery of the amount so paid, while they were in service is the subject matter of the present writ application.

8. In the facts situation where the employees of the Corporation drawn from different sources and appointed by way of absorption and performing the same duty and sharing responsibility, ordinarily, deserve the same pay scale, prima facie, the Court is of the view that different pay scale is not admissible to the employees, who come from different sources, organization after their absorption in the present organization, one pay scale to all employees in the same grade and class is admissible. However, the aforesaid factual controversy cannot be decided in the present writ application, as pleading is not available on that line on the record.

9. Since the petitioners retired in 2017 and 2019 and the law with regard to recovery/ adjustment was settled by the Apex Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih**, reported in **(2015) 4 SCC 334**, the Court is constraint to dispose of the writ application directing that the decision of the respondents as contained in Memo No. 54 and Memo No. 55 dated 30.04.2020 cannot sustain. It is hereby declared as illegal and inoperative. The respondents are restrained from recovering



any alleged excess amount or adjusting the alleged amount paid to the petitioners while they were in service. However, they were dis-entitled the respondents are at liberty to determine the post-retiral/remaining dues of the petitioners in accordance with their entitlement as per rule.

10. The respondents in the facts of this case are directed to determine the remaining dues of the petitioners after providing opportunity of hearing within a maximum period of four months from the date of receipt/production of a copy of this order and ensure payment of the remaining dues within the same time frame indicated hereinabove. They are required to address all the issues of grant of revised pay scale including the benefit of 7th Pay Revision Commission.

11. With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

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