

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12304 of 2023

Devendra Tiwary Son of Late Raja Ram Tiwary, resident of Village Malkauli,
Police Station-Bagaha, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, New Secretariat, Bailey Road, Patna.
2. The Director, Water and Land Management Institute, Phulwarisharif, Patna.
3. The Superintending Engineer, Command Area Development Circle, Muzaffarpur.
4. The Executive Engineer, Command Area Development Division, Bettiah.
5. The Executive Engineer, Command Area Development Agency, Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rupak Kumar, Advocate
For the Respondent/s : Mr. Anjani Kumar, AAG-4

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 15-01-2024

The present writ petition has been filed for quashing the order dated 27.09.2021, issued by the Executive Engineer, Command Area Development Division, Bettiah whereby and whereunder a sum of Rs.6,42,263/- has been directed to be recovered from the gratuity amount of the petitioner, on account of alleged excess salary paid to the petitioner, for the period 25.08.1983 to 31.10.2020.

2. The brief facts of the case, according to the



petitioner, are that the petitioner was working as Correspondence Clerk on daily wages against sanctioned vacant post in the office of the Executive Engineer, Gandak Area Development Division, Bagaha, Bettiah with effect from 25.08.1983, whereafter he along with others had approached this Court by filing a writ petition, bearing CWJC No.4587 of 1989, inter alia praying therein to direct the respondents to regularize their services, which was allowed by a judgment dated 18.02.1991, however, the same was challenged by the Gandak Command Area Development Division by filing an appeal, bearing LPA No.32 of 1991 but the same was dismissed by an order dated 17.02.1993, which in turn was challenged before the Hon'ble Apex Court in S.L.P. (Civil) No. 13250 of 1993, nonetheless, the same was also dismissed by an order dated 17.09.1993. The petitioner was then appointed, vide memo dated 07.10.1993 and his services were regularized on the post of Correspondence Clerk with effect from 25.8.1983.

3. Thereafter, the service book of the petitioner and others was opened and in the service book of the



petitioner, the date of first joining of the petitioner on the post of correspondence clerk was mentioned as 25.8.1983, whereafter the Executive Engineer, Gandak Command Area Development Division, Bettiah had fixed the salary of the petitioner in the replacement scale and paid the annual increment from the year 1983 onwards, in pursuance to letter dated 13.08.1999, by issuing an office order dated 31.12.2001. Nonetheless, the petitioner was not paid salary for the period 25.08.1983 to 06.10.1993, hence he had filed a writ petition, bearing CWJC No.12142 of 2010, which was disposed of by a co-ordinate Bench of this Court, by an order dated 23.08.2010, with a direction to the Secretary, Water Resources Department to release the necessary funds for payment of salary to the petitioner and then the petitioner was paid arrears of salary for the period 25.08.1983 to 06.10.1993.

4. It is submitted by the Ld. Counsel for the petitioner that the petitioner had then superannuated on 31.10.2020 but thereafter, the respondents have shockingly issued a letter dated 16.09.2021 to the



petitioner, seeking his reply, as to why recovery of a sum of Rs.6,42,263/- be not made from him on the head of excess salary paid for the period 25.08.1983 to 31.10.2020. In the meantime, a writ petition filed by the petitioner, bearing CWJC No. 23380 of 2013 was heard by a co-ordinate Bench of this Court and disposed of by an order dt. 09.01.2023 whereby and whereunder, the petitioner was granted liberty to approach the respondent authorities for redressal of his grievances regarding recovery being made from the gratuity amount.

5. The petitioner had then filed a representation before the Superintending Engineer, Command Area Development Circle, Muzaffarpur on 07.02.2023, however, the same has been rejected, by an order dated 02.06.2023 on the ground that the petitioner has availed all the benefits admissible to a regular employee from the date of his appointment as daily wager, i.e. w.e.f. 25.10.1983 till 06.10.1993, although his services were regularized with effect from 07.10.1993, hence there is no illegality in the order dated 27.09.2021, issued by the Executive Engineer,



Command Area Development Division, Bettiah, whereby it has been directed that the excess amount of salary paid to the petitioner from 25.08.1983 to 31.10.2020, totaling to a sum of Rs.6,42,263/- be deducted from the amount payable to the petitioner on the head of gratuity, whereupon the balance amount of gratuity, i.e. a sum of Rs.1,08,000/- and leave encashment amount to the tune of Rs.5,55,750/- be paid to the petitioner.

