(2004) 11 PAT CK 0046

In the Patna High Court

Case No : CWJC No. 11541 of 2003

Mostt. Snehlata Prasad — APPELLANT

Vs

The Chairman, B.S.E.B. and Others — RESPONDENT

Date of Decision : 11-11-2004

Acts Referred:

Citation : (2005) 1 PLJR 21

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Gopal Govind Mishra, for the Appellant; Mihir Kumar Jha and Ramesh Kumar Datta, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—The petitioner has filed this writ application praying for a direction to the respondents to pay amount of leave encashment, G.P.F. Gratuity, fixation of pension, arrears of pension and arrears of salary with interest as well as for quashing the order contained in Annexure-1 whereby the Superintending Engineer, Bhagalpur Circle has directed to deduct the amount from the death-cum-retiral benefits of late husband of the petitioner. This deduction has been ordered after revising the pay scale, yearly increment given to the late husband of the petitioner and fixing the pay of late husband of the petitioner in the lower scale. The husband of the petitioner namely Awadh Kishore Prasad was appointed as a Typist in Bihar State Electricity Board on 18.1.1965. His service was confirmed as employee of the Bihar State Electricity Board on 31.12.1972 as Typist. He died on 17.9.2002 in harness as an Office Superintendent, Electric Circle, Mayaganj, Bhagalpur. After the death of her husband, the petitioner intimated to the office regarding his death. She also submitted her claim papers before the Personal Officer, Bhagalpur Electricity Supply Area, Bhagalpur which was forwarded to the Bihar State Electricity Board alongwith service book and other relevant papers.

2. The grievance of the petitioner is that the Board has not paid the death-cum-

retiral dues of husband of the petitioner as yet but has reduced the salary of the petitioner after his death and has directed to deduct the amount from the retiral dues. The deduction order is Annexure-1 i.e. the order dated 29.4.2002, issued by the Superintending Engineer, Bhagalpur Circle. It is strange that despite several decisions in different cases by the High Court as well as Apex Court that such recovery is not permissible such orders are being passed by the respondent, in clear violation of the decision of this Court as well as the Apex Court.

3. A counter affidavit has been filed by the Board wherein it has been stated that when the claim papers alongwith service book of the late husband of the petitioner was received by the audit department, in course of checking some discrepancies in pay fixation were detected. The amount of three advance increment was given to the late husband of the petitioner after promotion as Headclerk from 7.4.1978 and 12% pay fixation benefit from 12.4.1980 was allowed in wrong manner. This required necessary correction and calculation of the recoverable excess amount drawn by the husband of the petitioner. Considering this discrepancies the gratuity claim of the petitioner was kept in abeyance till the finalisation of the said discrepancies. In the meantime pension was sanctioned to the petitioner, vide Pension order No. 498 dated 8.3.2003. The audit report found Rs. 99,563.30 recoverable and it has been recovered from gratuity amount. The petitioner has not vacated the government quarter though her husband died on 17.9.2003 as such the suitable penal rent amounting to Rs. 11,838/- has also been recovered from the gratuity amount. After deduction of these amounts the gratuity has been paid to the petitioner vide G.P.O. No. 2204 dated 12.4.2004 which is just and proper as per rule.

4. Counsel appearing for the petitioner has placed reliance on Sahib Singh Verma vs. The State of Haryana reported in 1995 Suppl. (1) S.C.C. 18 and also on an unreported decision of this Court in C.W.J.C. No. 1154 of 2003 Most. Snehlata Prasad vs. The Chairman Bihar State Electricity Board. In similar situation after considering different decisions in C.W.J.C. No. 1154 of 2003 it was decided that the amount which was so deducted must be refunded to the petitioner, since this is not the case of the respondents that the payment has been made on account of representation or misrepresentation, as such the salary and increment cannot be deducted and recovered as excess amount paid to the deceased employee.

5. Mr. Datta has placed reliance in the case of Bihar State Electricity Board and another vs. Md. Siddique and Ors. reported in 2004(3) P.L.J.R. 549. This decision has no application in the present case. It has been decided in this case that once the pay is revised or reduced, if that remains unchallenged, recovery cannot be held to be impermissible even if there is no fraud or misrepresentation on the part of the employee. In the present case, the reduction in the pay scale was not made in the life time of the husband of the petitioner, no order of revision or reduction of pay scale was passed during his life time as such there is no question of challenging the same after reduction of the pay scale. The petitioner who is the widow of the deceased employee has challenged the reduction as such

the decision relied on by the counsel for the Board has no application in the present case.

6. Considering the unreported decision of this Court as well as the decision of the Apex Court, the order contained in Annexure-1 of the writ application, issued by the Superintending Engineer, Bhagalpur, Circle dated 29.4.2003 is quashed. As the recovery is sought to be made though there is no allegation regarding misrepresentation or fraud as well as the order has been passed after the death of the deceased employee who is not even alive to challenge the order. This court strictly deprecates the action of the financial controller in passing the impugned order. In the result the writ application is allowed. The impugned order contained in Annexure-9 so far recovery part is concerned is quashed. Since all other retiral dues have already been paid, respondent Board is directed to refund the amount which has been recovered from the gratuity payable to the petitioner as an excess amount paid to the deceased husband of the petitioner. The penal rent which has been deducted from the gratuity should also be refunded to the petitioner and only the normal rent of the quarter for the period the petitioner had remained in possession of the quarter should be charged. Recovered amount as well as the penal rent should be refunded to the petitioner within four weeks from the date of receipt/communication of this order.