

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8626 of 2012

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Basant Kumar Sinha S/O Late Gupteshwar Prasad, R/O Indu Niwas, Kaliket
Nagar at Mahuabag - West Road of Hanuman Mandir, P.S.- Rupaspur,
District- Patna.

... .. Petitioner

Versus

1. The Bihar State Electricity Board, through its Chairman, Vidyut Bhawan,
Bailey Road, Patna.
2. Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road,
Patna.
3. Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road,
Patna.
4. Financial Controller, Bihar State Electricity Board, Vidyut Bhawan, Bailey
Road, Patna.

... .. Respondents

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Appearance:

For the Petitioner	:	Mr. Ashok Kumar, Advocate
For the Respondents	:	Mr. Vinay Kirti Singh, Sr. Advocate
		Mr. Akhileshwar Singh, Advocate
		Mr. Venkatesh Kirti, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

4 04-03-2024 Heard Mr. Ashok Kumar, the learned counsel for

the petitioner and Mr. Binay Kirti Singh, the learned senior
counsel appearing on behalf of the Bihar State Power Holding
Company Ltd. (Earlier, Bihar State Electricity Board).

2. The present writ petition has been filed for the
following reliefs:

*(a) For quashing the office order no. 2685,
contained in Memo No. 1772, dated 10.09.2010,
whereby and whereunder the petitioner's pay scale
has been re-fixed and his pay-scale has been*



reduced (Annexure-1).

(b) For quashing the office order no. 13 contained in Memo No. 163, dated 17.02.2011, whereby and whereunder in compliance of the aforesaid order, an amount of Rs. 1,06,543/- (Rupees one lakh six thousand five hundred and forty-three) has been recovered from the amount of gratuity after retirement from service (Annexure-2).

(c) For giving a direction to fix the pension and other retiral benefit and after quashing the order of aforesaid pay the arrears and refund the recovered amount forthwith along with statutory interest.

(d) Any other relief/reliefs which this Hon'ble Court may deem fit and proper.

3. Learned counsel for the petitioner submits that after his retirement he has received a letter contained in Annexure-2 of the writ petition, whereby an amount of Rs. 1,06,543/- (Rupees one lakh six thousand five hundred and forty-three) has been recovered from the amount of gratuity of the petitioner.

4. Learned counsel for the petitioner further submits that without issuing any show-cause notice, the Bihar State Power Holding Company Ltd. (Hereinafter referred to as "Board") has issued the impugned order (Annexure-2).

5. Learned counsel for the Board has filed a counter-affidavit stating therein that the petitioner has received an excess



amount which he was not entitled to and the matter was examined by the Administration as well as by the Audit Department of the Board and it was found that due to certain changes in pay fixation of the petitioner, only Rs. 38,574/- (Rupees thirty-eight thousand five hundred and seventy four) stand recovered from the petitioner. Since the petitioner had retired from service and the Board has issued a show-cause notice to the petitioner and after receiving his explanation, in the light of judgment of the Apex Court as well as the High Court, the Board has not recovered the amount of Rs. 38,574/- and thereafter, the Board vide Memo No. 285 dated 13.03.2015 has returned the amount of Rs. 1,06,543/-, which was recovered from the petitioner.

6. In view of the aforesaid, he further submits that with reference to the Full Bench Judgment dated 04.07.2007, in the case of ***Ram Binod Singh & Ors. vs. Bihar State Electricity Board & Ors., reported in 2007(3) PLJR 398***, and para no. 26 of the said judgment is read as follows:

The relevant provisions of the Indian Contract Act, particularly Section 72 cover cases of mistake of fact as well as law and provide for recovery. The principle of restitution in case of unjust enrichment is also an accepted principle for ensuring justice in appropriate case. Hence, in law,



the position appears to be clear that there is no legal bar in ordering for recovery from retired employees where they have received money benefits on account of mistake at the ministerial level in the matter of fixation of pay, grant of increments or time bound promotion when the conditions precedent for such promotions were clearly non est. However, it has been correctly submitted on behalf of the petitioners that the theory of simple mistake or error to justify recovery will not hold good where the grant did not suffer from patent illegality or perversity so as to attract the Wednesbury Principle or the vice of malafide in law. For example, where two interpretations of a provision were possible and one was consciously approved and adopted by the competent authority meant to be applied generally to all concerned, any error in such decision of the competent authority if corrected at a later stage may be ordered to apply only pro-spectively. Moreso, if the decision has been followed for many years. In other words, if on reinterpretation or adjudication the earlier view permitting the grant of monetary benefits is found to be by a competent authority and bonafide but wrong, mistaken or erroneous, then ordinarily no recovery should be made unless the excess payment already made is covered by the two exceptions pointed out in the case of Madan Mohan Prasad (supra). But if the grant was by way of undue favour, arbitrary, malafide, ultra vires and/or void



ab initio, recovery of public money should be the normal course. In such cases of clear disobedience of policy or rules by ministerial action or clear dishonest decision causing undue loss to public money, action against the concerned authority may also be justified to prevent and discourage plunder of public money by sheer disregard of clear law. The constitutional schemes of rule of law and fairness in public action support recovery in such cases unless law of limitation or waiver etc. are successfully invoked to show that they prevent such a course in the facts of any particular case.

7. In view of the settled principle of law, the petitioner is not entitled to avail interest from the amount which was credited to the petitioner due to wrong fixation of his pay.
8. Accordingly, the writ petition stands disposed of.

(Rajesh Kumar Verma, J)

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