(2011) 07 PAT CK 0061

In the Patna High Court

Case No : CWJC No. 11882 of 2007

Radhe Shyam Rai APPELLANT

Vs

The Bihar State Electricity Board and Others RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Citation : (2011) 07 PAT CK 0061

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Heard Sri Nalin Vllochan Tiwary, teamed counsel for the Petitioner and Sri Vijay Kumar Verma, Learned Counsel appearing on behalf of all the Respondents/ Bihar State Electricity Board. The Petitioner, who retired with effect from 31.1.2007 as Accountant from Bhojpur Electrical Circle, Arrah under Bihar State Electricity Board has mainly prayed for quashing of order contained in Annexures-4 & 5 to the writ petition.

2. Vide Annexure-4 after retirement of the Petitioner the pay scale of Petitioner was reduced and vide Annexure-5 i.e. an order contained in Memo No. 462 dated 1.6.2007 issued by Financial Controller-), Bihar State Electricity Board, Patna an order was passed to deduct Rs. 1,15,847/- from the total sanctioned gratuity amount of Rs. 3,44,669/-.

3. Learned Counsel for the Petitioner submits that in view of order contained in Annexure-5 to the writ petition an amount of Rs. 1,15,847/- has already been deducted.

4. Learned Counsel for the Petitioner while challenging both the orders has submitted that from Annexure-4 to the writ petition it is evident that after retirement of the Petitioner an order was passed by the Superintending Engineer, Bhojpur Electrical Circle, Arrah on 28.2.2007 whereby Petitioner''s pay scale was reduced with effect from 1.12.1980.

5. Learned Counsel for the Petitioner has drawn my attention to Annexure-4 to the writ petition. On perusal of the same it is evident that earlier the Petitioner

was in the pay scale of Rs. 696/- on 1.12.1980 whereas by the impugned order it was reduced to Rs. 624/- and thereafter continuously the pay scale of the Petitioner was reduced. Despite the fact that Petitioner was drawing the salary of Rs. 11,020/- at the time of his retirement i.e. on 15.1.2007 the same amount was reduced to Rs. 10,795/- and thereafter the authority concerned had issued Annexure-5 for recovery of Rs. 1,15,847/-.

6. It was argued that both the orders were passed without affording any opportunity of hearing to the Petitioner nor any notice was given to him and said orders were admittedly passed after the date of retirement of the Petitioner.

7. It has further been submitted by Learned Counsel for the Petitioner that there was no allegation of suppression of fact or misrepresentation against the Petitioner. The pay scale was fixed by the competent authority and as such the authority concerned were not authorized either to reduce his pay scale or to pass an order for recovery of excess amount on the basis of such reduction of pay scale.

8. Learned Counsel for the Petitioner has submitted that law on the point is settled that after retirement no recovery can be made unless there is an allegation of suppression of fact or misrepresentation. He has firstly referred to Sahib Ram Vs. State of Haryana and Others, It was submitted that the proposition laid down in Sahib Ram''s case was reiterated by the Hon''bie Supreme Court in a case reported in 2009(2) PLJR (SC)74 (Syed Abdul Qadir and Ors. v. State of Bihar and Ors.).

9. Learned Counsel for the Petitioner has specifically drawn my attention to paragraph Nos. 25 & 27 of the judgment in Syed Abdul Qadir''s case (supra) which are as follows:-

25. We now come to the question as to whether the amount that has been paid in excess to the Appellants-, teachers should be recovered or not. It is the submission of the Learned Counsel appearing on behalf of the Appellants-teachers that even if it were to be held that the Appellants were not enti-tied to the benefit of additional increment on promotion, the excess amount that has been paid to the Appellants cannot and should not be recovered; it having been paid without any misrepresentation or fraud on their part.

27. this Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received

was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circun stances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram Vs. State of Haryana and Others, , Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, ; Union of India (UOI) and Another Vs. M. Bhaskar and Others, ; V. Gangaram Vs. Regional Joint Director and others, ; Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, ; Purshottam Lal Das and Others Vs. The State of Bihar and Others, ; Punjab National Bank and Others Vs. Manjeet Singh and Another, ; and Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr.

10. In this case a counter affidavit has been filed on behalf of Respondent No. 1/ Bihar State Electricity Board wherein a stand has been taken that the pay scale was earlier incorrectly fixed and now correction has been made after the matter was noticed by the Auditor.

11. In the counter affidavit plea has been taken that pay has been corrected in accordance with rules and law. However, no provision has been mentioned in the counter affidavit nor at the time of hearing such provision has been brought to the notice of the court in support of the contention made in the counter affidavit. Only in the counter affidavit the Respondent has referred to Yogendra Prasad Sharma Vs. The State of Bihar and Others,

12. After hearing the parties the court is of the opinion that so far as recovery of Rs. 1,15,847/- from the amount of DCR gratuity is concerned vide Annexure-5 the same was wholly illegal and unjustified. The Respondents have not come out with a case that the Petitioner got enhanced pay scale by making fraud, suppression of fact or misrepresentation. Only a plea has been taken that Auditor has given report for correction and on that basis correction has been made. Moreover, in view of Syed Abdul Quadir''s case (supra) the court is of the opinion that deduction was not permissible and as such the order contained in Annexure-5 is hereby set aside.

13. So far as Annexure-4 is concerned, it is evident that the said order was passed without affording an opportunity to the Petitioner and as such order contained in Annexure-4 is also set aside. However, the Respondents will be at liberty to pass appropriate order after giving an opportunity of hearing to the Petitioner in respect of reduction of pay. The decision is to be taken by the Respondents/ Board within a period of four months from the date of receipt/ production of a copy of this order.

14. It is made clear that till the order is passed by the competent authority of the Board regarding revision of pay scale the pension which Petitioner is drawing on the basis of earlier revision i.e. order contained in Annexure-4 shall not be disturbed. This condition shall be applicable for a period of four months otherwise after four months the Petitioner shall be entitled to claim for revision of his

pension on the basis of last pay drawn i.e. Rs. 11,020/-.

15. With above observation and direction the writ petition stands partly allowed. Since Annexure-5 has already been quashed, the Respondents/Board is directed to refund the deducted amount to the Petitioner within a period of six weeks from the date of receipt/production of a copy of this order.

