

**(2002) 03 PAT CK 0120**

**Patna High Court**

**Case No:** L.P.A. No. 316 of 2002

Bihar State Electricity Board and  
Another

APPELLANT

Vs

Naresh Prasad and Others

RESPONDENT

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**Date of Decision:** March 10, 2002

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

1. The Bihar State Electricity Board and its Financial Controller (Pension) are the Appellants before this Court and they are aggrieved by order dated 15.1.2002 passed in CWJC No. 6572 of 2000 by a learned Single Judge of this Court by which he has quashed the order dated 28.6.1999 issued by the Appellant deducting Rs. 92,626.42 P., which was to be recovered from the writ Petitioner-Respondent as excess payment towards pay from the total sanction amount of gratuity payable to him.

2. The facts necessary for disposal of the present appeal are that the writ Petitioner-Respondent was appointed as Bill Clerk in the year 1964 and thereafter he was promoted to the post of Bill Collector in the year 1972. In 1976 he was promoted and confirmed on the post of Accounts Assistant. He was given selection grade with effect from 1.8.1988. He retired from the services of the Board on 31.9.1998.

3. The Board has come out with a Standing Order No. 385 dated 22.3.1973, according to which the Junior Accounts Clerk/Bill Clerk/Bill Collector shall be entitled to three advance increments after passing departmental examination. However Clause 3 of the said Standing Order provides that these advance increments shall not be taken into consideration on fixation of pay on promotion to the next higher grade. One Ramashray Sharma was promoted to the post of Accounts Assistant. His three advance increments in terms of Standing Order No. 385 dated 22.3.1973 were

also taken into consideration for fixation of pay on promotion and accordingly his pay was wrongly fixed. The writ Petitioner-Respondent complained that his pay was less than that of his junior Ramashray Sharma and accordingly, the pay of the writ Petitioner-Respondent was re-fixed which was also not correct. According to the resolution of the Board No. 537 dated 16.7.1979, no annual increment was admissible without passing Hindi Noting and Drafting Examination. The aforesaid resolution was modified and it was decided that such employees/officers, who have attained the age of 55 years or have completed 30 years of service shall be exempted from passing the said examination and accordingly, the writ Petitioner-Respondent was exempted from passing the said examination in the year 1993. However, in 1994 he passed the Hindi Noting and Drafting Examination. In 1995, the audit section of the Board raised objection that pay of the writ Petitioner-Respondent was wrongly fixed and accordingly by Board's order No. 391 dated 29.12.1995 his pay was re-fixed and reduced. The writ Petitioner also gave an undertaking before the Board to make recovery of excess overdraw of pay. In the meantime, representation filed by the writ Petitioner-Respondent was rejected by the Board in 2000 and his pension was also fixed on the basis of reduced pay. It is to be mentioned here that the pay of Ramashray Sharma which was wrongly fixed by the Board was also re-fixed by the Board.

4. Before the learned Single Judge the writ Petitioner-Respondent only challenged the order for the recovery of the amount and the learned Single Judge relying upon the decision of the Apex Court in case of [Sahib Ram Vs. State of Haryana and Others](#), held that even if the amount was wrongly paid to the writ Petitioner-Respondent as there was no fraud or misrepresentation on his part the Board has no power to recover the same and accordingly quashed the order dated 28.6.1999 as stated above.

5. The learned Counsel appearing for the Appellants-Board submitted that in view of the admitted fact that the salary of the writ Petitioner-Respondent was re-fixed on his representation that one Ramashray Sharma junior to him was getting more salary to him and later on when it was found that salary of both the employees was wrongly fixed decision was taken to reduce the salary. The order of reduction of salary became final and in such a situation the Board is entitled to recover the aforesaid excess amount wrongly paid to him.

6. The learned Counsel appearing for the writ Petitioner-Respondent on the other hand submitted that there is no fraud or misrepresentation on the part of the writ Petitioner-Respondent and as such after superannuation the Board cannot recover the said amount and relied upon the judgment of the Apex Court in the case of Sahib Ram (supra) as well as the recent decision of the Apex Court in the case of the Appellant itself Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr.

