

IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.7940 of 2005
GANGA PRASAD JHA
Versus
THE BIHAR STATE ELECTRICITY BOARD AND OTHERS.

7. 30.4.2010. Heard Mr. Amrendra Narain for the petitioner and Mr. Vijay Kumar Verma, learned Junior Counsel to Mr. Vinay Kirti Singh representing the Bihar State Electricity Board.

The petitioner superannuated from the post of Head Clerk with effect from 31.1.2002. Upon non payment of his post retiral dues, he filed a writ petition giving rise to C.W.J.C.No.2326 of 2003 which was heard and disposed of by a Bench of this Court on 25.4.2003 with liberty to the petitioner to file an appropriate representation raising his grievance before the appropriate Pension Cell created by the respondent Board and which was to be considered and disposed of in accordance with law (Annexure-6).

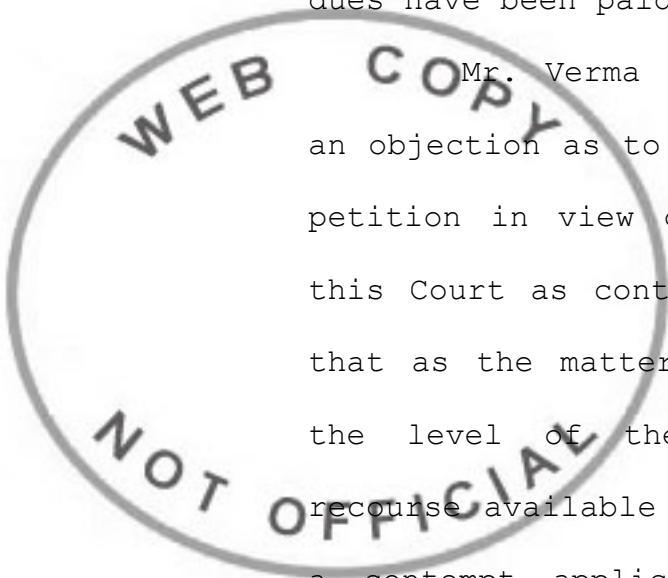
The petitioner, in compliance of the directions of this court, filed a detailed representation before the Presiding Officer of the Pension Adalat on 3.7.2003 setting out his claim as regarding payment of his post retiral and other dues as found admissible to him. Acting on the representation of the petitioner, he was paid part

of his post retiral benefits but part of GPF was kept pending.

The respondents at the same time, even while sanctioning the gratuity amount of Rs.2,08,692/- to the petitioner vide order bearing memo no.2105 dated 21.10.2003 (Annexure-C), issued orders of recovery of an amount of Rs.64,368.30 said to be the excess salary drawn by the petitioner.

Admitted position is that apart from the recovery aforesaid and a part of the GPF amount, the other admissible post retiral dues and other dues have been paid to the petitioner.

Mr. Verma appearing for the Board, raised an objection as to the maintainability of the writ petition in view of the earlier order passed by this Court as contained in Annexure-6. He submits that as the matter has still remained pending at the level of the Pension Adalat, the proper recourse available to the petitioner was by filing a contempt application and that a second writ petition on identical issue was not maintainable. The objection is only taken to be rejected for the reasons that though there is no positive order passed by the authorities on the application filed by the petitioner placed at Annexure-7 of the writ



petition but the gratuity payment order dated 21.10.2003 (Annexure-C) passed with the stipulation of recovery of an amount of Rs,.64,368.30, was manifestly in continuity of the refixation order dated 13.11.2002 placed at Annexure-1 and was an effective settlement of the issue raised by the petitioner vide Annexure-7. The order of recovery having been passed on 21.10.2003 that is subsequent to the order of this Court placed at Annexure-6, and the representation filed by the petitioner on 5.7.2003 (Annexure-7) is definitely a cause of action for the petitioner to maintain this writ petition. The refixation carried out by the authorities on 13.11.2002 vide Annexure-1 and the recovery effected pursuant thereto has been attempted to be justified by the respondents in para-8 of the counter affidavit.

