IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 18026 of 2023

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Malti Devi W/o Late Akhileshwar Jha, R/o Ward No. 2/35, Village and Post Dumra, P.S.- Dumra, District- Sitamarhi.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Engineer-in- Chief- cum- Special Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
4. The Chief Engineer (Mechanical), Public Health Engineering Department, Govt. of Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Circle, Muzaffarpur.
6. The Executive Engineer, Public Health Division, Sitamarhi.
7. The District Accounts Officer, Sitamarhi.
8. The District Treasury Officer, Sitamarhi.
9. The Accountant General (A and E), State of Bihar, Patna.

... ... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Siyaram Pandey, Advocate

For the Respondent/s : Mr. Vikash Kumar (Sc 11)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 02-04-2024

1. The present writ petition has been filed for quashing the memo dated 06.10.2023, issued by the Executive Engineer, Public Health Division, Sitamarhi, whereby and whereunder the pay of the petitioner has been revised w.e.f. 01.07.2011, on account of non-passing of the Computer Competency Test

Examination and it has been directed to recover a sum of Rs.13,08,410/- from the petitioner on the head of excess salary and gratuity paid to her.

2. The brief facts of the case, according to the petitioner, are that she was appointed on the post of correspondence clerk on compassionate ground on 20.06.1990 and after rendering unblemished service she superannuated on 30.09.2022. It is stated that though the petitioner has filed pension papers in time, however, till date the pensionary benefits have not been paid to her and instead by an order dated 14.09.2023, the pay scale of the petitioner has been lowered on the ground that the petitioner has not passed the computer competency test exam, whereafter, the impugned order dated 6.10.2023 has been issued by the Executive Engineer, Public Health Division, Sitamarhi, directing for recovery of a sum of Rs.13,08,410/- from the petitioner.

3. The learned counsel for the petitioner has referred to a circular dated 29.6.2020, issued by the Under Secretary, General Administration Department, Government of Bihar, Patna, wherein it has been stipulated that for the purposes of pay increments, it is not necessary to pass the computer competency test Examination. Reference has also been made to Bihar

Government Servant exemption from passing departmental exam Rules, 2018, issued vide notification dated 06.03.02018 by the General Administration Department, wherein it has been stipulated that in case an employee has appeared in the exam, however, has not been able to pass the same but has attained the age of 50 years in the meantime, such an employee shall be exempted from passing the computer competency test Examination, in case appropriate request is made.

4. Per contra, the learned counsel for the respondent-State has submitted by referring to the counter affidavit filed in the present case that after retirement, the service book of the petitioner was sent to the Office of the Accountant General, Government of Bihar, Patna vide letter dated 25.02.2023, for issuance of pension payment order, however, the same was returned vide letter dated 15.05.2023, with an objection that in view of the letter dt. 29.5.2011, issued by the General Administration Department, the employees belonging to supervisory cadre and group-'ga' will have to pass the computer competency test Examination for grant of next pay increment, whereas the petitioner has not passed the said examination. It is further submitted that in view of the objection raised by the Office of the Accountant General, Government of Bihar, Patna,

the matter was reviewed and it transpired that the petitioner has not passed the computer competency test Examination, hence vide office Order dated 14.9.2023, the pay of the petitioner was revised w.e.f. 1.7.2010 to 30.9.2022 and a sum of Rs.13,08,410/- was found recoverable from the petitioner, leading to issuance of the consequential order dated 6.10.2023, as aforesaid. It is stated that as per the Bihar Government Servants (Computer Competency for Recruitment Confirmation) Rules, 2011 (herein after referred to as the "Rules, 2011"), notified vide memo dated 24.5.2011, it is necessary to pass the computer competency test for grant of next pay increment. Thus, it is submitted that there is no illegality in the action of the respondents.

