

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.787 of 2018

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Pashupati Nath, Aged about 67 years, Retired Accountant, electric supply, circle Purnea, Son of Late Ramataur Sahu, Resident of Mohalla-Begampur (Bhitri), P.O.-Begampur, P.S.- Chowk, Patna-800009

... .. Petitioner

Versus

1. Bihar State Power Holding Company Ltd. through its Chairman cum-Managing Director, Vidyut Bhawan, Bailey Road, Patna 800021
2. Managing Director, North Bihar, Power Distribution Company Ltd., Vidyut Bhawan, Bailey Road, Patna-800021
3. The Deputy General Manager, (HRD/ADM), North Bihar Power Distribution Company Ltd., Vidyut Bhawan, Bailey Road, Patna 800021
4. General Manager-Cum-Chief Engineer, Muzaffarpur Electric Supply Area, P.O. + P.S. Ramdayalu Nagar, District Muzaffarpur.
5. Electrical Superintending Engineer, Electrical Circle, At, P.O., P.S. and District- Purnea.
6. Electrical Executive Engineer, Electric Supply Division, Buxar, At, P.O., P.S. and District- Buxar.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Ramnandan Kr. Sinha, Adv.
For the Respondents : Mr. Akhileshwar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 06-09-2022

Heard learned counsel for the petitioner and counsel for the respondent- Bihar State Power Holding Company Ltd (for short 'the Company').

2.The petitioner is aggrieved by a reasoned order dated 15.06.2017.The amount of Rs. 2,46,600/- (Two Lacs Forty Six Thousand and Six Hundred) is sought to be recovered by the said reasoned order.



3. The petitioner's counsel submits that the petitioner had already retired in the year, 2010 itself, which fact is not in dispute. The petitioner approached this Court for grant of his due and admissible retiral benefits in C.W.J.C No. 23171 of 2013. The petitioner's claim for retrial benefits was referred to the respondent Authorities for examining the same and making payments of the amounts found due and admissible. The respondents, however, have issued the impugned order causing recovery of the amount, as noted above.

4. The impugned reasoned order gives the background under which the amount of recovery has been ascertained. It states that pursuant to the petitioner's appointment on 17.11.1970, he was granted promotion on 01.12.1980 and on 01.04.1985, the Electrical Executive Engineer, Electricity Supply Division, Buxar granted the petitioner a higher scale on discovery of the fact that his juniors were being given the scale 795 to 1230. The petitioner's pay fixation, however, has been done with effect from 1982, being the date on which this scale was granted to his junior. The Respondent Company has found fault with this grant with retrospective effect which has had the consequence of giving five undue annual increment to the petitioner. The said reasons are supported by learned counsel appearing on behalf of the



respondent Company based on the averment made in the counter affidavit. He submits that petitioner cannot be permitted to indulge in unjust enrichment, and therefore, the recovery is in accordance with law.

5. Considering the rival submissions, this Court would observe that the fact being admitted that the petitioner retired on 31.07.2010, there was no master servant relationship between the petitioner and respondent Company. In view of applicability of the provisions of the Bihar Pension Rules (for brevity 'the Rules'), the only option available, post retirement for any recovery would have been in accordance with and under the provisions of the Bihar pension Rules itself.

6. The counsel for the petitioner has raised a specific grievance that there was no proceeding conducted under rule 43 (b) of the Rules and therefore, there being no other legal provision, the reasoned order, purporting to make recoveries post retirement, is unsustainable.

7. Learned counsel has also placed reliance on the decision of the Apex Court in the case of ***State of Punjab & Others Vs. Rafiq Masih (White Washer) & Ors.*** reported in ***(2015)4 SCC 334***, to submit that the recoveries cannot be made.



8. Considering the rival submissions, this Court would observe that from the records as well as submission of the parties, the indisputable position is that no proceeding has been conducted under Rule 43(b) of the rules. There is no other legal provision enabling issuance of an order seven years after the petitioner's retirement to effect recoveries made under a *bona fide* fixation by the competent authority in which the petitioner has made no misrepresentation. There is no such allegation in the impugned order or in the counter affidavit that the fixation was by incompetent authority or that the petitioner had made any misrepresentation leading to such fixation.

9. Considering the aforesaid facts, this Court would quash the impugned reasoned order dated 15.06.2017, insofar as the recovery of Rs. 2,46,600 is concerned.

10. Application stands allowed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
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