IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 13215 of 2021

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Parmanand Sharma S/o Late Maheshwari Singh R/o Pantnagar Ghugharitarn, Gaya, P.S.- Bishnupath, Distt.- Gaya.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Secretary, Transport Department, Government of Bihar, Patna.
2. The Administrator Bihar State Road Transport Corporation, Pariwahan Bhawan, Birchand Patel Marg, Patna.
3. The Chief Accounts Officer cum Financial Advisor Bihar State Road Transport Corporation, Pariwahan Bhawan, Birchand Patel Marg, Patna.

... ... Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Jai Prakash Verma, Advocate
For the Respondent State	:	Mr. Ajay Kr. Rastogi, AAG-10
For the Respondent BSRTC	:	Mr.P.K. Verma, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 07-12-2023

1. The present writ petition has been filed for quashing the order dated 07.10.2016, passed by the Administrator, Bihar State Road Transport Corporation, Patna i.e. the respondent no.2, who has passed an order for recovery of a sum of Rs.1,09,997/- from the post retiral benefits of the petitioner. The petitioner has also prayed for quashing of the order dated 12.07.2019, passed by the Administrator, Bihar State Road Transport Corporation, Patna i.e. the respondent no.2, whereby and whereunder the representation of the petitioner dated 22.09.2017 has been rejected. Lastly, the petitioner has prayed for refund of the

aforesaid amount of Rs.1,09,997/-.

2. The brief facts of the case, according to the petitioner, are that the petitioner superannuated from service on 29.02.2012, while posted as Conductor at Gaya Depot, Gaya Division, of the Bihar State Road Transport Corporation (herein after referred to as the "BSRTC"). It is stated that after about four years of retirement of the petitioner, the respondent no. 2 had passed an ex-parte order, contained in memo dated 07.10.2016, against 15 conductors including the petitioner herein, for recovery of different sums of money from each of them, on account of low income generated by the said conductors to the tune of a sum of Rs. 7,91,142/-, from their monthly wages in terms of office order dated 28.08.1999. Against the said order dated 07.10.2016, the petitioner had filed a representation dated 22.09.2017, however, the same has also stood rejected by an order dated 12.07.2019, passed by the same authority i.e. the respondent no.2, by illegally treating the same as an appeal.

3. The learned counsel for the petitioner has submitted that the aforesaid order of recovery dated 07.10.2016, has been passed by the respondent no.2, without either issuance of any show cause notice to the petitioner or granting him an opportunity of hearing and that too after four years of his

retirement. It is also submitted that the representation of the petitioner dated 22.09.2017 has been rejected by the respondent no.2, by illegally treating the same to be an appeal, barred by limitation, inasmuch as firstly, the petitioner had not filed any Appeal and secondly in case the same was being treated as an Appeal, the respondent no.2, who has passed the original order dt. 7.10.2016, could not have considered the same and passed the order dated 12.07.2019, since he cannot be a judge of his own cause, hence the impugned order dated 12.07.2019 is perverse and fit to be set aside.

4. Per contra, the learned senior counsel appearing for the respondent-BSRTC, Patna has submitted that the petitioner was a conductor of a bus running in between Gaya and Sarnath, prior to his retirement and had never collected fare up to the desired level and had always collected and deposited less fare for the bus services, resulting in loss to the respondent-corporation, hence in view of the office order dated 28.08.1999, which provides for recovery of the amount of less income generated by the conductors, by adjusting the same from the wages of the said conductors, recovery has been made from the petitioner and others, hence the impugned orders dated 07.10.2016 and 12.07.2019 do not suffer from any infirmity.

5. I have heard the learned counsel for the parties and perused the materials on record. At the outset, a query has been put to the learned senior counsel appearing for the respondent-BSRTC, as to whether without issuance of any show cause or without complying with the principles of natural justice, any order adverse to the petitioner can be passed, to which the answer of the learned senior counsel for the respondent-corporation is that the principles of natural justice are required to be followed. This Court finds that admittedly no show cause notice has been issued to the petitioner before passing of the impugned order dated 07.10.2016, by the respondent no.2 and moreover, there is no explanation much less any plausible reason for quantifying either the loss amount to the extent of a sum of Rs. 7,91,142/- or the amount sought to be recovered from the petitioner to the tune of Rs. 1,09,997/-, hence the order dated 07.10.2016 is perverse, arbitrary and fit to be set aside. As far as the office order dated 28.08.1999, being relied upon the learned senior counsel for the respondent-BSRTC is concerned, the same is vague and does not specifically mention about the minimum income required to be generated by the conductors and on the contrary, the same merely postulates that in case the conductors do not deposit the fixed amount, they should not be

permitted to work, hence such an ambiguous office order cannot form the basis for making recovery of a sum of Rs.1,09,997/- from the petitioner.

