

(8.iii) For direction to the respondent no.2 for holding fixing liability upon concern employee those have failed to discharge their duty properly.

(8.iv) For direction to the respondent no.3 to refund the recovered amount from the pension of the applicant from October 2012.

(8.v) The applicant be also paid cost of legal proceeding throughout. "

2. The brief facts of the case are as under:-

( i ) The applicant was working on a Group 'D' post in Nath Nagar Post Office, Bhagalpur and he superannuated from service on 30.11.2009. Before the date of superannuation the applicant, vide letter dated 10.07.2009, was directed by the Superintendent of Post Offices, Bhagalpur to submit his pension papers alongwith photograph. Thereafter, the Superintendent of Post Offices, Bhagalpur, vide letter dated 31.12.2009 had directed the office for payment of provisional pension till issuance of P.P.O by the DA (P), Patna. Subsequently, on the same date the applicant was issued two more letters by which he was granted provisional leave encashment, Gratuity accepting the date of superannuation i.e 30.11.2009.

[ii] Thereafter, the Director of Accounts (P), Patna (Res.-2) vide letter dated 06.10.2010 directed the respondent no. 3 to verify the date of birth of the applicant as it has been found to be 01.02.1949 and according to this date the applicant should retire on 31.01.2009. The respondent no. 3 was also directed to explain the reason of over stay in service of the applicant.

[iii] Pursuant to the letter dated 06.10.2010, the Superintendent of Post Offices, directed the applicant vide letter dated 28.10.2010 to explain why he has over stayed

in service for the period of 10 months and for that reason he was directed to refund the salary amount of 10 months failing which further action will be taken.

[iv] In response to letter dated 28.10.2010 the applicant submitted his reply on 16.11.2010 stating that the custodian of service book is department it was the duty of the concerned official to take appropriate action. The applicant further submitted that in this regard he had enquired several time from respondent no.5 i.e Post Master of nath nagar Post Office to bring his notice the date of his superannuation but they have not given any heed. The respondent no.2, without appreciating the facts issued the order of recovery and the office has started recovery @ 700/- per month from his monthly pension which is erroneous, malafide and against the law laid down by the Hon'ble High Court as well as the Hon'ble Apex Court hence the O.A.

3. The respondents, in response to notice, have filed their reply and submitted as under :-

[ i ] The applicant was appointed as Group 'D' (MTS) in Bhagalpur Division on 15.08.1997 vide letter dated 05.08.1997 / 13.08.1997. As per his date of birth i.e 01.02.1949, he should retire on superannuation on 31.01.2009 (A/N) but applicant himself superannuated from service on 30.11.2009 and due to overstay in service he was paid a sum of Rs.1,14,866/- as pay and allowances in excess. The applicant was paid Rs3500/- only as provisional pension & other admissible reliefs. Vide letter

dated 31.12.2009 the applicant was paid a sum of Rs.58,514/- as provisional retirement gratuity and leave encashment.

- [ii] The I/c for respondents further contended that the applicant is well aware about his date of birth and accordingly he should retire on superannuation on 31.01.2009. This fact was noticed during scrutiny of pension papers and service book that the date of birth of applicant is recorded as 01.02.1949. This fact he should brought to the knowledge to the office but despite that he continued his service about 10 months excess himself. It is further submitted that as per the provision of rule 35 G.I.D (II) of CCS Pension Rule 1972, the retirement is automatic on the date of superannuation and in absence of specific order to the contrary by the competent authority a govt. servant must retire on due date. The learned counsel for respondents placed reliance on judgement passed by Hon'ble Apex Court in the case of Radha Kishun vs U.O.I reported in 1997 (L&S) and submitted that continuance in service beyond the date of superannuation without being reemployed in public interest the applicant is not entitle to claim any salary. The I/c for respondents also relied upon the judgment passed by the Hon'ble Apex Court in the case of High Court of Punjab & Haryana & Ors Vs Jagdeo Singh reported in 2017 (2) SCC (L&S) 789, as well as the judgement passed by the Hon'ble Patna High Court in CWJC no. 18923/2015 dated 11.08.2016 and submitted that the applicant has no legal right to continue in service after his retirement and thereafter no right whatsoever

exists to claim payment of salary or can receive any payment towards salary. Once the respondent department found that excess payment had been made to the applicant after his retirement for which he was not legally entitled the same was ordered to be recovered, therefore, the applicant is not entitled for any relief.

