

(2004) 09 PAT CK 0051
In the Patna High Court
Case No : LPA No. 842 of 2004

Chandra Shekhar Mishra

APPELLANT

Vs

The Chairman, Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 01-09-2004

Acts Referred:

Citation : (2006) 1 PLJR 287

Hon'ble Judges : Nagendra Rai, Acting C.J.; S.N. Hussain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The appeal is directed against the order dated 27.7.2004 passed by the learned Single Judge in CWJC No. 8939 of 2004 whereby he has ordered for recovery of the excess amount paid to the appellant on the ground that he did not pass the Hindi noting and drafting examination at the relevant time. Admitted fact is that the appellant joined the service in 1967 and in 1968 a rule mandatory in nature came into force for all the Class III employees of the State Government to pass the Hindi noting and drafting examination. The appellant cleared the examination in 1993 but he was getting the benefit prior to the passing of the examination. When the said fact was detected an order for recovery of excess amount already paid was passed.

2. Learned counsel for the petitioner relied upon a judgment of the learned Single Judge of this court passed in CWJC No. 6549 of 2004 on 19.8.2004 whereby the learned Single Judge relying upon a judgment of the Supreme Court passed in the case of Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr. has ordered that in absence of misrepresentation, recovery of excess amount cannot be made.

3. In our view, the attention of the learned Judge was not drawn to the special facts of the case of Bihar State Electricity Board and Anr. vs. Bijay Bhadur and Anr. (supra) where their lordships have observed in paragraph 10 in clear words

that the order will be restricted only to the facts of the present writ petition. That was not a law laid down.

4. A Division Bench of this court having considered the matter in the case of Bihar State Electricity Board and Others Vs. Man Bahadur and Others has already held that once a benefit has been granted to an employee wrongly and the mistake has been detected then recovery can be made. This court had relied upon the judgments of the Apex Court rendered in the cases of V. Gangaram Vs. Regional Joint Director and others, , State of Punjab and Others Vs. Devinder Singh and Others, and Union of India and Others Vs. Smt. Sujatha Vedachalam and Another, .

5. Admitted fact is that the appellant is in service and he passed the examination in 1993, as stated above. In that view of the matter, in law he was not entitled to get the benefit before passing the examination. As such the order for recovery is justified and the same cannot be defaulted on the ground that there was no misrepresentation on the part of the appellant. The mistake committed by the office can always be corrected.

6. This court in the case of Bihar State Electricity Board and Anr. vs. Man Bahadur and Ors. (supra) has already held that the employer has a right to recover the excess amount if it has been wrongly paid and a SLP filed against the said order has been dismissed by the Apex Court.

7. Taking into consideration the facts of this case, we are fully agreed with the view taken by the learned Single Judge that the recovery cannot be stopped. Accordingly, this appeal is misconceived and is dismissed.