

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11607 of 2002

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Ajit Lall son of late Satya Narayan Lall, resident of Near Court Station, Police Station Khajanchi Hat, District- Purnea.

.... Petitioner/s

Versus

- 1.The State of Bihar through Secretary to the Government, Food, Civil Supplies and Commerce Department, Government of Bihar, Patna.
2. The Under Secretary to the Government, Food, Civil Supplies and Commerce Department, Government of Bihar, Patna.
3. The District Magistrate, Purnea
4. The District Supply Officer, Purnea.
5. The District Provident Fund Officer, Purnea.
6. The Accountant General of Bihar, Bir Chand Patel Marg, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Gyanand Roy

For the Respondents : Mr. J.P.Karn

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 29-06-2015

The petitioner was holding the post of Supply Inspector in substantive capacity in the Food, Civil Supplies and Commerce Department, Government of Bihar, when he retired while officiating as Block Supply Officer, Banmankhi, which post is held by an officer of the rank of Assistant Marketing Officer in the Department. When the petitioner was serving the department, he was granted first time bound promotion and second time bound promotion under the Time Bound Promotion Scheme, as existing at that point of time .

2. The State Government through its resolution dated 08.02.1999 decided to grant its employees, the central scales of pay



with effect from 01.01.1996. A Fitment Committee was constituted to fit the central pay scales for various posts in the Government of Bihar. The said Central scales of pay came into force with effect from 01.01.1996. For the purpose of adjudication of the present dispute, para 11 of the State Government's Resolution dated 08.02.1999, relating to revision of Scales of pay of State Government Employees, in view of introduction of Central scales of pay is relevant and is quoted hereunder:

“The State Government have decided to abolish the existing facilities of Time Bound Promotions and Selection Grades, discussed in paras 10 and 12 of F.D. Resolution no. 6021 dated 18.12.1989 and they shall cease to be applicable with effect from 01.01.1996 and thereafter in the existing pay scales. If any such promotion, however, is due under the Rules before 01.01.1996, it shall be given and the payment of arrears in the existing scale shall be made only upto 31st December, 1995 after which the promotion would be deemed to have been automatically terminated. While fixing pay in the revised scales, such promotions given after 31.12.1995 will not be taken into consideration. If such promotions have been given after 31.12.1995, then the question of adjustment of such additional emoluments obtained in the process, will be decided after the Fitment Committee submits its recommendations on promotion policy. Promotion to any vacancy of a post identified as ‘need based post’ would be admissible. The procedure for identification of such need based posts has been set out in paragraph 12.” (emphasis mine)

3. As on 31.12.1995 i.e. prior to introduction of central scales of pay, the petitioner was getting pay scale of Rs. 2000 to



3800/-. However, upon introduction of scale of pay with effect from 01.01.1996, his pay was fixed in the scale of Rs. 5500 to 9000/-. Upon his retirement with effect from 31.03.2001, it was detected by Food, Civil Supplies and Commerce Department, Government of Bihar, while preparing his pension papers, that the petitioner was not entitled to the said pay scale of Rs. 5500 - 9000/- rather he was entitled to the pay scale of Rs. 5000-8000/-, which scale was available to the officers holding the post of Supply Inspector in the Department with effect from 01.01.1996. In the background of these facts, the department decided to recover the excess amount paid to the petitioner on account of wrong fixation of his pay in the higher pay scale of Rs. 5500 – 9000/- in place of Rs. 5000-8000/-. The government also decided to sanction the petitioner, post retirement benefits by fixing his emoluments on the basis of pay scale of Rs. 5000-8000/- for the purpose of computation of pension etc. This decision of the government is under challenge in the present writ application. By way of amendment in the main writ application through I.A.No. 4178 of 2003, the petitioner has sought to challenge memo no. 1246, dated 22.04.2003 issued by the Department, whereby the payment of pension to the petitioner has been sanctioned with the stipulation that the amount of Rs. 22,408/- was recoverable from the petitioner on account of wrong fixation of his pay and consequent excess payment

of salary to the petitioner. I.A.No. 4178 of 2003 is allowed. The relief sought and the averments made in I.A. No. 4178 of 2003 shall form part of the writ petition.

4. Mr. Gyanand Roy, learned counsel appearing on behalf of the petitioner has submitted that admittedly as on 01.01.1996, the petitioner was in the pay scale of Rs. 2000 – 3800/- after he was granted benefits of second Time bound promotion. He has further submitted that the pay scale of Rs. 2000- 3800/- which the petitioner was getting upon grant of second time bound promotion prior to introduction of the Central scales of pay was admissible to officers in the department in the rank of Assistant District Supply Officer and upon introduction of the Central scale of pay, the said pay scale of Rs. 2000- 3800/- was replaced by Rs. 6,500 -10,500/-. He has submitted that, as a matter of fact, the petitioner was placed in the pay scale of Rs. 5500 -9000/- which under the Central scale of pay was made admissible to the post of Marketing Officer, with effect from 01.01.1996, which is the replacement scale of Rs. 1640 – 2900/-, whereas the petitioner was , in fact, getting pay in the scale of Rs. 2000- 3800/- as on 01.01.1996. He has secondly submitted that before taking any decision to recover the amount, which is said to have been paid to the petitioner in excess on account of wrong fixation of pay, no opportunity of hearing was given to the petitioner,



