

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2745 of 2021

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Mahesh Pandey, Male, aged about 64 years, Son of Late Uttim Pandey
Resident of Village- Katar Mala, Police Station- Goraul, District- Vaishali.

... .. Petitioner/s

Versus

1. The North Bihar Power Distribution Company Limited Through its Managing Director, Vidyut Bhawan, Patna
2. The Managing Director Bihar State Power Holding Company Limited, Vidyut Bhawan, Patna
3. The Senior Manager, B and L North Bihar Power Distribution Company Limited, Patna
4. The Electrical Executive Engineer Electric Supply Division, Khagaria
5. The Accounts Officer Electric Supply Division, Khagaria
6. The Assistant Electrical Engineer Electric Supply Sub-Division, Gogri, District- Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajey Kumar, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Advocate
		Mr. Vijay Kumar Verma, Advocate
		Mr. Akhileshwar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 25-04-2022

Heard learned counsel for the parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“That this is an application for issuance of a writ of certiorari for quashing the order of recovery as contained in Letters dated 08.08.2020 (Annexure – 9), 11.09.2020 (Annexure – 10), as well as reminder letter



dated 24.11.2020 (Annexure – 14) and also for issuance of a writ of mandamus directing/commanding the Respondents to make refund the amount recovered in pursuance of order dated 08.08.2020 (Annexure-9) and be further pleased to grant such other relief or reliefs to which petitioner is found entitled in the eyes of law.”

3. Short question for consideration is whether before passing the impugned order of recovery dated 08.08.2020 read with communications dated 11.09.2020 and 24.11.2020 (Annexures – 10 and 14) whether petitioner has been heard in the matter or not?

4. Perusal of the records, it is evident that, petitioner was not subjected to disciplinary proceedings in terms of the audit report. If the disciplinary authority accepts the audit report and it is against the petitioner's interest insofar as misappropriation and recovery is concerned, such misappropriation is required to be proved only in a domestic enquiry and in accordance with the relevant provisions of law. Thus, the author of the recovery order has not resorted to domestic enquiry in holding departmental enquiry and proving the audit report which is against the petitioner by examining relevant documents and authors of the documents including audit report submitted by the concerned authority. Further it is to be noted that petitioner has already attained age of superannuation and retired from service. As on the date of retirement he was holding the post of Junior Accounts Clerk.



Insofar as recovery is concerned, the disciplinary authority is hereby directed to take note of decision of the Apex Court in the case of ***State of Punjab vs. Rafiq Masih*** reported in **(2015) 4 SCC 334**. Thus the disciplinary authority is hereby directed to proceed in accordance with law within a period of three months.

5. If the petitioner has already remitted certain amounts towards recovery, the same shall be refunded to the petitioner within a period of one months from the date or receipt of this order.

6. At this stage, it is noticed that petitioner's allegation date backs to April, 2014 to November, 2014 and he has attained the age of superannuation and retired from service in the month of July, 2016. Having regard to the dates and events read with Rule 43 (2) of the Bihar Pension Rules, the disciplinary authority's hands are tied in initiating any disciplinary proceedings in respect of alleged event in the month of April, 2014 to November, 2014. This legal issue must be answered in the detailed order to be passed.

(P. B. Bajanthri, J.)

(Rajeev Ranjan Prasad, J.)

GAURAV S./
Rajeev-

AFR/NAFR	
CAV DATE	
Uploading Date	28.04.2022
Transmission Date	

