

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3954 of 2013

Deo Kumar Pandey Son Of Late Ram Lakhan Pandey Resident Of
Mohalla- Badi Patandevi Garha, Near Pili Kothi, Post- Gulzarbagh, P.S.-
Alamganj, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary-Cum-Finance Commissioner, Finance
Department, Government Of Bihar, Patna
3. The Director (Press And Stationery), Finance Department, Government
Of Bihar, Patna
4. The Deputy Secretary (Press And Stationery) Finance Department,
Government Of Bihar, Patna
5. The Superintendent, Secretariat Press, Government Of Bihar,
Gulzarbagh, Patna
6. The Deputy Superintendent, Secretariat Press, Government Of Bihar,
Gulzarbagh, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Anju Jha

For the Respondent/s : Mr. Shashi Bhushan Kr.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

3 11-01-2016 Heard learned counsel for the petitioner and learned
counsel for the State.

In the present application, the petitioner has raised
grievance that the respondent has issued a letter No. 1429 dated
16.08.2012 (Annexure-1) whereby and whereunder the
respondents authorities have modified the benefit of ACP to his
prejudice and directed for recovery of excess payment made to
him as the petitioner was wrongly given Time Bound Promotion.

Short facts of this case is that on entry in service, the
petitioner passed the Hindi Noting and Drafting Examination as is



clear from letter dated 27.02.1984 (Annexure-3). The petitioner was granted the first Time Bound Promotion vide letter dated 31.08.1992 (Annexure-4) of the writ application which was confirmed vide letter dated 06.02.2006 (Annexure-5). The petitioner was granted exemption from passing the departmental examination along with the other persons after reaching the age of 50 years is apparently clear from letter dated 28.03.2007 (Annexure-6) and ultimately superannuated from service on 31.07.2011 and after lapse of one year the impugned order has been passed. The counsel for the petitioner submits that the petitioner was granted Time Bound Promotion in the year 1992 after lapse of so many years, submitting the respondents are unjustified in passing impugned order thereby reduced pay of the petitioner, so much so, directed for recovery of the extra amount paid to him. He has placed reliance on 2015(1) P.L.J.R. 261 (SC) (State of Punjab & Ors. vs. Rafiq Mashi (White Washer) and 2015 (1) 243 (Pramoda Nand Jha vs. State of Bihar) wherein it has been held that if any benefit has been given to specially to a class III and Class IV employees, on certain situation there will not be recovery of the excess amount if any paid to him or her and classified the situations. Time Bound Promotion has been scrapped after implementation of recommendation of 5th P.R.C.

substituted by A.C.P. Scheme providing all the conditions for promotion will equally applicable in time bound promotion.

In such view of the matter, passing of departmental examination be one of the criterion for granting the benefit. In the present case, the counsel for the State has submitted from the counter affidavit that Annexure-1 has been passed on account of the fact that the petitioner was wrongly given Time Bound Promotion as he has not passed the departmental examination which was essential element for granting Time Bound Promotion.

Having considered rival contention of the parties and the fact that the petitioner was granted Time Bound Promotion in the year 1992 and there is no allegation that the petitioner had played any fraud or misrepresentation or in any manner played undue influence, if the employer has granted the benefit of Time Bound Promotion without the intervention of petitioner thereby enhanced the pay, now after lapse of so much time, the employer would be unjustified to recover the payment which has been paid wrongly to the employees concerned, that too, the person holding Class III and Class IV posts. This view has been taken in a large number of judgment right from Saheb Ram Verma Vs. State of Haryana 1995 Supp. (1) SCC 18, the Court has laid down that if the payment is made without any fraud or misrepresentation or undue influence,

the excess payment that has been made cannot be recovered. This principle has been reiterated in case of Rafiq Masih (White Washer) reported in 2015 (1) P.L.J.R. (SC) 261 relevant to quote paragraph No. 12, where the Court has summarized from whom the recovery cannot be made. It will be relevant to quote paragraph No. 12 of the said judgment:-

“It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

- (i) Recovery from retired employees belonging to Class-III and Class-IV service (or Group ‘C’ and Group ‘D’ service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer’s right to recover.

In such view of the matter the order of recovery is quashed.

However, it is admitted fact that impugned order has been passed without giving any notice to the petitioner. In such view of

the matter, order cannot be sustained as any order passed prejudiced to the person causes civil consequences without hearing effected person reliance can be placed upon A.K. Kraipak vs. Union of India A.I.R. 1970 S.C. 150.

In such view of the matter, the order Annexure-10 is quashed.

The respondent authority if so advised, it may pass any order after giving notice to him.

While passing order, it has to be kept in mind that the government has granted exemption of passing the departmental examination after reaching of 50 years of age.

In such view of the matter recovery in no manner can be affected against the petitioner in view of the Supreme Court judgment so far as fixation of pension and other benefit is concerned, the Respondents are at liberty to take step in accordance with law.

(Shivaji Pandey, J)

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