

(2019) 07 PAT CK 0339

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10432 Of 2017

Prem Chauhan

APPELLANT

Vs

State Of Bihar Through Principal Secretary And Ors

RESPONDENT

Date of Decision : 31-07-2019

Acts Referred:

Citation : (2019) 07 PAT CK 0339

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Bhubneshwar Prasad, Sushil Kumar

Final Decision : Allowed

Judgement

1. The present writ petition has been filed for directing the respondents to make payment of the amount deducted under the head of Group Insurance from the salary of the petitioner herein, for directing the respondents to hold that the benefits of 1st A.C.P. granted from 09.06.1999, 2nd A.C.P. w.e.f. 18.04.2006 and the 3rd M.A.C.P. granted w.e.f. 10.04.2012 are correct, to quash the office order dated 19.09.2016 whereby and whereunder a sum of Rs.3,64,954/-, (excess amount of salary paid in the past) has been adjusted from the amount of leave encashment and for payment of the differential amount of arrears of retiral dues.

2. The learned counsel for the petitioner has submitted that no recovery can be made from the petitioner herein in view of the admitted fact that the petitioner has not misrepresented or committed any fraud so as to warrant payment of excess amount of salary to the petitioner in the past. It is further submitted that according to the petitioner, the fixation of pay made in the past, after granting of 1st A.C.P., 2nd A.C.P. and 3rd M.A.C.P., is correct.

3. The learned counsel for the State, referring to the counter affidavit filed in the present case, has submitted that the process for payment of group insurance is going on and the deduction reports are being obtained from the place where the petitioner had been posted, during his service period. It is further submitted that

the petitioner is not entitled for grant of the benefits of 3rd M.A.C.P. and in this regard, the Superintending Engineer, Central Circle, R.C.D., Patna, had passed a detailed order dated 12.7.2016, rejecting the claim of the petitioner, after considering all the relevant circulars of the Government of Bihar. As regards the recovery/ adjustment made from the leave encashment amount, it is submitted that the same has been made in view of the objection made by the District Account Officer, Patna.

4. I have heard the learned counsel for the parties and I find that there has been no misrepresentation on the part of the petitioner so as to result in the respondents being misled to make excess payment of salary. This position is not disputed by the learned counsel for the respondents and, in fact, it has been contended in the counter affidavit filed by the respondent State that the adjustment has been made from the leave encashment amount on account of audit objection, however, the respondents have failed to disclose as to what is the audit objection. Thus, on this ground alone, recoveries/ adjustments made with regard to the excess amount of salary paid to the petitioner herein from the leave encashment amount is liable to be set aside. Nonetheless, the other reasons for setting aside the recovery/ adjustment sought to be made by the impugned order dated 19.02.2016, issued by the Executive Engineer, Patna West, Road Division, is the well settled law to the effect that no recovery can be effected from the petitioner herein since he has already attained the age of superannuation as also there has been no misrepresentation or fraud committed by the petitioner so as to result in recovery of the alleged excess amount paid to him. This aspect of the matter stands well concluded by the various pronouncements of the Hon'ble Apex Court in a catena of decisions reported in (2009)3 SCC 475 (Syed Abdul Qadir Vs. State of Bihar); (1995) suppl. 1SCC 80 (Sahib Ram vs. State of Haryana); (1994) 2 SCC 521(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 Electric ity Board vs. Bijay Bhadur); (2006) 11 SCC709 (B.J. Akkara vs. Government of India University) and(1995) suppl. 1 SCC 18 (Sahib Ram vs. State of Haryana) and the one reported in reported in (2015) 4 SCC 334 (State of Punjab vs. Rafique Masih)

5. Having regard to the facts and circumstances of the case as also considering the law laid down by the Hon'ble Apex Court in the aforesaid decisions, the order dated 19.09.2016 issued by the Executive Engineer, Patna West, Road Division, Patna is set aside to the extent, the same seeks to adjust a sum of Rs. 3,64,954/-, from the amount of un-utilized leave encashment and the respondent authorities are directed to pay a sum of 3,64,954/-, to the petitioner herein within a period of twelve weeks from today along with outstanding amount of group insurance, failing which the Executive Engineer, Patna West, Road Division, Patna shall not draw his salary.

6. The writ petition stands allowed to the aforesaid extent.