
(2009) 01 PAT CK 0041
In the Patna High Court
Case No : CWJC No. 10564 of 2003

Raj Ballabh Upadhyay

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

Citation : (2009) 57 BLJR 2216 : (2010) 2 PLJR 482

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Advocate : Shivajee Pandey, for the Appellant; Rakesh Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J.—Challenge is to annexure-1 which is dated 20.5.2003 as well as annexure-2 dated 11.1.2003. By virtue of these orders certain deduction from the salary of the petitioner is sought to be made under the head of wrong fixation of pay. The amount worked out in this regard is Rs. 1,16,090.30. There are some other recoveries which relate to house building advance and motorcycle advance. It has been included for adjustment with the gratuity of the petitioner who retired from the post of head clerk on 14.02.2002.

2. Submission of the learned Counsel for the petitioner is that house building advance and motorcycle advance are matters of accounting and in the counter affidavit filed on behalf of the respondents there are certain other figures which has emerged. Those are matters which the petitioner will settle with the board and in so far as recovery from the salary for payment of 12% extra emolument is concerned, learned Counsel for the petitioner relies on a decision of a Division Bench dated 3rd September, 2008 rendered in the case of Mundrika Devi v. Bihar State Electricity Board and Ors. L.P.A. No. 1241 of 2002. The Division Bench had this to say in paragraph Nos. 3 and 4 of the said decision as follows:

3. In the instant case, it is not the contention of the Board that in the matter of

alleged mistake, which resulted in excess payment, the appellant had any role to play. The excess payment, if any, is also not due to mistake in pay fixation, grant of increment or the like leading to wrong calculation of salary of the employee. The mistake is also not at the ministerial level. Respondent-Board, in the instant case, after superannuation of the appellant, opined that pay protection given to the appellant, his promotion to selection grade and grant of 12% extra emolument was improper and incorrect; and because of improper and incorrect decision, excess payment has been made to the appellant, which is recoverable. It is not the contention of the respondent-Board that grant of any of them was not by the authority authorized to grant the same. It is the contention of the appellant Board that the grants themselves were not permissible by law and accordingly, any payment made on the basis of such grants is recoverable.

4. As we are bound by the judgment rendered by the Full Bench of this Court and inasmuch as the decision of the Full Bench, as quoted above, squarely applies to the present case, we have no other option but to allow the appeal and set aside the judgment and order under appeal, which we do hereby, and at the same time allow the writ petition by directing the Board to fix the retiral/terminal dues of the appellant, without taking note of the contention of the Board, as contained in its order dated 3rd April, 2000, which admittedly came into play subsequent to superannuation of the appellant.

3. In view of the settled decision in law the impugned order in so far as it relates to recovery of the sum of money under the head of excess payment of salary due to wrong fixation is quashed.

4. The writ application is allowed. Respondents are directed now to settle the accounts and retiral dues of the petitioner as if the deductions and excess pay pointed out by the respondents do not exist.