

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.93 of 2021

In

Civil Writ Jurisdiction Case No.4528 of 2020

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1. Bihar State Minorities Financial Corporation Ltd. a Government of Bihar Undertaking/Public Limited Company registered under the Companies Act, 1956 having its office at 34, Harding Road, Haz Bhawan, P.S. Sachiwalay, Town and District Patna through its Managing Director.
 2. Managing Director, Bihar State Minorities Financial Corporation Ltd., a Government of Bihar Undertaking/Public Limited Company 34, Harding Road, Haz Bhawan, P.S. Sachiwalaya, Town and District Patna.

... .. Appellant/s

Versus

1. Awadh Kishore Prasad Son of Late Nageshwar Prasad Resident of Flat No.302, Madhu Kunj Apartment, Nehru Nagar, P.S. Patliputra, Town and District Patna- 800013.
2. Hem Chandra Mishra Son of Late Sushil Mishra Resident of Flat No. 403, Shivam Vihar Apartment, Anandpuri, West Boring Canal Road, P.S. S.K. Puri, Town and District Patna- 800001.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, Sr. Advocate Mr. Ravish Chandra, Advocate Mr. Utkarsh Bhushan, Advocate
For the Respondent/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Siddhartha Prasad, Advocate Mr. Sunit Kumar, Advocate Mr. Kumar Rajeev, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 12-04-2023

Heard Mr. Anjani Kumar, learned Sr. Advocate for
the appellant/Bihar State Minorities Financial Corporation
Ltd. and Mr. Mrigank Mauli, learned Sr. Advocate for the
respondent nos. 1 and 2.



The State in its Bihar State Minorities Financial Corporation Limited, a Government of Bihar undertaking has come in appeal against the judgment and order dated 21.09.2020 passed by a learned Single Judge of this Court in CWJC No. 4528 of 2020, whereby the decision of the Corporation as recommended by the Finance Department, for recovering the excess amount from the respondents herein was turned down and the Corporation was asked to pay the entire post-retiral dues of the respondents who retired in 2017 and 2019 respectively.

While saying so, the learned Single Judge relied upon the judgment delivered in case of ***State of Panjab and Others Vs. Rafiq Masih (White Washer) and Others 2015 (4) SCC 334*** holding that there was no misrepresentation on the part of the respondents and therefore if there was any excess payment, the respondents were not responsible for the same and such issue having been taken up by the Corporation after their retirement is nothing but trying to flog a dead horse.



Mr. Anjani Kumar, learned Senior Advocate appearing on behalf of the appellant/Corporation has submitted that the respondents were deputed to Bihar State Minorities Financial Corporation Ltd. (hereinafter called as 'BSMFCL') in the year 1999 and they joined the post of Accounts Officer and Deputy Secretary which post was re-designated as Administrative Officer respectively. By a decision of the Board of Governors, they were absorbed permanently in the Corporation with effect from 31.12.1999. About a month before the absorption of the respondents, there was a decision of the Board of Directors for re-fixation of the salary of the employees of the Corporation but the salary was revised on 28.02.2000, giving the scale of Rs. 2200-4000/- to Rs. 8000-13,500/- to the respondents.

Mr. Anjani Kumar has submitted that at this stage only, anomaly crept in which got perpetuated till the respondents retired resulting in their being paid excess amount than their entitlements.



The grounds urged in support of the aforesaid contention is that for pay fixation, the last pay drawn by an employee in the parent department is to be considered. He further submits that the respondents were in the pay-scale of Rs. 2000-3500/- which ought not to have been altered for the reason that they were deputationists, who later came to be absorbed in the services of Minorities Corporation.

Apart from this, it has been urged that there was a mistake in giving parity to the services of the respondents with the officers of the Finance Department who were obviously being paid higher salary for the reason of their work-profile, giving no reason to any authority to treat the respondents at par with such officers of the Finance Department.

Except for the Finance Department, there is no other department which has Accounts Officer in their cadre and the appellation of the post of the respondents, though, was Accounts Officer and Administrative Officer but in fact



the nature of work was not akin to the work discharged by the Accounts Officers of the Finance Department. It was pointed out that the pay-scale of the respondents ought to have been taken as Rs. 2000-3500/- over which the 5th Pay Revision Committee recommendation would have applied and the respondents should have been placed in the pay-scale of Rs. 6500-10,500/-.

