IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4443 of 2020

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Bhogendra Lal S/o Late Hari Shankar Lal R/o A-505, Ribhiya Residency, Ved Nagar, Rukunpura, P.S.- Rukunpura, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar Through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary Department of Industries, Government of Bihar, Patna.
3. The Bihar Industrial Area Development Authority (BIADA) Udyog Bhawan, Gandhi Maidan, Patna through its Managing Director.
4. The Managing Director Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
5. The Executive Director (H.O.) Bihar Industrial Area Development Authority (BIADA), Patna.
6. The Employees Provident Fund Organization Serpentine Road, Patna, through the Commissioner.
7. The Regional Provident Fund Commissioner Employees Provident Fund Organization, Regional Office, Serpentine Road, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anupam Kumar Srivastav, Adv Mr. Abhishek Kumar Pandey
For the Respondent/s	:	Mr.Abbas Haider (Sc6)
For the BIADA	;	Mr. Avinash Kumar, Adv Mr. Ajay Kumar Mehta, Adv
For the E.P.F.	:	Mr. Prashant Sinha, Adv

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL ORDER

6 25-07-2024 Heard learned counsel for the petitioner, Counsel for the State, Counsel for BIADA and Counsel for the E.P.F.

2. The present writ petition has been filed for setting aside the notice circulated by Respondent No. 5 Executive Director, (H.O.) BIADA dted 09.01.2020 to hold and declare that the decision taken by the BIADA, Board of Directors in its 47^{th} meeting dated 23.01.2015 which was affirmed by the 56th Meeting of BIADA, Board of Directors dated 17.12.2018

pursuant to which the arrear of due amount along with penalty have been paid by the BIADA to EPFO on being resolved to confer the benefits of Employees Provident Fund and Miscellaneous Provisions Act, 1952 read with Employees Provident Fund Scheme, 1952 to all contractual employees at par with regular employees of BIADA is legal, valid and can't be overreached by the impugned notices. Further prayer has been made to hold and declare that the extra amount paid by BIADA is under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 read with Employees Provident Fund Scheme, 1952, which is not recoverable in any manner from the employees like Petitioner and during pendency of this writ application, Notices Dated 09.01.2020 and 16.01.2020 the Respondent No. 4 (Managing Director, BIADA) and Respondent No. 5 (Executive Director, BIADA) be restrained from taking any coercive steps against the Petitioner.

3. Learned counsel for the petitioner submits that the said notice which is annexed as Annexure-7 and Annexure-10 has been issued completely without jurisdiction and fit to be set aside. He submits that the petitioner was working in the department of the post of Executive Direction (H.O.) till the year 2019 and in response of the letter issued by the EPFO, the

matter was placed before the higher authorities of BIADA and it has been decided by them i.e. BIADA Board of Directors in its 47th and 56th meeting dated 23.01.2015 and 17.12.2018 respectively to pay the amount under the E.P.F. Scheme. He submits that the letter which has been annexed as Annexure P/1 by way of rejoinder to the counter affidavit is not due to the personal decision of the petitioner rather it was decision of the BIADA Officials at the highest level and in compliance of the same, the payment was made. Learned counsel for the petitioner further submits that this payment is not the payment in the individual account of any person rather it is a payment from the account of one organization to the account of another organization in compliance of the welfare scheme of Government of India for the employees of BIADA. He further submits that issuance of such type of coercive notice is not proper in the eye of law and BIADA is planning to take coercive action for realization of the amount from the petitioner which is not legal and due to such apprehension, petitioner has filed this present writ application.

4. Counsel for the BIADA on the other hand submits that by virtue of the said notices which are challenged and annexed as Annexure-7 and Annexure-10 a general circulation

has been made to all employees of BIADA, whose payment have been made at the higher ends in their EPF accounts had directed to be returned back due to the reason that under EPF Scheme, the money deposited in the account of EPF scheme cannot be refunded to the employer rather it can only be refunded to the employees, because E.P.F Act has formulated for the benefit of the employees and it is due to this reason the BIADA has correctly issued the notice. But, without answering to the notice, petitioner has opted to file the writ application, therefore, he submits that petitioner firstly be directed to file a reply in response of the said notices. He further submits that employees of BIADA other than the petitioner have complied the said notice and deposited the amount which was deposited from the account of BIADA to the account of EPF.

5. Learned counsel for the EPFO submits that he has filed the counter affidavit and submits that in the counter affidavit, specific stand of the EPFO is clear as mentioned in paragraph 6 and 7 of the counter affidavit which states that

> *6. "As far as EPFO is concerned since there was no joint request of the employer and employee under Paragraph 26 (6) of the EPF Scheme 1952, to contribute over and above statutory wage ceiling and there is no permission of the Commissioner to contribute on actual wages, therefore such contribution has been deposited in the EPF account of the petitioner, treating it to be erroneous deposit, while his pension contribution has been accepted on the wage ceiling of Rs.15000/-*

> *7. That since there is no provision in the EPF & MP Act for refund of the excess contribution amount to the employer therefore the EPFO has rejected the request of refund made by the employer but if the employee prays for withdrawal of the amount or seeks advance any part thereof it can be paid to him. In sum and substance, though it is erroneous deposit, it cannot be refunded back to the employer as there in no provision for such refund to the employer.*

6. Counsel for the State submits that State has nothing to say as in the present writ petition there is direct contest among the petitioner, BIADA and EPFO with whom the money has kept.

7. From the contention of the statement made in paragraph 6 and 7, it transpires to this Court that there is no provision in Employees Provident Fund and Miscellaneous Provisions Act, 1952 for refund of the excess contribution amount to the employer and it is due to this reason the E.P.F.O has rejected the request to refund made by the employer but it has categorically been mentioned that if the employees prayed for withdrawal of the amount or seek advance of any part, thereof, it can be paid to him and in this circumstance, the erroneous deposit, it can be refunded to the employee only.

8. In this background, this Court is of the view that even if the amount of BIADA which has been deposited erroneously before the EPF cannot be refunded back to the employer BIADA, but the said excessive amount may be

returned back to BIADA through his employee (petitioner) and the petitioner being the honest employee must have to rectify the wrongs.

9. In the light of the discussion made above, this writ petitioner is disposed off directing the petitioner to respond in the light of Annexure-7 and Annexure-10 before the BIADA authority. He is also directed to file application before the EPFO for the refund the erroneous amount by virtue of the claim form and the EPFO is directed that upon receiving such form shall return the amount to the petitioner and petitioner thereof within a reasonable period of time shall return the erroneous amount to the BIADA account. All such exercise shall be directed to be completed within 6 months.

10. It is made clear that in case, the petitioner has already withdrawn the amount from the EPF, the EPFO shall have no liability to return the amount but petitioner shall still have the liability to return the amount to BIADA

11. Accordingly, the writ application stands disposed off.

(Dr. Anshuman, J)

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