6. Yet another aspect of the matter is as to whether any recovery can be made from the petitioner, after his retirement, without following the due process of law. It is a well settled law that pension is not a bounty payable on the sweet will and pleasure of the Govt., on the other hand, the right to pension is a valuable right vested in a government servant, hence the State has no power to withhold the retiral dues of a superannuated employee merely by an executive order and moreover, no order of deduction can be made from any amount of retiral benefits, payable to the petitioner in absence of any departmental or judicial proceeding having been held against the petitioner or without their being any finding of guilt. Reference in this regard be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Kerala SRTC vs. K.O. Varghese***, reported in ***(2003) 12 SCC 293***, paragraph 20 whereof is reproduced herein below:-

> *"**20.** From the aforesaid analysis three things emerge :*
>
> *(i) that pension is neither bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to the statute, if any, holding the field,*

> *(ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and*
>
> *(iii) it is a social-welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for employers on an assurance that in their ripe old age they would not be left in the lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the emoluments earlier drawn. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement. That is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure."*

7. This Court would also gainfully refer to certain other authorities on the aforesaid subject matter in issue, which are reproduced herein below:-

> *"(i) 2000 (1) PLJR 99 (Kumud Ranjan Tiwari Vs. The state of Bihar & Ors.)*
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> *(ii) (2002) 4 PLJR 676 (Gauri Shankar Singh v. Bihar State Food & Civil Supplies Corporation Ltd. & Ors.)*
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> *(iii) (2000) 1 PLJR 169 (Gopal Prasad vs. The State of Bihar & Ors.)*
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> *(iv) (2005) 1 PLJR 513 (Jagdish Chandra Sinha vs*

The State Of Bihar And Ors.)

(v) (2004) 4 PLJR 236 (Smt. Shanti Choubey v. The State of Bihar & Ors.)"

8. Yet another issue which arises for consideration in the present case is as to whether any recovery can be effected from the petitioner, who has already attained the age of superannuation. The law in this regard is no longer *res integra* and has been well settled in a catena of decisions reported in ***(2009) 3 SCC (Syed Qadir vs. State of Bihar); (1995) Suppl.1 SCC 80 (Sahib Ram vs. State of Haryana); (1994) 2 SCC 52 (Shyam Babu Verma vs. Union of India); (1997) 6 SCC 139 (B.Ganga Ram vs. Regional Joint Director); (2006) 11 SCC 492 (Purshottam Lal Das vs. State of Bihar); (2000) 10 SCC 99 (Bihar State Electricity Board vs. Bijay Bhadur); (2006) 11 SCC 7089 (B.J. Akkara vs. Government of India University) and (1995) suppl. 1 SCC 18 (Sahib Ram vs. State of Haryana) and the one reported in (2015) 4 SCC 334 (State of Punjab vs. Rafique Masih)***.

9. The present case is squarely covered by a judgment rendered by Hon'ble Apex Court in the case of ***Rafique Masih*** (Supra), paragraph no.18 whereof is reproduced herein below:-

"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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

> *(i) Recovery from the employees belonging to Class III & Class IV service (or Group C & Group D service).*
>
> *(ii) Recovery from the 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".*

10. At this juncture, this Court, deems it fit and proper to

refer to yet another judgment rendered by the Hon'ble Apex Court in the case of ***Thomas Daniel Vs. State of Kerala & Ors.***, reported in ***(2022) SCC Online SCC 536***, paragraphs no.9, 11 and 14 to 16 whereof, are reproduced herein below:-

> *"9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.*
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> *11. In Col. B.J. Akkara (Retd.) v. Government of*

India this Court considered an identical question as under:

> *"27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521 :1994 SCC (L&S) 683 : (1994) 27 ATC 121], Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] and V. Gangaram v. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):*
>
> > *(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.*
> >
> > *(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.*
>
> *28. Such relief, restraining back recovery of excess payment, is granted by courts not because*

of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the

> *excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made."*

14. Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

15. Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified.

16. In the result, the appeal succeeds and is accordingly allowed. The Judgment and order of the Division Bench dated 02.03.2009 and also of the *learned Single Judge of the High Court dated 05.01.2006 impugned herein, and the order dated 26.06.2000 passed by the Public Redressal Complaint Cell of the Chief Minister of Kerala and the recovery Notice dated 09.10.1997 are hereby set aside. There shall be no order as to costs."*

11. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove as also in view of the law laid down by the Hon'ble Apex Court in a catena of decisions, as aforesaid, this Court finds that the orders dated 07.10.2016 and 12.07.2019, passed by the respondent no.2, as far as the petitioner is concerned, is arbitrary, perverse and contrary to the well settled law, hence are set aside. Consequently, the respondent no.2 is directed to refund the aforesaid amount of Rs. 1,09,997/- back to the petitioner, within a period of six weeks of receipt/production of a copy of this order, failing which he shall not draw his salary.

12. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.02.2024
Transmission Date	NA