

Bhola Ram Vs. Bihar State Electricity Board and ors.

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Court : Patna

Decided On : Sep-17-2008

Judge : Ajay Kumar Tripathi, J.

Appellant : Bhola Ram

Respondent : Bihar State Electricity Board and ors.

Disposition : Application allowed

Judgement :

Ajay Kumar Tripathi, J.

1. This is yet another writ application in which benefit of increment accruing out of passing of Hindi Noting & Drafting Examination granted to the petitioner years ago is now sought to be recovered by an order dated 21.10.2003 contained in annexure-1 to the I.A. No. 1986 of 2004 filed by the petitioner. The order indicates that a sum of Rs. 1,23,432.50paise is sought to be recovered from the gratuity of the petitioner. In the upper part of the order the said amount has been broken up in two parts i.e. Rs. 41,495/- on account of non-passing of Hindi Noting & Drafting Examination and Rs. 81,937.50 paise on account of wrong pay fixation. However the lower part of the order has interchanged the two figures. Petitioner protested against this decision of the respondents by filing his objection before the Secretary, Bihar State Electricity Board as would be evident from annexure-2.

2. The primary contention of the petitioner is that in so far as the Hindi Noting & Drafting Examination is concerned, the issue has been agitated earlier on many occasions and predominant view of the Court on such issue is that no recovery would be effected at the fag end of the career of the petitioner on that score.

3. There were many litigations in this regard and some of them even travelled to Hon'ble Supreme Court, the case of Bijay Bahadur (2000)X SCC 99 is one of them. The similar issue of recovery and reduction was also a matter of dispute and with the so called conflicting view emerging from two Division Benches in the case of Bihar State Electricity Board and Ors. v. Madan Mohan Prasad and Ors. and Bihar State Electricity Board and Ors. v. Man Bahadur and Ors. the matter came to be referred to Full Bench. In the case of Ram Binod Singh v. Bihar State Electricity Board and Ors. along with analogous cases reported in 2007(3) PLJR 398 the Full Bench explained the two decisions, reconciled them and concluded the matter in paragraph-26. With the above stated legal position the petitioner has made out a case for interference with regard to the issue of recovery under the head of Hindi Noting Drafting Examination.

4. The Court therefore, is of the opinion that the respondents did not have authority to make reduction from the gratuity of the petitioner, the amount which had accrued to him by way of increment despite not passing the Hindi Noting & Drafting Examination at the relevant time. The direction to that extent can be quashed.

5. But there is reflection with regard to wrong fixation of pay based on a claim made by the petitioner at one point of time regarding pay parity with one Mr. Ramashray Sharma. The stand of the respondents in the counter affidavit in paragraph-7 is that when the pay fixation of Mr. Sharma was itself found to be faulty and subsequently the excess amount paid to him was ordered to be recovered the petitioner cannot be permitted the benefit when his case was similarly treated as that of Mr. Sharma.

6. This fact seems to be corroborated from the application which was filed by petitioner before the Secretary, Bihar State Electricity Board which is dated 21.10.2003 and is contained in annexure-2 to the I.A. No. 1986 of 2004. In

otherwords, the Court does not find much resistance with regard to this aspect under which the wrong fixation of pay was done. The Court will not come in the way of recovery of this amount.

7. Looking on the variance in the figures with regard to the deduction under the head of Hindi Noting & Drafting Examination as well as the wrong pay fixation which is evident on reading of annexure-1 which is Memo No. 2090 dated 21.10.2003 the Secretary, Bihar State Electricity Board is directed to verify the position coupled with the stand of the petitioner which is reflected in annexure-2 as to the quantification under the two heads. He will render a final opinion in this regard. It is clarified that the reduction or recovery to be made from the gratuity of the petitioner will be limited on the account of wrong fixation, if any only. Nothing would be recovered under the head of Hindi Noting & Drafting Examination. The figure therefore will be reflected in the communication which shall be made to the petitioner and the adjustment amount shall be done accordingly. Needless to say that the final settlement in this regard would be made within a period of three months from the date of the communication/production of a copy of this order.

8. This writ application is allowed to the extent indicated above. However, there will be no order as to costs.