
(1999) 04 PAT CK 0012
In the Patna High Court
Case No : C.W.J.C. No. 4150 of 1998

Ramjee Malakar

APPELLANT

Vs

The Chairman, Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 20-04-1999

Acts Referred:

Citation : (1999) 3 PLJR 75

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard Mr. Tara Kant Jha, learned Counsel appearing on behalf of Petitioner and Mr. Shivendra Kishore, learned Counsel appearing on behalf of Respondents.

2. By this writ application the Petitioner had prayed for quashing the office order dated 3.4.1997, as contained in Annexure-1 to the writ application, whereby and whereunder the Respondent authority of the Electricity Board have proceeded to recover a sum of Rs. 52,542.93 paise from the amount of gratuity of the Petitioner. Learned Counsel appearing on behalf of the Petitioner submitted that the action of the Respondents concerned is wholly arbitrary and without jurisdiction inasmuch as that no recovery could have been asked for after superannuation of the Petitioner. Learned Counsel further submitted that the Petitioner was provisionally promoted on the post of Head-Clerk with effect from 1976 and three increments were already paid to him and, thereafter, he was confirmed on the post as such in the year 1990 and after his retirement with effect from 28.2.1997. the order as contained in Annexure-1, could not have been issued by the authorities for recovery of the amounts paid to the Petitioner as against the three increments are concerned. Learned Counsel for the Petitioner further submitted that there is nothing in the counter affidavit to show that the Petitioner has either misrepresented his case or had played fraud upon the Respondents in getting the increment aforesaid on account of his promotion

on the post of Head Clerk and, therefore, the order, as contained in Annexure-1, is not sustainable in law. In support of his contention learned Counsel placed reliance in the case of Sahib Ram Vs. State of Haryana and Others, and in the case of Bijay Bahadur and Ors. v. The Bihar State Electricity Board and Ors. disposed of by this Court in C.W.J.C. Nos. 1007 and 4576 of 1997 on 19.5.1998. The learned Counsel appearing on behalf of Respondents, on the other hand, submitted that the increments, which have already been paid to the Petitioner, were not payable to him on account of his promotion on the post of Head Clerk and the Respondents, by the impugned order, as contained in Annexure-1, have proceeded to rectify their own mistakes.

2. The Apex Court in the case of Sahib Ram (supra) has held that if more payment has been made in favour of the Petitioner on wrong construction of law, it was not open to them to recover the same as there was no fault of the Petitioner in getting the amount aforesaid. A Bench of this Court applying the ratio laid down in the case of Sahib Ram (supra) in the writ application (C.W.J.C. Nos. 1007 and 4576 of 1997) has held that since the increments have been paid to the writ Petitioner by the Board without any misrepresentation by the writ Petitioners and as the writ Petitioners had already passed the Hindi noting and drafting examination in the year 1993 at a belated stage the Board cannot be allowed to pass an order for recovery of the said amount from the writ Petitioner. In the instant case, it appears from the order, as contained in Annexure-1, that the Respondent-Electricity Board has realised the sum of Rs. 52,000/- and odd from the gratuity amount of the Petitioner. I have already noticed above that the Petitioner is not at fault in getting the three increments on account of promotion on the post of Head Clerk nor at any point of time, he had mis-represented the facts before the authorities concerned by playing fraud.

3. Considering the facts and circumstances of the case, and also seeing the legal proposition, as referred to above, the order as contained in Annexure-1, is not sustained in law. I, therefore, allow this application and quash the order, as contained in Annexure-1. At the same time, the Respondents concerned are directed to pay the full gratuity amount to the Petitioner, which they are said to have deducted pursuant to the order, as contained in Annexure-1. However, in the facts and circumstances of the case, there shall be no order as to costs.