

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9766 of 2017

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Kailash Prasad Son of Late Ramdat Prasad, resident of Village and P.O. Jamorhi, P.S. Bikramganj, District- Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Engineer Mechanical, Water Resources Department, 70/84, New Punai Chak, Patna.
3. The Superintending Engineer, Irrigation Mechanical Circle, Gaya, Camp at Dehri-on-Sone, District- Rohtas
4. The Executive Engineer, Irrigation Mechanical Division, Dehri, District- Rohtas.
5. The District Provident Fund Officer, Rohtas at Sasaram.
6. The Accountant General, Bihar, Birchand Patel Path, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar
For the Respondent/s : Mr.Anjani Kumar, AAG-4

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

6 21-09-2020 The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

Heard Shri Ajay Kumar, the learned counsel for the petitioner, Shri Dhanendra Choubey, the learned counsel for the Accountant General as also the learned counsel for the State.

At the outset, the learned counsel for the petitioner has submitted that now only two issues remain to be considered, firstly payment of the GPF amount for the period November, 1973



to July, 1981 and secondly the recovery which has been effected totaling to a sum of Rs. 17,763/-.

The learned counsel for the petitioner has submitted that though the respondents in the counter affidavit filed on behalf of the respondent no. 4 have submitted that the provident fund amount of the work charge period was paid to the petitioner in the year 1982 itself and thereafter the G.P.F. amount for the remaining period i.e. till the date of superannuation of the petitioner herein totaling to a sum of Rs. 4,80,144/- has been paid in the year 2011, however, no material has been brought on record, by the respondents, to show that the GPF amount for the period November, 1973 to July, 1981 has stood paid to the petitioner herein. It is further submitted that the petitioner had sought the details of his GPF contribution under the Right to Information Act whereupon the Executive Engineer has provided the attested copies of the said information vide communication dated 22.11.2016 from which it is apparent that the GPF deposits of the petitioner has been left out for certain period, hence it is submitted that the District Provident Fund Officer, Rohtas be directed to look into the matter and make payment of the balance amount of the GPF. It is further submitted that as far as the recovery of a sum of Rs. 17,763 is concerned, admittedly no show cause notice was ever issued to the petitioner herein nor the respondents have been



able to show that any excess amount was paid to the petitioner on account of misrepresentation on the part of the petitioner.

The learned counsel for the respondent-State has submitted that first of all coming to the recovery made from the petitioner, totalling to a sum of Rs. 17,763/-, the same is on account of the excess payment made to the petitioner on account of wrong fixation of his salary. It is further submitted that as far as the balance amount of GPF is concerned, the District Provident Fund Officer, Rohtas shall look into the matter.

I have heard the learned counsel for the parties and perused the materials on record. As far as recovery of a sum of Rs. 17,763/- is concerned, which has been directed to be recovered by an order dated 29.03.2011, passed by the concerned Executive Engineer, Dehri, this Court finds that the respondents have failed to show that either any show cause was given to the petitioner prior to passing of the said order dated 29.03.2011 or there has been any misrepresentation on the part of the petitioner herein resulting in payment of excess amount of salary to the petitioner herein and moreover the petitioner has also stood superannuated on 31.08.2011, hence this Court is of the view that in view of the principles laid down by the Hon'ble Apex Court in a judgment reported in *(2015) 4 SCC 334 (State of Punjab & Ors. vs. Rafiq Masih)*, the impugned order date 29.03.2011, whereby and



whereunder a sum of Rs. 17,763/- has been sought to be recovered from the petitioner on the head of excess salary paid, is unsustainable in the eyes of law, hence is quashed. The respondents are directed not to recover the aforesaid sum of Rs. 17,763/- from the petitioner herein, however, in case the said amount has been recovered, the same is directed to be refunded forthwith to the petitioner.

Now, coming to the issue of payment of balance amount of GPF for the period November, 1973 to July, 1981, this Court directs the District Provident Fund Officer, Rohtas to immediately ascertain factual aspect of the matter and in case any amount is payable, the same be paid within a period of eight weeks from today, failing which the District Provident Fund Officer, Rohtas shall not draw his salary.

The writ petition stands disposed off on the aforesaid terms.

The Registry of this Court is directed to forward a copy of this order to the District Provident Fund Officer, Rohtas forthwith.

(Mohit Kumar Shah, J)

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