6. The learned counsel for the petitioner has contended that since there is no misrepresentation on the part of the petitioner, leading to excess payment of salary to him, no recovery can be made from the petitioner, especially after his superannuation as has been held by the Hon'ble Apex Court in a judgment reported in **(2015) 4 SCC 334**, rendered in the case of **State of Punjab vs. Rafique Masih**.

7. *Per contra*, the learned counsel for the respondent-State has submitted by referring to the counter affidavit filed in the present case that the petitioner and four other employees were initially



engaged as daily wage workers on different dates and as far as the petitioner is concerned, he was engaged as daily wage employee on 25.08.1993, whereafter the said employees had moved this Court by filing a writ petition, bearing CWJC No.4587 of 1989, which was allowed by an order dated 18.02.1991 and the same was upheld upto the Hon'ble Apex Court, leading to the services of the petitioners and others being regularized. As far as the petitioner is concerned, he was regularized, by an order dated 07.10.1993, hence, the petitioner is legally entitled to get the service benefits with effect from the actual date of joining as a regular employee, i.e. w.e.f. 07.10.1993 and not from the date of his initial appointment on daily wage basis, i.e. 25.08.1983. Nonetheless, the petitioner managed to receive all the benefits admissible to a regular employee with effect from 25.08.1983. In such view of the matter the respondent no.3, vide letter dated 21.08.2020, had directed the concerned Executive Engineer to consider the date of regularization of the petitioner



as 07.10.1993 and accordingly revise the pay scale as per the 7th pay revision as also correct the illegality which has crept in fixation of salary, leading to excess amount being paid to him. In fact, the petitioner has also received all the benefits akin to that of a regular employee for the period he had worked on daily wages i.e from 25.08.1983 to 7.10.1993, hence the service book of the petitioner was examined by the District Account Officer, West Champaran, Bettiah, the salary was re-fixed and calculation was made with regard to the excess amount paid to the petitioner, which totals upto a sum of Rs.6,42,263/-, thus after issuing a show-cause notice dated 16.09.2021 and considering the reply filed by the petitioner on 21.09.2021, a reasoned order dated 27.9.2021 and 2.6.2023 have been passed, which under the facts and circumstances of the present case requires no interference by this Court.

8. I have heard the learned counsel for the parties and perused the materials on record, from which it is apparent that there has been no



misrepresentation on the part of the petitioner, leading to payment of alleged excess amount of salary to the petitioner. Moreover, the Hon'ble Supreme Court of India, times without number, has reiterated the well settled principle of law to the effect that no recovery can be effected from persons like the petitioner, who have already attained the age of superannuation since there has been neither any misrepresentation nor any fraud has been committed by them, leading to payment of excess amount of salary, whereas it is the negligence and the laches on the part of the respondent authorities which has led to excess payment of salary. The present case is squarely covered by the latest judgment rendered by the Hon'ble Supreme Court in the case of **Rafique Masih** (supra), paragraph-18 whereof is reproduced herein below:-

"18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

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

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

(iii) Recovery 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.

(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. This Court further finds that the law regarding



recovery is no longer res integra and has been well settled in a catena of decisions, reported in **(2009) 3 SCC (Syed Qadir vs. State of Bihar); (1995) Suppl.1 SCC 80 (Sahib Ram vs. State of Haryana); (1994) 2 SCC 52 (Shyam Babu Verma vs. Union of India); (1997) 6 SCC 139 (B.Ganga Ram vs. Regional Joint Director); (2006) 11 SCC 492 (Purshottam Lal Das vs. State of Bihar); (2000) 10 SCC 99 (Bihar State Electricity Board vs. Bijay Bhadur); (2006) 11 SCC 7089 (B.J. Akkara vs. Government of India University); (1995) suppl. 1 SCC 18 (Sahib Ram vs. State of Haryana) and the one reported in (2015) 4 SCC 334 (State of Punjab vs. Rafique Masih).**

10. Having regard to the facts and circumstances of the case, this Court finds that since the petitioner has superannuated on 31.10.2020 and moreover, the respondents have failed to demonstrate that the petitioner had engaged in any sort of misrepresentation, leading to payment of the alleged excess salary to him, no recovery can be



made from the pensionary dues of the petitioner, hence the impugned order dated 27.09.2021, passed by the Executive Engineer, Command Area Development Division, Bettiah as also the order dated 02.06.2023, passed by the Superintending Engineer, Command Area Development Circle, Muzaffarpur are unsustainable in the eyes of law, hence are quashed. Consequently, the respondents are directed to refund the aforesaid amount of Rs. 6,42,263/- to the petitioner, in case the same has already stood recovered, within a period of two weeks of receipt/production of a copy of this order.

11. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Kanchan./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.03.2024
Transmission Date	NA