4. The applicant has filed rejoinder to the written statement and reiterated his earlier submission that the custodian of service book is the department and it is the duty of concerned official to inform the applicant six month before the date of superannuation about the date of retirement but neither any form was given to fill up nor any notice or letter was served upon him. The applicant also relied upon the decision reported in 2015 PLJR (1) SC 61.

5. Heard the parties, perused the records and considered their submissions. It reveals from the records and material placed in the present case that during the scrutiny of pension paper and service book of the applicant, the respondents found that the applicant was appointed as Group 'D' (MTS) in Bhagalpur Division on 15.08.1997 vide order dated 05.08.1997/13.08.1997. As per the record of service, the date of birth of the applicant is 01.02.1949. The date of superannuation from service was 31.01.2009. However, the applicant was continued in the service till 30.11.2009. The respondents had paid salary for the period of 31.01.2009 to 30.11.2009 for total 10 months. Therefore, the office of the Director of Accounts, Pension-I, Department of Posts, Patna had informed to the office of Superintendent of Post Office, Bhagalpur Division about the over stay of the applicant after his due date of superannuation and directed to take appropriate action. Accordingly, the Superintendent of Post Offices, Bhagalpur Division had examined the case and service record of the applicant and found that in fact the applicant was erroneously continued in

service till 30.11.2009 beyond the date of his due retirement and the applicant was over paid , therefore, vide letter dated 28.10.2010, the applicant was informed about his actual retirement date and also that he had erroneously received the payment of salary. Therefore the said overpayment in the name of salary was required to be recovered from his retiral dues. Subsequently, the respondent has issued order dated 21<sup>st</sup> August 2012 requesting the applicant to deposit a sum of Rs.1,14,866/- which was over paid. However, the applicant did not deposit the overpayment made to him. Therefore, the respondents had started recovery of the said amount in instalment of Rs.700/- per month from his monthly pension.

6. It is noticed that the applicant has not disputed his date of birth i.e 01.02.1949 and his date of retirement from the service i.e 31.01.2009. The applicant had not disputed about the overpayment of salary for the period from January 2009 to November 2009. It is also admitted by the applicant that he had been paid provisional pension under rule 64 A of CCS Pension Rule by considering his wrong date of superannuation i.e 30.11.2009. (Annexure R/2 refers). He had also received payment of unutilised earned leave as well as provisional retirement gratuity on the basis of said erroneous date of superannuation. As per the provision of CCS Pension Rule the govt. employee is retired on his attaining the age of superannuation, thereafter he has no right to continue in the service. However, we are conscious of the settled principle of law that no recovery is permissible from the salary /pension of Group D employee after his retirement as laid down by Hon'ble Apex Court in the case of State of Punjab & ors vs Rafiq Masih (whitewasher) and in the facts and circumstances of the present case, the principle enunciated in Rafiq Masih case (supra) is directly applicable. The applicant was working in Group D under the respondents. He had requested the concerned authority that he was not

aware about his date of retirement and entire service record was with the respondents and no copy thereof was provided to the applicant. Not only that, the respondents themselves had allowed the applicant continue in service up to 30.11.2009 and subsequently, the office of the respondents issued PPO on the basis of date of superannuation i.e 30.11.2009. However, on thorough scrutiny from the Account Department, it was found from the service record that the date of birth of the applicant is 1.2.1949 and not 01.2.1949. According to it, the applicant ought to retire on 30.1.2009 but the respondents have retained the applicant till 30.11.2009. The applicant had not misrepresented nor had he submitted any wrong information with regard to his date of birth. He is Group D employee, and it will be very harsh to recover a huge amount of Rs. 1,14,866/- from his pension amount. Even recovery @ of Rs. 700/- per month from his pension has caused great financial hardship to him. It is apt to note that there is negligence on the part of the respondents and the applicant cannot be faulted for continuance of his service beyond the date of actual superannuation. The action of recovery of overpayment cannot be permitted in view of law laid down by the Hon'ble apex Court in the case of Rafiq Masih (supra).

7. In view of what is stated hereinabove, and the law laid down by the Hon'ble apex court, the OA is allowed and the impugned order of recovery dated 28.10.2010 and 21.8.2010 are quashed and set aside. It is further directed that the respondents shall refund the amount recovered so far from the pension of the applicant within a period of two months from the date of receipt / communication of this order. It is further directed that the respondents shall re-fix the pension and other retiral dues on the basis of his due date of retirement i.e. 30.1.2009. No order as to costs.

(Jayesh V. Bhairavia ) M [ J ]

(A.K. Upadhyay) M ( A )

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