and as such the action of the department of recovery of the said amount from the petitioner's entitlement of retirement benefits is against the principle of natural justice. He has thirdly submitted that even upon introduction of Central scales of pay with effect from 01.01.1996, whereby the State Government decided to do away with the scheme of Time Bound Promotion, the State Government was required to consider the petitioner's promotion against the need based posts in terms of revised policy and has further contended that as a matter of fact, the petitioner on the date of his retirement i.e. 31.03.2001 was discharging the duties of higher responsibility of Assistant Marketing Officer and on that basis the scale of pay at Rs. 5500- 9000/-, which is admissible to an officer working as Block Supply Officer, was fixed as his actual entitlement and the decision to recover the excess amount on that basis from the petitioner, is arbitrary.

5. From the pleadings on record and submissions made, as noted above, it is not disputed that the petitioner was holding the substantive post of Supply Inspector as on 01.01.1996, when the Central scales of pay came to be introduced, allowing the pay scale of Rs. 5,000-8,000/- for the post of Supply Inspector in the department. It is apparent from the State Government Policy introducing Central scales of pay to its employees, para 11 of which has been quoted



above that it was conscious decision of the State Government to abolish the facilities of Time Bound promotion and Selection Grade. The policy in clear term states that while fixing the revised pay scale, such promotion given after 31.12.1995 will not be taken into consideration and if such promotion is given after 31.12.1995 then the question of adjustment of such additional emolument in the process shall be decided after the Fitment Committee submitted its recommendations on promotion policy. It also mentions that the payment on the basis of promotion under Time Bound Promotion Scheme shall be made only up to 31.12.1995, whereafter 'Promotion would be deemed to have automatically terminated'. The scheme introducing Central scales of pay thus apparently required that no Time Bound Promotion granted prior to 31.12.1995 shall have any effect, with effect from 01.01.1996 and such promotion shall automatically stand terminated with effect from 01.01.1996. In my view, on the basis of said scheme of the State Government, introducing central scales of pay for the purpose of determining the petitioner's pay scale, time bound promotion granted to him prior to 31.12.1995 could not have been taken into consideration as such promotion automatically stood terminated with effect from 01.01.1996. The decision of the State Government fitting the petitioner's scale in the scale available for the post of Supply

Inspector, ignoring time bound promotions granted to him before 01.01.1996, in my opinion, cannot be faulted with, in the facts and circumstances, as noted above.

6. Learned counsel for the petitioner, however, appears right in his submission that it was arbitrary on the part of the State Government to have taken a decision to recover the amount so paid to the petitioner in excess to his actual entitlement because of wrong fixation of pay from the pensionary benefits of the petitioner after his superannuation. He has relied upon a recent decision of the Supreme Court in the case of **State of Punjab & ors –v- Rafia Mafisih (white washer) & ors.** (AIR 2015 SC 696) in support of his submission. In my opinion, such recovery from pensionary benefits after the petitioner retired from service will certainly cause undue hardship to the petitioner, which appears to be iniquitous in the facts and circumstances of the case.

7. However, I do not find much force in the submission that for the purpose of fixation of petitioner's pension, the State Government ought to have taken into consideration, the last emoluments actually drawn by the petitioner on the date of his superannuation which he evidently drew on the basis of wrong fixation of pay. A wrong cannot be allowed to perpetuate and no person, seeking relief in equitable writ jurisdiction under Article 226



of the Constitution of India can claim consequential benefits of any mistake committed by the State- respondents in his favour as in the present case, wrong fixation of higher pay in favour of the petitioner. In my opinion, emoluments for the purpose of fixation of pay of an employee would mean the pay within the meaning of Rule 26(a)(i) of the Bihar Pension Rules, 1950, which the petitioner was legally entitled to draw on the date of his superannuation and not the pay, which he received because of wrong pay fixation. Therefore, so far the fixation of pension is concerned, I do not find any illegality in fixation of petitioner's pension on the basis of his actual entitlements.

8. As regards petitioner's claim that he was entitled for being considered of promotion against the need based post, which the respondents failed to do, in my view, the respondents are required to take a decision in this regard as to whether the petitioner was entitled to such promotion prior to the date of his superannuation w.e.f 31.3.2001.

9. In view of the discussions, as above, I dispose of the present writ application with the following directions:

(i) the respondents shall not recover any amount from the petitioner's entitlement of his pensionary benefits on the ground of excess payment of salary because of wrong fixation of petitioner's pay in the pay scale of Rs. 5500-9000/- and if any amount is found to

have been recovered, the same must be refunded to the petitioner within a period of six months from the date of receipt/ production of a copy of this order.

(ii) the respondents will consider as to whether the petitioner deserved consideration for promotion against need based post in terms of the policy as contained in Resolution No. 660 dated 08.02.1999 . If it is found that the petitioner was fit for consideration of promotion, the respondents will be required to take a final decision in this regard within a period of six months from the date of receipt/ production of a copy of this order or otherwise pass an order rejecting the petitioner's claim, which must be communicated to the petitioner within the same period. If the petitioner is found to be entitled to such promotion, the respondents shall proceed for revising his pensionary benefits, accordingly without any further delay.

10. With the above observation and directions, the writ petition stands disposed of. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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