Because of this anomaly, by giving parity of pay to the respondents, their pay was upgraded in 1999 only to the scale of Rs. 2200-4000/- and therefore, after the 5th Pay Revision Committee the scale which was given to the respondents was Rs. 8000-13,500/- which was not their entitlement.

It has further been urged very vehemently by Mr. Kumar that the judgment of the Supreme Court in ***Rafiq Masih (White Washer) and Others*** (supra) will not come to the aid of the respondents as they are neither Class-III employees nor is there any iniquitous result



because of the decision of the Board to have the excess money recovered from them.

It was further submitted that after the 5th Pay Revision Committee's report, during the pay fixation, the respondent no. 1 was made part of the Screening Committee, who should have pointed out that the respondents were not accorded the correct scale in the beginning.

Thus this was misrepresentation simplicitor, dis-entitling them from being exempted from returning the amount which they had received in excess of their entitlement.

As opposed to the aforesaid contention, Mr. Mrigank Mauli, learned Senior Advocate has pointed out that the allegation of misrepresentation is absolutely uncalled for and is not supported by the facts on record.

There is no dispute about the respondents having joined the Minorities Corporation as Deputationists in the beginning from the Bihar Pharmaceutical and Chemical



Department Corporation Ltd. way-back on 19.08.1999. Pursuant to their deputation, they joined their respective posts on 23.08.1999. There is also no dispute about the fact that they were absorbed by the Office Order pursuant to the decision of the Board of Directors on 31.12.1999.

The decision of the Board of Directors to revise the pay-scale of the employees of the Finance Corporation (BSMFCL) was initiated sometimes in 1999, prior to the final absorption of the respondents in the services of the Finance Corporation (BSMFCL).

The initiative at the behest of Board of Directors was given a final shape on 16.06.2000, giving the pay-scale to respondents and others on same category of Rs. 2200-4000/- even though the respondents in their parent organization had been getting the scale of Rs. 2000-3500/-.

It has further been submitted that thereafter two Pay Revision Committee's report were implemented viz. 6th and 7th Pay Revision Committee and against such revision



in the pay-scale of the employees, respective pay of the employees were fixed. With respect to the respondents, such fixation was on the scale which they had been given after the 5th Pay Revision. At those stages, the respondents were asked to and they furnished an undertaking that if there is any anomaly found later with respect to the fixation of pay, resulting in excess payment to them, that shall be returned in one go, preferably from the other entitlements of the respondents.

This undertaking, as suggested by the appellant/Corporation, is not an undertaking for returning the excess amount which in the estimation of the Corporation was wrongly paid to them since 2000.

On the basis of the afore-noted facts Mr. Mrigank Mauli contends that there is no case of misrepresentation or fraud and all through, the respondents have abided by the pay fixation and the pay-slab allotted to them even though one of them was the Accounts Officer.



Nonetheless, with respect to the undertaking given by the respondents after the pay fixation of 6th Pay Revision Committee's report, nothing was found to be recoverable from them but after the 7th pay fixation, the respondent no. 1 received a notice on 28.05.2017 informing him that according to the calculation of the Corporation, he has received Rs. 7,08,729/- in excess of his entitlement and that the same amount be returned to the Corporation.

The learned counsel for the respondents has submitted that the amount so calculated by the Corporation was set off against the leave encashment of respondent no. 1. With respect to respondent no. 2, no excess payment to him could be discovered. The respondents retired on 31.10.2017 and 30.06.2019 respectively.

After their retirement, a Four-Men Inquiry Committee was constituted in which the respondents also were noticed and were given the opportunity of



representing their cause. The Committee submitted a report on 01.10.2019 holding that the respondents have received excess amount to the tune of Rs. 30,54, 841/- and Rs. 25,05,654/- respectively.

The respondents, therefore, urge that this calculation is absolutely faulty for it even includes an amount of Rs. 7 lakhs and odd against the account of respondent no. 1 which had already been set off against his leave encashment.

Apart from this, the basis of such calculation is the anomaly according to the Corporation since 2000 when they were put in the scale of Rs. 2200-4000/-.

