IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.493 of 2023
In
Civil Writ Jurisdiction Case No.13085 of 2021

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Bhuneshwar Prasad Singh S/o Late Aditya Narayan Singh R/o Village - Tungi, P.S. - Nawada, District - Nawada, Bihar.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Bihar, Patna.
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Director, Health Department, Govt. of Bihar, Patna.
4. The Accountant General, Bihar, Patna.
5. The Civil Surgeon-cum-In Charge Medical Officer, Nawada.
6. The Treasury Officer, Nawada.
7. The Assistant General Manager, State Bank of India, Centralised Pension Processing Centre, 4th Floor, Administrative Office, Judges Court Road, Patna.
8. The Branch Manager, State Bank of India, Branch- Nawada.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Ms. Roona, Advocate
For the Respondent/s	:	Mr. S.D.Yadav (AAG-9)
		Mr. Anil Kumar Verma, AC to AAG-9
For the Bank	:	Mr. Kaushlesh Choudhary, Advocate
For Accountant General	:	Mr. Binod Kumar Labh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-12-2024

The writ petition was filed against the recovery of alleged excess payment of pension and grade pay, on the ground of wrong fixation of grade pay, sought to be effected from both the writ petitioners. The writ petition was dismissed by the learned Single Judge finding that the petitioner had given an undertaking before the Bank that any excess amount, if credited to the account and found to be not entitled to the pensioner, would be refunded and made good. The learned Single Judge also relied on a decision of Hon'ble Supreme Court in ***High Court of Punjab and Haryana and Other v. Jagdev Singh; (2016) 14 SCC 267.***

2. We heard Ms. Roona, learned Counsel appearing for the petitioner, Sri S.D. Yadav, learned Additional Advocate General (9), Mr. Kaushlesh Choudhary, learned Counsel appearing for the Bank and Mr. Binod Kumar Labh, learned Counsel appearing for the Accountant General.

3. Only one of the writ petitioners have filed the appeal and we refer to the parties from their status in the appeal.

4. The appellant was working as a Basic Health Worker in the Government; appointed on 16.05.1976 and superannuated on 31.01.2012 after more than 30 years of service. The appellant's basic pay was fixed at Rs.22,514/- by the Office of the Accountant General and his retirement benefits were also being paid in accordance with the Pension Payment Order (PPO). It is the contention of the respondent-government that the petitioners grade pay was fixed wrongly as Rs. 4200/- while the Basic Health Workers were entitled only to Rs.2800/-; while the appellant was in employment. The Finance Department, Government of Bihar, *vide* its letter No.410 dated 08.08.2018 produced as Annexure-R/1 directed recovery of the excess amount paid in installments. The recovery was from the pension and included the excess amounts paid; computed on the basis of the higher grade pay.

5. Admittedly, there was no notice to the appellant before such recovery was ordered. The contention of the Government was that even at the time of sanction of grade pay, it was granted only on the condition that, if the revision of pay is found to be improper, then there would be a refund ordered. However, it is pertinent to notice that the Government has not produced the order by which grade pay was granted, with the reservation for refund of excess amounts, if found to be improperly granted. It is also pertinent that the petitioner had retired from service in 2012 and his pension was also fixed, as per the last pay drawn and the order finding him to have received excess grade pay and excess pension on wrong computation came only in the year 2018, 6 years after his retirement. The pension was sought to be re-fixed at Rs.20,516/- from that earlier fixed at Rs.22,514/-. We find the demand for refund of excess money and the re-fixation of pension to be in violation of principles of natural justice.

6. The learned Counsel for the Bank asserted that there was an undertaking filed before the Bank for recovery of excess amounts. We have to emphasize that the undertaking was before the Bank and not before the Government. The undertaking also served only, wrong computation made by the Bank for the purpose of disbursing pension to the pensioner in the account maintained by the pensioner with the Bank. In the present case, there is no wrong computation by the Bank and the Bank had been disbursing the pension in accordance with the PPO, as issued by the Office of the Accountant General, Bihar. The claim of excess amounts, as we found, arise from the order of Government, which found excess payment of grade pay and excess amounts disbursed as pension granted to the pensioner This we already found, was in gross violation of principles of natural justice. We find the undertaking given before the Bank for the purpose of disbursing of pension to be of no avail to the Government to seek refund of the excess amounts.

7. We also do not find any reason to sustain the reliance made to ***Jagdev Singh (supra)***. Therein, a Civil Judge Junior Division was promoted as Additional Civil Judge and the pay was fixed in the promoted post, based on a notification issued by the State Government. The rules provided an undertaking to be furnished that any excess amount found to have been paid will be refunded to the Government, either by adjustment against future dues to the Government or otherwise; which was furnished by the Judicial Officer based on which, the revised pay-scale was granted and later the selection grade. The Judicial Officer was placed under suspension and eventually compulsorily retired from service. The undertaking furnished by the Officer was to his employer.

8. Later, the Hon'ble Supreme Court accepted the first National Judicial Commission Report based on which the revision of pay of Judicial Officers in the State of Haryana was also revised, which necessitated excess payments to be refunded. The writ petition against the recovery was allowed by the High Court. Referring to ***State of Punjab & Others v. Rafique Masih (White Washer) and Others; (2015) 4 SCC 334,*** the second proposition therein was held to be not applicable to the fact situation, since the Officer was clearly placed on notice that any payment found to have been paid in excess, would require to have been refunded and the Officer also had furnished an undertaking, while opting for the provisional revision of pay-scale. The order of the High Court setting aside the recovery was found to be unsustainable.

9. We find no parallel, insofar as the present case is distinct and different and more in consonance with ***Rafiq Masih (supra)*** from which, the principles, we extract hereunder: -

> *"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 it 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."*
>
> *(emphasis supplied).*

10. All the parameters apply squarely in the present case. The recovery is made from a Basic Health Worker, who is in the lower cadre of service. The recovery is attempted to be made from a retired employee, that too, 6 years after his retirement. The third condition also stands satisfied since payment was made for a period in excess of 5 years, before the order of recovery is issued and even now, there is no clarity as to the date on which excess payment of grade pay commenced. The condition at Serial Nos. 4 and 5 is of no consequence, since all the other three conditions are satisfied in the present case.

11. We have held that the undertaking before the Bank, is of no consequence, insofar as the recovery ordered by the Government on the basis of the allegation of excess grade pay having been granted, while the petitioner was in service. There is nothing produced by the Government to show that the grant of grade pay was with the condition of refund in the circumstance of an excess payment being made. There is no undertaking filed before the Government by the employee when the grade pay was granted. The recovery was also ordered without any notice to the pensioner.

12. We find absolutely no reason to sustain the order of recovery and we are of the definite view, on facts, that, ***Rafique Masih (supra)*** applies squarely and ***Jagdev Singh***

(supra), with respect to a Judicial Officer does not have any application.

13. We set aside the judgment of the learned Single Judge and allow the appeal. There can be no recovery effected on the allegation of excess payment of grade pay; if made, while in employment or as pension based on the last-pay drawn. The revision of pension, on that count and the recovery effected also is bad. The revision of pension made by the Accountant General by a revised PPO is also set aside. We direct the Government to refund the amounts already deducted from the pension. The petitioner shall be paid the pension as determined at the time of retirement.

14. The writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Nani Tagia, J)

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