

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.823 of 2023

Amal Kumar Lal son of Jagdish Lal, resident of Puranankar Balha, Ladowar, Benibad, District- Muzaffarpur. At present, resident in the house of Dinesh Prasad Yadav, Near Red Cross Building, P.S.- Chitragupt Nagar, District- Khagaria.

... .. Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Energy Department, Govt. of Bihar, Patna.
2. The Chairman-cum- Managing Director, Bihar State Power Holding Company Limited, Patna.
3. The Managing Director, North Bihar Power Holding Company Limited, Patna.
4. The Deputy General Manager (Personnel), North Bihar Power Holding Company Limited, Patna.
5. The Accounts Officer, Bihar State Power Holding Company Limited, Patna.
6. The Deputy General Manager-cum- Electrical Superintending Engineer, North Bihar Power Holding Company Limited, Saharsa.
7. The Electrical Executive Engineer, M.R.T. Division, North Bihar Power Holding Company Limited, Saharsa.
8. The Electrical Superintendent Engineer, Electric Supply Circle, Saharsa.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Prem Kumar Jha, Advocate Mr.Rajesh Kumar Jha, Advocate
For the Respondent/s	:	Mr.Subhash Prasad Singh, GA-3
For the BSPHCL	:	Mr.Vinay Kirti Singh, Sr. Advocate Mr.Vijay Kumar Verma, Advocate Mr.Akhileshwar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 18-04-2023 Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Bihar State Power Holding Corporation Limited.

2. Petitioner in this case has prayed for the following reliefs:-

“(i) For issuance of appropriate writ/s, direction/s and



order/s in the nature of “Certiorari” for setting-aside the office order no. 11 dated 30.06.2021 (Annexure-4) issued under signature of the Electrical Executive Engineer, Saharsa (respondent no. 7) whereby and whereunder all the earlier orders, relating to the annual increment provided to the petitioner from 16.04.1999, have been cancelled and petitioner’s basic pay structure has been suo-moto revised and decreased to Rs. 57,500/- whereas Rs. 61,000/- was drawn by the petitioner at the time of his retirement on 30.04.2021 as per petitioner’s pay-slip for the month of April, 2021 (Annexure-2), illegally and arbitrarily.

(ii) For issuance of appropriate writ/s, direction/s and order/s in the nature of “Certiorari” for setting-aside the memo bearing No. Pen – 9719/21/2333 dated 22.11.2021 issued under signature of the Accounts Officer, Bihar State Power Holding Corporation Limited (hereinafter referred to as “the BSPHCL”) (respondent no.-5) whereby and whereunder on the basis of re-fixation/decrease of the petitioner’s basis pay-scale/structure vide office order no.-11 dated 30.06.2021 (Annexure-4), altogether ***total amount of Rs. 5,15,833/-*** [Five Lakh Nineteen Thousand Eight Hundred Thirty three] only under three heading viz. - (i) Rs.2,619/- from the head of G.P.F.; (ii) Rs. 4,76,264/- as alleged excess pay & (iii) Rs. 40,950/- from Leave Encashment)] has arbitrarily been deducted from the retirement benefit of the petitioner and be further pleased to direct the respondents concerned to return & pay the said amount of Rs. ***5,19,833/-*** to the petitioner within a fortnight in the light of judgment rendered by the Hon’ble Supreme Court of India in Sayed Abdul Kadir’s case reported in (2009)-SCC-475.



(iii) For issuance of appropriate writ/s, direction/s and order/s in the nature of “Certiorari” for setting-aside the P.P.O. no. 9719/2021/2332 dated 22.11.2021 (Annexure-7) issued under signature of the Accounts Officer, Bihar State Power Holding Corporation Limited (hereinafter referred to as “the BSPHCL”) (respondent no. 5) whereby and whereunder petitioner’s pension & Family Pension has wrongly been fixed on the basis of illegally decreased and re-fixed basic pay of Rs. 57500/- and direct the concerned respondents to fix and pay the pension & family pension to the petitioner on the basis of his basic pay of Rs. 61,000/- which has been drawn by the petitioner at the time of his retirement on 30.04.2021 (Gross salary of Rs. 80930/-) as per petitioner’s pay-slip for the month of April, 2021 (Annexure-2) w.e.f. 1.5.2021.

(iv) And be further pleased to pass any appropriate order/s, writ/s and direction/s for which the petitioner is found to be entitled in the given facts and circumstances of the case.”

3. It is the case of the petitioner that he was initially appointed as daily wager staff in the year 1982. Later on his service was regularized on the sanctioned and vacant post of Messenger by the competent authority. It is stated that after attaining the age of 60 years, he retired on 30.04.2021 from the same post of Messenger in the office of M.R.T. Sub-division-I, NBPDCCL, Saharsa. He was not given regular promotion in the entire service career.