5. I have heard the learned counsels for the parties and perused the materials on record. This Court finds that the respondents have relied on the Rules, 2011, notified vide Notification dated 24.5.2011, nonetheless, the same has stood further clarified vide letter dated 29.6.2020, issued by the General Administration Department, Government of Bihar, Patna (Annexure-5 to the writ petition) wherein it has been stipulated that for the purposes of confirmation of service and pay increment of the employees belonging to group-'ga' and clerks, passing of computer competency test Examination will

not be necessary. In any view of the matter the Bihar Government Servant exemption from passing departmental exam Rules, 2018 also talks about exemption from passing the said computer competency test examination, after attaining the age of 50 years. Thus, this Court finds that the respondents have illegally revised the pay of the petitioner not only in teeth of the aforesaid clarification, issued vide letter dated 29.6.2020, by the General Administration Department but also against the well settled law to the effect that non passing of departmental examination cannot be an impediment to grant of the benefits of time bound promotion/pay increment/ACP/MACP. Reference in this connection be had to the following judgments:-

(i) Judgment rendered by the Hon'ble Apex Court in the case of ***Amrendra Kumar Singh and Ors. Vs. The State of Bihar and Ors.***, reported in 2023 (2) PLJR (SC) 423;

(ii) Judgment rendered by the learned Division Bench of this Court in the case of ***The State of Bihar & Ors. vs. Ram Subhag Singh***, reported in 2022 (2) PLJR 773;

(iii) Judgment, rendered by this Hon'ble Court in the case of ***State of Bihar & Ors. vs. Anjani Kumar***, reported in 2013 (2) PLJR 643, which has also been upheld upto the Hon'ble Apex Court;

(iv) Judgment rendered by the learned Division Bench of this Court in the case of ***State of Bihar & Ors. vs. Smt. Jivachi Devi***, reported in 2020 (2) BLJ 471, which has also been upheld by the Hon'ble Apex Court and

(v) Judgment rendered in the case of ***The State of Bihar & Ors. vs. Shri Krishna Singh & Anr.*** (L.P.A. No.372 of 2019).

6. Yet another aspect of the matter is that it is a well settled law that no recovery can be affected from an employee, who has already attained the age of superannuation, more so if there has neither been any misrepresentation nor any fraud has been committed by such an employee leading to payment of excess amount of salary. The law regarding recovery is no longer res integra and has been well settled in a catena of decisions, reported in (2009) 3 SCC 475 (***Syed Abdul Qadir & Ors vs State Of Bihar & Ors***.); (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***) and the one reported in (2015) 4 SCC 334 (**State of Punjab vs. Rafique Masih**).

7. The Hon'ble Apex Court times without number has reiterated the well settled principle of law to the effect that no

recovery can be effected from an employee, who has already attained the age of superannuation, especially in cases where there has been neither any misrepresentation nor any fraud has been committed by the employee leading to payment of excess amount of salary, whereas on the contrary, it is on account of negligence and laches on the part of the respondent authorities which has led to excess payment of salary. The present case is squarely covered, not only by a catena of judgments rendered by the Hon'ble Apex Court, as have been referred to herein above, but also by the latest judgment rendered by the Hon'ble Apex Court in the case of Rafique Masih (supra), paragraph No. 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:-*
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> *(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
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> *(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".

8. Having regard to the facts and circumstances of the case, for the foregoing reasons and in view of the law laid down by the Hon'ble Apex Court in a catena of decisions, as aforesaid, I deem it fit and proper to hold that no recovery can be made from the petitioner and non-passing of the computer competency test Examination cannot be an impediment to grant of the next pay increment, thus the Office Order dated 14.09.2023, issued by the Executive Engineer, Public Health Division, Sitamarhi as also the memo dated 06.10.2023, issued by the Executive Engineer, Public Health Division, Sitamarhi are quashed and the respondents are directed to restore the pay

scale of the petitioner, refund the amount of recovery made from the petitioner and further make payment of all the outstanding retiral dues of the petitioner within a period of four weeks of receipt/production of a copy of this order.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2024
Transmission Date	NA