

**Sushil Kumar Rao Vs. Bihar State Electricity Board and ors.**

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**Court :** Jharkhand

**Decided On :** Mar-25-2003

**Reported in :** [2003(3)JCR25(Jhr)]

**Judge :** R.K. Merathia, J.

**Acts :** Service Law; [Constitution of India](#) - Article 226

**Appeal No. :** WP(S) No. 5182 of 2001

**Appellant :** Sushil Kumar Rao

**Respondent :** Bihar State Electricity Board and ors.

**Advocate for Def. :** Ajit Kumar and; M.K. Sinha, Advs.

**Advocate for Pet/Ap. :** Ritu Kumar,; R.K. Singh and; Preeti, Advs.;

**Judgement :**

ORDER

1. Heard learned counsel for the parties and with their consent this case is being disposed of at the admission stage.
2. The petitioner has prayed for, quashing the order contained in Memo No. 409 dated 17.4.2001 (Annexure-8) by which a decision has been taken to recover excess salary paid to the petitioner; and for payment of post retrial dues.

3. It is stated and submitted by the petitioner that his services were regularized on 17.9.1958. He was promoted on 2.8.1969. He was again promoted on 22.5.1981 and 24.11.1982. At the time of giving the said promotions, the respondent never said that the petitioner was getting a wrong higher pay scale. The respondent did not say so even at the time of deciding he dispute regarding the seniority of the petitioner on November 1991. Even when the petitioner was notionally promoted and pay of the petitioner was revised, the respondents did not raise any objection with regard to drawal of excess salary by the petitioner. It is lastly submitted that after the petitioner has retired in the year 1999, such matters are being raised.

4. Mrs, I. Sen, Choudhary, learned counsel appearing on behalf of the respondent No. 3 to 6 stated that an undertaking was given by the petitioner on 30th May, 1981 to the effect that if any excess payment is made on account of salary or other heads, or if there is any rent due, the petitioner will be bound to refund/pay the same. Therefore, she submits that the respondents are entitled to recover the excess payment made to the petitioner. She further submitted that at the time of calculation of pension etc. after the retirement it was detected that excess payment against the salary has been drawn by the petitioner. She further submitted that impugned letter dated (Annexure-8) is not a final decision but it is only for calculation of deductible amount as per the pay scale. In other words, she submitted that a final decision in the matter is yet to be taken and, therefore, this writ petition is premature.

5. In reply to this, learned counsel for the petitioner drew my attention to Annexure-8 in order to show that only the calculation of the alleged excess salary is to be made as per the said letter dated 17.4.2001 (Annexure-8). She further submitted that in fact, the respondents have decided to deduct the aforesaid excess payment as will appear from the said Annexure-8 read with the statement made in the counter affidavit in Para-7 to the effect that it was found that the petitioner has received excess payment than the actual pay receivable by him. The aforesaid undertaking dated 30th May, 1981, is a general undertaking, given by all the employees. The respondents can not recover the payment allegedly made in excess to the petitioner on the basis of this undertaking.

6. It is also submitted on behalf of the petitioner that there is no basis for the respondents to allege that since 1973 excess payment has been drawn by the petitioner by making misrepresentation.

7. From the facts and circumstances indicated above, it appears that the Board is proceeding to calculate and recover the alleged excess salary drawn by the petitioner. It is well settled that unless a specific case is made out by employer that the employee has drawn excess salary by misrepresentation, employer can not recover the alleged excess payment from the employee. In this case the amount sought to be recovered is for the period 1973 till he retired in 1999.

8. It is also well-settled that before taking any such proceeding for recovery of the alleged excess payment, the concerned employee must be given an opportunity of hearing.

9. But in view of the submissions of learned counsel for the Jharkhand State Electricity Board (JSEB) that Annexure-8 is not a final order and the Board is yet to take a final decision as to whether or not there has been any excess payment. I am not passing any positive order in this case at this stage.

10. With regard to the claim of the petitioner for payment of leave encashment, computation of pension and gratuity, it is submitted by the petitioner that the other retiral dues have been paid by the JSEB and the said retiral dues are also to be paid by JSEB. On this, learned counsel for the JESB stated that the dispute between both the Boards regarding payment of retiral dues of the employees who retired prior to coming into force of Bihar Reorganization Act, 2000, is still pending.

11. Learned counsel appearing for BSEB stated that as the petitioner was a Lineman and the controlling authority is General Manager, and some of the payments have already been made to the petitioner by JSEB, the petitioner should not suffer and should be paid by JSEB subject to adjustment, if any, with BSEB.

12. In the facts and circumstances of this case, the JSEB is directed to take a final decision in the matter of alleged deduction of excess payment within a period of one month from today and pay the unpaid retiral dues of the petitioner within two

months from today. If the authorities of JSEB feel that certain amount is liable to be paid by or to be recovered from the BSEB, the authorities of the JSEB after payment of dues to the petitioner may raise the issue for recovery of amount from BSEB at the time of apportionment of assets and liabilities.

With these observations and directions, this writ petition stands disposed of.

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