

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4377 of 2018

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Ram Nandan Singh S/o Late Ramphal Singh, Resident of Mohalla-Siddarthpuri Colony, P.O.-Buniyadganj, District- Gaya.

... .. Petitioner/s

Versus

1. The Bihar State Power Holding Company Limited
2. The General Manager Human Resources/Administration, Bihar State Power Holding Company Limited, Vid
3. The Managing Director, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road,
4. The General Manager Human Resources/Administration, South Bihar Power Distribution Company Limited
5. The Deputy General Manager Cum Electrical Superintending Engineer, Magadh Electric Supply Area, Gay
6. Senior Manager Finance and Accounts Magadh Electric Supply Area, Gaya.
7. Electrical Executive Engineer, Electric Supply Division, Gaya Rural.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dharmendra Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Dharmeshwar Mishra, Advocate
		Mr. Indrajeet Bhushan, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 26-09-2023 Heard the parties.

2. The present petition has been preferred for the following reliefs:-

(i) for issuance of appropriate writ in the nature of certiorari for quashing the Memo No. 5 dated 3.01.2014 issued under the signature of Senior Manager (F and A) Magadh Electric Supply Area, Gaya by which a



sum of Rupees 38,432/- (Thirty Eight thousand four hundred thirty two) has been directed to recover from the payable amount of gratuity on account of excess amount paid due to pay fixation made by standing order of Board in the year 1992 which was superseded by implementation of A.C.P. by the Board in the year 2012 and deduction due to excess payment upon earlier fixation was bad and illegal;

(ii) for issuance of appropriate writ in the nature of Certiorari for quashing the letter No. 172 dated 23.10.2013 issued under the signature of Electric Executive Engineer, Gaya (Rural) by which pay scale of petitioner was refixed and reduced with effect from 1.01.2006 till the date of retirement on 31.07.2013 without issuing any notice and without giving any opportunity for hearing to petitioner;

(iii) for issuance of appropriate writ in the nature of mandamus seeking direction to respondents to reconsider the fixation of pay scale of petitioner which was patently arbitrary on the face of it as according to A.C.P. Scheme in a case of a person who is receiving higher pay scale shall not be allowed to refix at lower



scale under A.C.P. Scheme.

3. The case of the petitioner is that he was serving as Switch Button Operator and retired from the office of Electrical Executive Engineer, Electric Supply Division, Gaya (Rural) on 31.07.2013.

4. Thereafter he moved for payment of retiral benefit when the memo no. 5 dated 03.01.2014 issued by the Senior Manager (F and A), Magadh Electric Supply Area, Gaya by which a sum of Rs. 38,432/- has been directed to be recovered from the gratuity of the petitioner as according to the respondents, it is excess amount paid due to pay fixation made by the Board in the year 1992 and superseded by implementation of ACP in the year 2012. There are other prayers also for which the petitioner submits that he will be agitating the matter before appropriate authority.

5. It is the case of the petitioner that the payments were rightly made to him and in any case, it is not the stand of the respondents that there was any misrepresentation on his part. In that background, once he has retired and has to lead his life with miniscule pension and other retiral benefits, deduction/realization of the said amount is illegal.

6. He as cited the case of **State of Punjab and Ors.**



vs Rafiq Masih and Ors. reported in **(2015) 4 SCC 334** in support of his case.

7. A counter affidavit has been filed on behalf of the South Bihar Power Distribution Company Limited in which it has been claimed that he was granted promotion earlier, later the respondent company decided to implement ACP scheme and in accordance with that, memo no. 77 dated 07.05.2012, the pay scale of the petitioner was revised and accordingly the excess amount has to be recovered.

8. Having gone through the facts of the case as also the submissions put forward by the learned Counsels, it is clear that there is no misrepresentation on the part of the petitioner. The respondent claims that the excess amount was paid which has to be realised, the same has been barred by the order of the Hon'ble Supreme Court in **State of Punjab & Ors. Vs Rafiq Masih** (supra) in which paragraph 12 read as follows:-

"12. 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 herein above, we may, as a ready reference, summarise the



following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) 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.

(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."

9. In that view of the matter, the order in question vide memo no. 5 dated 03.01.2014 stands quashed.



10. Any amount that has been recovered has to be
returned to the petitioner.

11. The writ petition stands disposed of.

(Rajiv Roy, J)

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