
(2010) 04 PAT CK 0179
In the Patna High Court
Case No : CWJC No. 4440 of 2005

Dineshwar Singh

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Citation : (2010) 04 PAT CK 0179

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Jyoti Saran, J.—Heard Mr. Vindhyachal Singh, learned Counsel appearing on behalf of the petitioner and Mr. Vinay Kirti Singh, learned Counsel representing the Bihar State Electricity Board.

2. The petitioner is aggrieved by the order bearing memo No. 1474 dated 23.7.2003 (Annexure-3) whereby the Financial Controller of the respondent Board, while according sanction for payment of the gratuity of Rs. 2,33,475/, has directed for recovery of an amount of Rs. 1,09,852.80 on alleged grounds of excess pay drawn by the petitioner during his service. The petitioner is also aggrieved by the action of the respondent authorities in not allowing the commutation of pension despite the order sanctioning the same as contained in Annexure-2 to the writ petition.

3. With the consent of the parties, the matter has been taken up for disposal at the stage of admission.

4. The petitioner was appointed as a Correspondence Clerk on 13.7.1961 and superannuated from the post of office Superintendent with effect from 31.1.2003. He applied for commutation of his pension and which was allowed vide order dated 10.9.2003 as contained in Annexure-1 to the writ petition and orders were passed for payment of the amount of commuted value of pension as contained in Annexure-2.

5. Admitted position is that the entire admissible amount of retiral benefits have since been paid to the petitioner except the two issues set out hereinabove. The commutation amount has not been received as also a sum of Rs. 1,09,852.80 has been recovered from his gratuity amount. The said situation has led to the filing of the writ petition.

6. Learned Counsel for the petitioner submits that the recovery effected by the authorities while according sanction for payment of gratuity vide memo dated 23.7.2003 (Annexure-3) is not only illegal and arbitrary action but is also in gross violation of the principle of natural justice. He submits that no notice or any opportunity of hearing was provided to the petitioner before the said order was passed. He further submits that no reason has been assigned to the petitioner, for the action taken by the respondent authorities. He thus submits that unless the respondents allege any fraud, misrepresentation or the like against the petitioner in so far as the fixation of pay is concerned, or it is found that the petitioner was not entitled to the scale itself, no action of recovery can be undertaken by the authorities as laid down in the Full Bench judgment of this Court reported in Bihar State Electricity Board and Others Vs. Ram Kumar Bharti @ R.K. Bharti and Others . He thus submits that not only the petitioner is entitled for refund of the recovered amount but is also entitled for commutation amount.

7. Mr. Vinay Kirti Singh, learned Counsel representing the Board opposes the contentions advanced on behalf of the petitioner and supports the action taken by the authorities. He, with reference to the Standing Order No. 515 dated 7.5.1976 of the respondent Board, submits that the provision of providing double benefit to the employees of the Board had been withdrawn under the said order and as the petitioner had been granted the said double benefit, the same was in the teeth of the circular of the Board and thus, the Board was within the jurisdiction to recover the excess amount drawn by the petitioner by reason of such incorrect pay fixation.

8. In so far as the prayer for commutation is concerned, learned Counsel, with reference to a Circular dated 17.11.2003 issued by the Board, submits that said facility was discontinued in view of the financial crunch being faced by the department. He submits that in absence of any deductions made from the pension of the petitioner, he was not entitled to the said benefit even if earlier any sanction had been accorded for payment of commutation of pension. He submits that in view of the said policy decision, the petitioner was not entitled to the facility of commutation of pension.

9. Learned Counsel representing the Board, in support of his contentions, relied upon a bench decision of this Court reported in 2005 (4) PLJR wherein in similar circumstances, this Court did not entertain the prayer and found justification in the decision taken by the respondent Board.

10. In view of the position noted above, this Court would not interfere with the

decision taken by the Board and the prayer of the petitioner for payment of the commuted value of pension, is disallowed.

11. Coming to the recovery aspect, I find that the respondent Board has carried out a refixation order which dates back almost 24 years and on that basis, they have tried to impress that the fixation of the petitioner which was done on 27.5.1978 was not in accordance with the Rules and by reason of the said pay fixation, the petitioner continued to draw the excess amount until his retirement. In support of their action, the respondent Board have relied upon two of its circulars dated 7.5.1976 and 12.9.1978.

12. This very issue of conferment of double benefit and withdrawal thereof in the light of the Circular No. 515 dated 7.5.1976 came to be tested by a Bench of this Court in a writ petition raising identical issues in the case of Satyanarayan Lal v. The Bihar State Electricity Board and Ors. reported in 2010 (1) PLJR 347. This Court after examining the Standing Order(s) relied upon by the respondent Board has held that the action of the authorities in carrying out the refixation can not be upheld as the facility was never completely withdrawn, rather stood eclipsed for a short period, only to be revived under the standing Order No. 125 dated 7.5.1983 and thus there was no infirmity in the pay fixation.

13. The judgment rendered in the case of Satyanarayan Lal (supra) applies with full force to the case of the present petitioner. Apart from that, in absence of any direct or even indirect allegation against the petitioner, in the matter of his pay fixation, I find the action taken by the respondent Board after a lapse of two decades is most unjust and inequitable, to say the least and thus unsustainable.

14. In the result, the stipulation of recovery present in the order sanctioning gratuity as contained in Annexure-3 is set aside. The respondents are directed to remit the amount recovered from the gratuity amount of the petitioner within a period of three months from the date of receipt/production of a copy of this order.

15. The writ petition is allowed to the extent indicated above.