IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No. 68 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 18916 of 2008

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1. The Bihar State Electricity Board Patna through the Chairman, presently Bihar State Power Holding Ltd., through Chief Managing Director, Vidyut Bhawan, Bailey Road, Patna.
2. The Secretary, Bihar State Electricity Board, Patna.
3. The Joint Secretary, Bihar State Electricity Board, Patna.
4. The General Manager-cum-Chief Engineer, Magadh Supply Area, Gaya.
5. The Electrical Superintending Engineer, Electric Supply, Rohtas at Sasaram.
6. The Electrical Executive Engineer, Electric Supply Division, Kaimur at Bhabhua.

... ... Petitioner/s

Versus

Rajesh Devi, Wife of Late Rishi Kumar, at present residing at Village-Iglas, P.S. Iglas, District - Aligarh (U.P.).

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mrs. Namrata Mishra and Mrs. Archana Jha, Advocate

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 13-02-2020

Heard learned counsel for the petitioners.

2. The present application has been filed seeking review of order dated 07.01.2015 passed in CWJC No. 18916 of 2008, filed by the opposite party which was disposed off directing the petitioners to return the deducted amount of Rs. 1,05,076/- to the opposite party latest by 28th February, 2015.

3. Learned counsel for the petitioners submitted that the order has been passed on the premise that the decision of the

Bihar State Power Company Limited contained in office order No. 3677 dated 13.12.2013, was applicable in the case of the opposite party.

4. The admitted facts are that the late husband of the opposite party superannuated from the post of Accountant on 31.01.2007. Thereafter, by order contained in Memo No. 740 dated 14.07.2010, an amount of Rs. 1,05,076/- was deducted/adjusted from the amount of gratuity payable to the late husband of the opposite party. The petitioners claimed that in the year 1976, on promotion given to the late husband of the opposite party the three increments granted to him had to be deducted, which was not done and, thus, while making final computation of the retiral dues of the late husband of the opposite party, it was detected that Rs. 1,05,076/- had been paid in excess of his entitlement and accordingly, an order for such deduction/adjustment from his gratuity was made. The husband of the opposite party died on 25.11.2011 and admittedly, such stand was taken by the petitioners of alleged excess payment made to him in the year 1976 only after over one year of filing the writ petition in April, 2015. The late husband of the petitioner having superannuated on 31.01.2007 and the order having been passed on 14.07.2010, i.e., after three years of superannuation and that too

for an alleged error committed in the year 1976, cannot be sustained, in view of the law settled by the Hon'ble Supreme Court, especially in **State of Punjab v. Rafiq Masih** reported as **(2015) 4 SCC 334** where at paragraph no. 18 it has been held as under:

> *"18. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
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> *(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
>
> *(ii) Recovery from retired employees, or the employees who are due to retire within one year, of the order of recovery.*
>
> *(iii) Recovery from the 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."*

5. Moreover, the Court would indicate that it is not the case of the petitioners that such error was committed by the late husband of the opposite party or he was responsible for the excess payment as alleged by the petitioners.

6. Thus, from an overall consideration, the Court does not find any merit in the present application and accordingly, the same stands dismissed. If the order has still not been complied with, the authorities are directed to ensure such payment within two weeks from today and file affidavit. The Court is passing such order for the reason that a widow having been granted relief and on merits also, the Court finding no substance in the present review application and now for five years, the order has not been complied with. If such payment is not made within the time stipulated and affidavit filed showing such payment, Registry shall place the matter before the Bench.

(Ahsanuddin Amanullah, J.)

P. Kumar

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