From the arguments advanced on behalf of the parties, we find that the pay of the respondents was calculated since 2000 on the basis of the scale which was given to them (Rs. 2200-4000/-) whereafter the scale was upped after 5th, 6th and 7th Pay Revision Committee report and consequent pay fixation. At one point of time *i.e.* after the pay fixation against 7th Pay Revision Committee's



recommendation, respondent no. 1 appeared to have received approximately Rs. 7 lakhs more than his entitlement which was promptly withdrawn adjusted against his leave encashment.

The arguments of the appellant/State that there was misrepresentation on behalf of the respondents is solely premised on the fact that one of the respondents was an Accounts Officer and for some time, while fixing the pay against the 5th Pay Revision Committee's report, was also one of the members of the Screening Committee.

There appears to be some confusion in the matter.

There is no allegation of misrepresentation while fixation of pay against the 5th Pay Revision Committee but the dispute has arisen only because of the fact that the respondents, after their absorption in the Corporation, were put on the scale of Rs. 2200-4000/- which decision making could not have been influenced by the respondents in any way whatsoever as the decision to revise the pay-



scale of the employees of the Corporation had taken place much before the absorption of the respondents in the Corporation.

Had there been any anomaly in the pay fixation after the 5th Pay Revision Committee's Report, there could be some case for the appellant to contend that necessary facts were concealed especially by respondent no. 1, as he was member of the Screening Committee and also dealing with finance and calculation of pay of the employees of the Corporation in his capacity as Accounts Officer. No such allegation has been levelled against the respondents.

We further find that if at all the respondents were paid in excess of their entitlement right from 2000, the matter should have been raised by the Corporation much before. We do not understand the reason for initiating an enquiry after their retirement and that also on the basis of a pay-scale, which was given to them after their absorption in the Corporation.



The logic provided by the appellant that the respondents were getting a scale of Rs. 2000-3500/- in their parent Corporation which would have only fetched them a scale of Rs. 6500-10,500/- after the 5th Pay Revision Committee recommendation.

If this were so, the issue should have been raised during the tenure of the employment of the respondents.

During the course of arguments, the learned counsel for the respondents has also informed us that with this calculation of the Corporation of the excess payment against their entitlements, the respondents would be left with no post-retiral dues at all as their services are not pensionable.

On this ground, it has been urged that it would be highly iniquitous to recover the excess amount, if at all it is, from the respondents after their retirement.

The Supreme Court in ***Rafiq Masih (White Washer)*** (supra) has held that the recovery by the



employer in case of excess payment would be impermissible in law:

(A) If it is from employees belonging from Class III and Class IV services (or Group C and Group D service);

(B) If it is from retired employees or the employees who are due to retire within one year, of the order of recovery;

(C) If it is 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;

(D) From employees who were wrongfully made to discharge duties of higher post and have been paid accordingly even though they should have rightfully been required to work against an inferior post.

In any other case, the Supreme Court holds, where the Court arrives at the conclusion that recovery if made from the employee, would be iniquitous of harsh or



arbitrary to such an extent as would far outweigh the equitable balance of the employers' right to recover.

It would be necessary to recall here in this order as to how the issue came to be decided in *Rafiq Masih (supra)*.

There were conflicting views of the Supreme Court in different decisions. One of the views taken in some of the cases was that merely on account of the fact that the release of monetary benefits was based on a mistaken belief at the hands of the employer and that the employee had no role in the determination of the employer that they would be exempted from refunding the excess amount received by them.

The other view obviously was that if an employee has not misrepresented and has been paid in excess of his entitlement, he ought not to be compelled to refund that excess amount.

In view of apparent differences of views expressed (refer to ***Shyam Babu Verma Vs. Union of***



India reported in 1994 (2) SCC 521; Sahib Ram Vs. The State of Haryana reported in 1995 supplementary (1) SCC 18 and Chandi Prasad Uniyal and Others vs. State of Uttarkhand and Others reported in 2012(8) SCC 417, the Division Bench of the Supreme Court referred the matter before a larger Bench of three Judges.

The reference was returned indicating that orders exempting the employees from refunding the amount was passed in exercise of the extraordinary powers of the Supreme Court under Article 142 of the Constitution of India which vests the power in Supreme Court to pass equitable orders for the ends of justice. It was only thereafter that ***Rafiq Masih*** (supra) case was decided. The Supreme Court after taking into account several cases on the same issue formulated the conditions under which there could be no recovery of excess payment from the employees.