7. The only question for determination in this case is as to whether the order of recovery is permissible in law or not.

8. No doubt there is no fraud or misrepresentation on the part of the writ Petitioner-Respondent but the fact remains at the amount was paid to the writ Petitioner-Respondent in excess of the amount which he was entitled. The said amount as paid only with a view to equalize his salary to that of his junior. Later on it was found that the pay in his case as well as in a case of his junior was wrongly fixed and the mistake in the case of the writ Petitioner-Respondent was rectified in 1995. The writ Petitioner-Respondent did not change the aforesaid order on the other and his retirement benefits have also been (sic)id on the basis of re-fixation and reduction of pay. Thus, it is admitted fact that for certain period the writ Petitioner-Respondent was wrongly paid the amount which he is not entitled in law. The money is a public money which was paid to him under wrong fixation of pay. In the case of Sahib Ram (supra) the Apex Court ordered that (sic)he amount may not be recovered as there is no misrepresentation on the part of (sic)he Appellant, on the other hand, the extent of payment was made due to wrong instruction of relevant order by the authority concerned. That is not the case (sic)are. In this case the writ Petitioner-Respondent complained that his fixation of pay was not at par with his junior and thereafter pay protection was given to him after on it was found that the writ Petitioner-Respondent was not entitled to the (sic)same and his salary was re-fixed and reduced and that order became final. In view of the finality of the said order the excess amount received by the writ Petitioner-Respondent has to be returned. The public money which the Respondent is not (sic)entitled cannot be said to be not recoverable on the ground of equity.

9. In the case of Bihar State Electricity Board (supra) the orders were dismissed for recovery of the amount paid to the employees of the Board by way of increment on the ground that they did not pass the Hindi Noting and Drafting Examination at the relevant time. It was noticed in that case that while orders for recovery were passed promotions given to the employees were not withdrawn and taking into consideration the said aspect of the matter and also the fact that there was no documentary evidence available on record to show that the employees were intimated about the requirement of passing Hindi Noting and Drafting Examination earlier the Apex Court held that the decision of the Board was not correct in law and accordingly relying upon the judgment of Sahib Ram's case (supra) held that recovery cannot be made. It was however observed that the order will be restricted to the facts of the said case only. Thus taking into consideration the facts of the said case direction for recovery was quashed. The said decision is also not applicable in the present case for the reason that here on the representation of the writ Petitioner-Respondent the pay was re-fixed which was later on found to be wrongly fixed and accordingly order for recovery was made.

10. With regard to the recovery of the excess payment made to the employee which he is not entitled to the Apex Court in the case of [V. Gangaram Vs. Regional Joint Director and others](#), and in the case of Union of India and Ors. v. Sujatha Vedachalam (Smt) and Anr. reported in (2000) 9 Supreme Court Cases 187 has held

that the recovery can be made of the amount paid to the employee on account of wrong fixation of pay.

11. It cannot be laid down as absolute proposition of law that in the case of excess payment due to wrong fixation of pay on promotion, the excess amount cannot be recovered from the employee unless there is fraud or misrepresentation. It depends upon the facts of each case. The Apex Court as stated above has already upheld the recovery of the amount in the aforesaid cases. It is not in consonance with equity, good conscience and justice that the employees should not return the amount which has been paid to them wrongly at the time of fixation of pay or promotion. In the case like the present one where employee did not challenge the order for re-fixation of pay and reduction of pay cannot be allowed to say that he will not return the amount which was wrongly paid to him which in our view will be against the justice, equity and good conscience. In our view, the Board was justified in making the recovery of the excess amount paid to the writ Petitioner-Respondent and the learned Single Judge was not justice in law in quashing the order dated 28.6.1999 passed by the Appellant.

12. Accordingly, the appeal is allowed and the writ petition is dismissed.