It is stated that as the petitioner was initially appointed as a Work Sarkar and was brought within the cadre of Correspondence Clerk on the same pay scales, the grant of selection grade and super selection grade and the consequential benefits, ought to have been calculated from the date the petitioner was brought within the cadre of Correspondence clerk on 19.6.1969. It is thus sought to be convassed

that the grant of selection grade/super selection grade and other benefits to the petitioner by treating him in continuous service from the date, he joined on the post of Work Sarkar on 2.11.1967 was not correct.

The only area of dispute thus is whether the grant of selection grade to the petitioner and other consequential benefits should have been by counting his service since after his initial appointment to the post of Work Sarkar or from the date from which he was brought in the cadre of Correspondence Clerk.

Indisputedly, the selection grade and the consequential grade was granted to the petitioner by treating him in continuous service since his appointment as Work Sarkar on 2.11.1967 but the said promotion was sought to be modified by counting his service from the date he joined the post of Correspondence Clerk on 19.6.1969. It is in this background that the respondents have raised the objection that by reason of such discrepancy the petitioner has drawn excess salary amounting to Rs.64,368.30 and which is fit to be recovered.

Learned counsel for the petitioner assails the impugned order of refixation and the recovery

stipulations present in the gratuity payment order (Annexure-C) mainly on ground that the premise on which the orders have been passed itself was misconceived. It is submitted that it was the policy decision of the Board itself in bringing the petitioner from the cadre of Work Sarkar to the cadre of Correspondence Clerk carrying identical pay scales and the said transfer of the petitioner to the cadre of Correspondence Clerk under the policy decision of the Board can not act detrimental to the interest of the petitioner. Apart from the said fact, both the posts carried the same scale and the service of the petitioner was continuous service.

Learned counsel further submits that the impugned orders having been passed in utter violation of the principle of natural justice as no notice or opportunity of hearing was provided to the petitioner prior to the passing of the impugned orders, the same cannot be sustained.

Learned counsel proceeding on his arguments further submitted that in any event, the petitioner having not been attributed with any role in the matter of pay fixation, the same is wholly arbitrary, unjust and unreasonable more particularly by reason of having been carried out

much after his superannuation.

Learned counsel for the Board, relying upon the statement made in para-8 of the counter affidavit, submits that the recovery was perfectly in accordance with the Rules. He submits that the entitlement of the petitioner for grant of selection grade and the super selection grade was only to be counted with effect from the date he joined the post of Correspondence Clerk. He thus submitted that there is no infirmity with the order of refixation as also in the stipulation of recovery present in the Gratuity Sanction order placed at Annexure-C.

Taking into consideration the rival contentions advanced on behalf of the parties and upon perusal of the materials available on record, I am convinced with the submission of the learned counsel for the petitioner, that the action of the respondents in carrying out the refixation on 13.11.2002 vide Annexure-1 followed by the recovery stipulation in the Gratuity sanction order as contained in Annexure-C to the counter affidavit, is patently arbitrary, to say the least. The impugned action(s) taken after the retirement of the petitioner and in gross violation of the principle of natural justice,

cannot be sustained.

Even on merits, the objection cannot be upheld for the reasons that the transfer of the petitioner in the cadre of Correspondence Clerk was not on the volition of the petitioner but was under the policy decision of the Board. Further, it is not the case of the Board that counting the services of the petitioner from the date he joined his Work Sarkar, he was not entitled to the said scale.

In that view of the matter, the writ petition is allowed. The re-fixation order as contained in Annexure-1 together with the recovery stipulation as present in Annexure-C, is set aside. As the recovered amount has already been provided to the petitioner under the directions of this court, no further direction needs to be issued in this regard.

In so far as the GPF claim of the petitioner is concerned, the petitioner may raise his grievance with calculative details before the concerned authorities who shall consider and dispose of the same and if the petitioner is found entitled for any further amount, the same should be provided to him within a period of three months from the date of receipt/production of a copy of

this order. The petitioner may also raise his claim for interest on belated payment of G.P.F. in terms of the relevant circular of the Board.

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(Jyoti Saran, J.)

