

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 1694 of 2010
IN
Civil Writ Jurisdiction Case No 731 of 2004

- =====
1. The State Of Bihar through Chief Secretary Government of Bihar, Patna
 2. The Chief Engineer-Cum-Additional Commissioner-Cum-Special Secretary Irrigation Department, Govt. Of Bihar, Patna
 3. The Additional Secretary Water Resource, Irrigation Department, Govt. Of Bihar, Patna
 4. The Executive Engineer Poonpoo Flood, Protection Division, Patna City at Karbighahia
 5. The Treasury Officer Vikash Bhawan, Bailey Road, Patna

.... Appellant/s

Versus

1. Sri Rajendra Prasad Shrivastava S/O Sri Gagandeo Prasad Shrivastava Junior Engineer, Design & Planning Division No.2, Anisabad, Patna, Permanent R/O Vill.- Bhatawalia, P.O.- Bhatawalia, P.S.- Govindganj, Distt.- East Champaran
2. The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. S.K.SINGH (AC-SC21)
For the Respondent/s : Mr.

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
&
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 09-05-2016

The present intra-Court Appeal, by the State, is against the judgment and order dated 29.06.2010 passed by learned Single Judge of this Court in CWJC No 731 of 2004 (*Rajendra Prasad Shrivastava –Versus- The State of Bihar & Others*).

2 By the judgment and order of the learned Single Judge, the order of the State Government contained in Memo No 709 dated 01.09.2003 and the follow up order under Memo No 1163 dated



18.10.2003, being Annexure 1 series, were set aside. By the aforesaid orders, which were impugned in the writ petition, the first and the second time bound promotions, which were granted to the writ petitioner, respondent in this appeal, with effect from 01.04.1981 and 19.02.1994, were now sought to be cancelled/withdrawn and the financial benefits, accrued in the meantime, were ordered to be recovered from his salary. It may be noted here that the writ petitioner, respondent in this appeal, superannuated on 31.05.2004. The learned Single Judge set aside the orders of the State Government and debarred it from recovering any amount holding that before coming to the conclusion that the time bound promotions were wrongly granted, no explanation was called for from the employee who was still in service. It was a one sided decision taken. The learned Single Judge also noticed that as and when the promotions were granted, the writ petitioner had no role to play. Accordingly, the learned Single Judge, relying on Division Bench judgment of this Court in the case of *State of Bihar –Versus- Ram Sharan Prasad Singh, 2007 (Supp) PLJR 223*, allowed the writ petition. State is in appeal.

3 On behalf of the State, it is submitted that the time bound promotions, though granted by the Department, were subject to ultimate approval by the Department of Finance. The promotions, having been granted, ultimately the Department of Finance rejected

the grants and substantially altered the dates, as such, State was within its right to correct its mistake and recover the amounts.

4 We have heard learned counsel for the State and learned counsel for the writ petitioner/contesting respondent.

5 In principle, the State cannot be denied the right to correct a mistake committed by its officers but recently the Apex Court, reviewing the judgments in this regard including judgment in the case of *Chandi Prasad Uniyal –Versus- State of Uttarakhand*, since reported in (2012) 8 Supreme Court Cases 417, the Apex Court held, in the case of *State of Punjab & Others –Versus- Rafiq Masih (White Washer) & Others* since reported in (2015) 4 Supreme Court Cases 334, and enumerated in paragraph 18 of its judgment the circumstances under which even though payments were mistakenly made, recoveries would not be ordered:

“18. 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 impressible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) *Recovery from the 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."*

6 This being the judgment of the Apex Court, in our view, the learned Single Judge, in the facts and circumstances of the case, was not in error in allowing the writ petition and setting aside the orders impugned.

7 We, thus, find no merit in this appeal. It is, accordingly, dismissed.

8 Consequently, if any amount has been recovered, would be liable to be returned to the writ petitioner, respondent in this appeal, forthwith.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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