

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12608 of 2018

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Amar Nath Pathak Son of Late Sukh Nandan Pathak Resident of Mohalla -
Unta, Madarpur, South of Railway Cabin, Jehanabad, District – Jehanabad.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Superintending Engineer, Public Health Engineering Department,
Public Health Engineering Circle
3. The Executive Engineer, Public Health Engineering Department, Public
Health Division, Jehanabad.
4. The District Provident Fund Officer, Jehanabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Priyadarshi, Advocate.

For the Respondent/s : Mr. Vijay Kumar Sinha, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 08-12-2022

Heard Mr. Manoj Priyadarshi, learned counsel for the
petitioner and Mr. Vijay Kumar Sinha, learned AC to AAG-5 for
the State.

The present writ application has been filed seeking the
following reliefs:-

*(i) To issue an appropriate writ preferably in
the nature of certiorari for setting aside part of the
order bearing memo no. 296 dated 23.02.2017 issued*



by the Executive Engineer, Public Health Division, Jehanabad. Whereby and whereunder the amount paid to the petitioner towards salary and other allowances for the duty discharged by him in excess to 42 years of service has been ordered to be recovered from his pension/retiral benefits.

(ii) To issue an appropriate writ preferably in the nature of Mandamus Commanding upon the respondent authorities to pay/refund the amount to the petitioner which has been deducted from the retiral benefits of the petitioner.

(iii) To hold and declare that the petitioner since has discharged his duty as Nalkup Khalasi till 20.07.2017 therefore the petitioner is legally entitled to receive salary and other allowances till 20.07.2017.

(iv) To grant any other relief for which the petitioner may be found entitled to in the peculiar facts and circumstances of the case.

The short facts which led to the filing of the present writ application is that the petitioner was initially appointed in the work charge establishment on 01.01.1975 and thereafter, his service was taken in the regular establishment pursuant to the memo no. 1236 dated 12.10.1985 w.e.f. 01.01.1985 issued by the Public Health Engineering Department (hereinafter referred to as “PHED”).

Admittedly, the petitioner was a Class IV employee, working as a Handpump Khalasi, has been allowed to work till 20.07.2017. It is contended that vide annexure 1 to the writ



application, a direction has been given to the Executive Engineer, Public Health Division, Gaya, Jehenabad and Nawada to furnish details of all Class III and Class IV employees working even after completion of 42 years of service and in response to the aforesaid direction the Executive Engineer P.H.E.D. issued notice bearing memo no. 296 dated 23.02.2017 intimating to all concern, that all those Class III and IV employees, who have completed 42 years or more services were directed to inform the Executive Engineer. By the said notice, it has been informed that any claim for payment beyond 42 years shall not be admissible and any excess payment received by any of the employee beyond the period of 42 years of service would be recovered from their pensionary benefits.

Mr. Priyadarshi further submits that when the petitioner came to know about this notice, he immediately filed an application before the Executive Engineer, P.H.E.D., Jehanabad that he has been allowed to work more than 42 years and his total period of working came to 42 years 5 months and 20 days from the date of his initial joining and he gave his undertaking that he would be abide by any order passed by the authority concerned fixing any date of retirement, however, a request has been made that no deduction be made from his retiral benefits.



It is next submitted that the petitioner was admittedly a class IV employee had no knowledge about the date of his superannuation as he was not the custodian of service book etc. and prior to the notice contained in annexure 2, he has never been informed, but surprisingly on being discharged from his services the Executive Engineer, P.H.E.D. vide office order as contained in memo no. 1380 dated 25.09.1917 has directed to recover an amount of Rs. 1,92,180/- from the head of leave encashment. Now, the aforesaid order of recovery is under challenge before this court.

Learned counsel for the petitioner further reiterated his submission that the petitioner being a Class IV employee was not aware of his actual date of retirement and he has been allowed to discharge the work, however, there has never been any misrepresentation or fraud on the part of the petitioner nor this is the stand of the respondent authorities.

Learned counsel for the petitioner heavily relied upon the judgement passed by the Apex Court in the case of ***State of Punjab Vs. Rafiq Masih*** reported in 2015 (4) SCC 334 that no recovery is permissible from a Class III or IV employee, who has either due to superannuate within a year or already superannuated.



On the other hand, learned counsel for the State vehemently confronted the submissions made on behalf of the learned counsel for the petitioner and submits that prima facie from the date of birth of the petitioner, it appears that the petitioner has entered in service of work charge establishment at the age of 15 years and on this account also the initial service of the petitioner appears to be bad, however, he submits that since no action has ever been taken with regard to the same, therefore, his stand is not only basing upon his improper initial appointment.

He further submits that from bare perusal of the annexure 2, it appears that this important notice has been given to all the concerned but the petitioner even knowing fully well, has discharged his duty till 20.07.2017. Though, he was fully aware that he has already crossed the age of 42 years but despite that he has been continuing in his service for about more than five-six months and as such, no benefit could be given to him for the said period. He further relied upon one of the judgements rendered by the coordinate Bench of this Court in the case of ***Ragjawa Nr. Mishra Vs. C.E.O, Bihar R.K.G. Board (F.B.) reported in 2006 (1) PLJR 410*** and submits that no employee can be allowed to work for more than 42 years of his service and if the same has been done no benefit could be granted to such employees. Further



reliance has also been made on a Judgement rendered by the coordinate Bench of this Court in the case of ***B.S.E.B. Vs. Shubhendra Sharma reported in 2004 (1) PLJR 208*** especially paragraph no. 4 thereof, which is quoted herein below:-

In the counter affidavit, the submission is, the the effect, that the service book was available at Saharsa in 1994 itself. Between two versions somebody seems to be taking advantage of the situation of the service book which was not being located. But, with no order on extension of service, the petitioner says he managed to work for one year more. The petitioner thought it was a short term gain and not realizing that no sooner he retired, the amount, which was paid to him for the extended service, which he arranged for himself, would be deducted. The petitioner now says that he had worked for those periods but he is not liable to refund the amount. The question is where is the order on the extension of his service ?”

Having heard the learned counsels for the parties and the materials available on record, prima facie this court is of the view that the notice as contained in annexure 2 has been intimated to all the concerned officers and the employees and as such, the plea of the petitioner that he was not aware of this fact, is not acceptable to this court.

It is also observed that the case of the petitioner does not come within the stipulated conditions of few exceptions of extreme hardships as enunciated by the Hon’ble Supreme Court in the Case of State of Punjab & Ors. Vs. Rafiq Masih (supra).



The Apex Court in the case of *Chandi Prasad Uniyal & Ors. vs State Of Uttarakhand & Orss reported in 2012 (8) SCC 417* while considering the identical matter of the recovery has been pleased to hold that “any amount received or paid to an employee without any authority of law could always be recovered barring few exceptions and not as a matter of right, in such a situation law implied an obligation on payee to repay the money, otherwise it would amount to unjust enrichment”.

In view of the aforesaid factual and settled legal position, this court does not find any merit in the present writ application.

Accordingly, the present writ application stands dismissed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