A year after, however, in ***High Court of Punjab and Haryana Vs. Jagdev Singh 2016 (14) SCC 267***, a somewhat separate view was expressed by the Supreme Court.

In that case, the respondent, a Judicial Officer after the pay revision and his getting selection grade, undertook to refund any excess payment if it was so detected and demanded subsequently. The Officer was placed under suspension and was compulsorily retired on 12th of February, 2003.

In the meantime, the recommendations of the First National Judicial Pay Commission (Shetty Commission) came whereupon Haryana Civil Services (Judicial Branch) and Haryana Superior Judicial Service revised pay rules of 2003 were brought about and notified in the month of May, 2003.

This led to revision of the pay-scales of Judicial Officers, in which the respondent was asked for refund of the excess amount. This was challenged by him which was



sustained by the High Court on the sole ground that there was no fraud or misrepresentation on the part of the respondent with regard to pay fixation.

The Supreme Court after noting the judgment in ***Rafiq Masih*** (supra) found that the principle enunciated in the proposition viz. not to recover from the retired employees, or employees who were due to retire within one year of the order of recovery would not apply to a situation where the Officer was clearly placed on notice that any payment found to have been made in excess would be required to be refunded, which undertaking was given by the Officer. The Officer in that circumstance was bound by the undertaking.

The respondent, therefore, was made to refund the excess payment.

Mr. Anjani Kumar for the appellant, by taking reference of this case has submitted that ***Rafiq Masih*** (supra) does not give a *carte blanche* to every employee who receives excess payment beyond his entitlement



moreso, when he undertakes after every fixation, to refund the excess amount if discovered.

It was thus submitted by the appellant that after every pay revision and consequent pay fixation, an undertaking was given as in normal routine that any excess payment would be returned in one installment which could be either by way of adjustment against the salary or post-retiral dues or whatever.

The facts of **Jagdev Singh** (supra) cannot be imported in the facts of this case for the reason that after the report of the 7th Pay Revision Committee pay fixation, whatever amount was found to be in excess of the entitlement of the respondent no. 1 was returned. No such case of excess payment was found in the case of respondent no. 2. It was only after their retirement in 2017 and 2019 respectively that it was found by the Four-Men Enquiry Committee, referred to above, that the pay-scale given to the respondents way back in the year 2000 was itself bad as there was no parity between the post of



Accounts Officer in Finance Department and the Accounts Officers or Administrative Officer of the Corporation, requiring grant of higher pay-scale to the respondents to reduce the pay anomaly of the employees.

Even if this argument is accepted for the time being, it does not entitle the employer to recover the excess amount as such scale was given to the respondents immediately after their absorption in service and against a decision to revise the pay scale which decision was taken before the absorption of the respondents in the Corporation, went unchallenged.

The case of the respondents fall squarely in two of the propositions in ***Rafiq Masih*** (supra) viz. that there could be no recovery from employees when the excess payment has been made for a period in excess of five years before the order of recovery is issued and; no recovery in case where it is apparent that it would be iniquitous or harsh or arbitrary to such an extent as would



far out-weigh the equitable balance of the employers' right to recover.

We have taken note of the arguments of the respondents that their services were not pensionable and with the decision to recover the excess amount, which calculation itself is faulty and misplaced, the respondents would not be paid a farthing which would result in great iniquity so far as the respondents are concerned.

The undertaking given by the respondents has been respected and whatever was found excess against the entitlement after the 7th Pay Revision Committee's Report pay fixation, the same was refunded.

We have also taken note of two of the decisions of this Court in **LPA No. 270 of 2021** and **LPA No. 431 of 2021**, wherein applying such principles the recovery has been forestalled.

[Refer to **The Assistant General Manager State Bank of India, Centralized Pension Processing Centre and Anr. vs. Akhileshwari Devi and three**



***others.; Surendra Mandal and twenty eight Others.
vs. the State of Bihar and twenty two others.]***

For the aforementioned reasons, we do not find any reason to interfere with the judgment passed by the learned Single Judge whereby the appellant has been forbidden from initiating any recovery proceeding against the respondents. Whatever is due to the respondents as their post-retiral entitlements shall be given to them forthwith.

The appeal stands dismissed and the parties are left to bear their own costs.

(Ashutosh Kumar, J)

(Harish Kumar, J)

krishna/shivank

AFR/NAFR	AFR
CAV DATE	NA
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