4. It is stated that the petitioner was subjected to a disciplinary proceeding in the year 1999, in which he was awarded punishment of “(i) Condemnation; (ii) withholding of one annual increment with non-cumulative effect & (iii) During suspension period from 23.03.1999 to 23.01.2004, nothing will be payable except subsistence allowance and during such period, only notional increment will be payable, and the above period will be counted for pension providing service.”

5. It is stated that in the light of the memo no. 239 dated 07.02.2019 issued by the Electrical Superintendent Engineer, Electric Supply Circle, Saharsa vide office order no. 14 dated 13.02.2019 sanctioned/approved the withheld annual increment of the petitioner by way of making partial modification of earlier office order no. 71 dated 27.07.2013 and other office orders stating in paragraph ‘8’ of the writ application. It is stated that the petitioner was duly paid revised up-to-date salary on the basis of revised basic pay scale at Rs.57,500/- as on 01.07.2018.

6. The grievance of the petitioner is that all of a sudden, the Deputy General Manager (Personnel) (respondent no.4) issued memo no. 241 dated 29.06.2021 to the Electrical Superintending Engineer, Electric Supply Circle, Saharsa in



which it has been mentioned that the petitioner has been given the benefit of third ACP on 16.04.2013 based on the records regarding increment and salary fixation. Based on such fixation done by the Accounts Branch of the company step was taken to pay the retiral dues of the petitioner. It is stated that on the basis of the salary slip of the petitioner as contained in Annexures '2' and '3' to the writ application in which the petitioner's basic pay has been shown at Rs. 61,000/-, the petitioner got his retirement benefit, but, thereafter all of a sudden the respondents issued office orders whereunder the earlier orders relating to annual increments provided to the petitioner from 16.04.1999 have been cancelled and petitioner's basic pay structure has been suo-moto revised and decreased to Rs. 57,500/- from Rs. 61,000/-.

7. Learned counsel for the petitioner submits that the basic pay structure of the petitioner has been reduced in a most arbitrary and fanciful manner without giving any opportunity of hearing to the petitioner, without asking any show cause, therefore it is in violation of the principles of natural justice. It is stated that the office order (Annexure '4') by which the pay structure of the petitioner has been reduced is liable to be quashed.

8. Learned counsel submits that the petitioner filed a detail representation dated 02.08.2021 to the Electrical



Executive Engineer, M.R.T. Division, NBPDCCL, Saharsa and the same has also been served in the office of the Deputy General Manager-cum- Electrical Superintending Engineer, NBPDCCL (respondent no. 6) through speed post on 03.08.2021. It is further submitted that the petitioner's representation has also been sent by the Electrical Executive Engineer, M.R.T. Division, NBPDCCL, Saharsa to the Deputy General Manager (Personnel), NBPDCCL, Patna.

9. It is further stated that the petitioner submitted another representation dated 02.08.2021 (Annexure '5') personally in the office of the Chairman-cum-Managing Director, Bihar State Power Holding Company Limited, Patna but the grievance of the petitioner has not been considered. It is submitted that the BSPHCL, Patna (respondent no. 2) through its Accounts Officer (respondent no. 5) issued another Pension Order dated 22.11.2021 by which altogether Rs. 5,19,833/- only has been deducted/adjusted from the retirement benefit of the petitioner under three heads i.e. (i) Rs. 2,619/- from the head of G.P.F.; (ii) Rs. 4,76,264/- as alleged excess pay & (iii) Rs. 40,950/- from Leave Encashment.

10. Learned counsel submits that such deductions are against the spirit of the judgment of Hon'ble Supreme Court



rendered in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** reported in **(2015) 4 SCC 334**.

11. On the other hand, learned counsel for the respondent Power Company submits that presently he has no instruction in the matter but in case the representations of the petitioner are still pending with the competent authority, the same may be considered and an appropriate decision thereon may be taken and communicated to the petitioner within a reasonable period.

12. Having regard to the submissions noted hereinabove and the materials available on the record, this Court is of the considered opinion that the representations submitted by the petitioner as contained in Annexure '5' and '6' to the writ application must be considered by the competent authority within a period of two months from the date of receipt/production of a copy of this order. The competent authority is expected to consider each and every aspect of the matter and pass a reasoned order keeping in view the judgment of the Hon'ble Supreme Court in the case of **Rafiq Masih (White Washer)** (supra). A reasoned order shall be communicated to the petitioner within the aforesaid period of three months.

13. Till then, no recovery shall be made from the



petitioner and the amount, if any withheld from the gratuity of the petitioner shall be made available to him immediately subject to final decision of the competent authority.

14. It is however made clear that in case the petitioner ultimately succeeds in establishing that no recovery may be made, the amount, if any remained withheld shall be liable to be paid with statutory interest.

15. This Writ Application stands disposed of, accordingly.

(Rajeev Ranjan Prasad, J.)

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