

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6898 of 2011

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Shree Vindeshwari Bhagat, son of Late Laddu Lal Bhagat, resident of
village- Manupur, P.O. Manupur, P.S. Bachhwara, District- Begusarai
..... Petitioner

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna
2. The Finance Commissioner-cum- Secretary, Govt. of Bihar, Patna
3. The Principal Secretary, Co-operative Department, Govt. of Bihar, Patna
4. The Registrar, Co-operative Department, Govt. of Bihar, Patna
5. The Joint Registrar(Head Quarter), Co-operative Department, Govt. of Bihar, Patna
6. The Joint Registrar, Co-operative Committee, Darbhanga
Commissionary, Darbhanga
7. The Accounts and Audit Controller, Accounts Control, Finance (Audit)
Department, Govt. of Bihar, Patna

..... Respondents

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Jha

For the Respondent/s : Mr. AC to SC-26

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6 18-01-2016 Heard Sri Sanjeev Kumar Jha, learned counsel for the
petitioner and learned AC to SC-26.

It is a peculiar case, in which the petitioner was promoted in the year 1981 as driver from the post of peon and retired in the year 2004 as such, thereafter, his pension was fixed treating as Driver, he started getting pension, however suddenly in the year 2010, the petitioner was noticed vide Annexure-7 to the writ petition and he was told that his promotion from peon to Driver was not correct, as has been pointed out by the auditor and he was told that about Rs, 67,609/- was recoverable from him.

Finally, vide Annexure-10 to the writ petition i.e. order contained in letter No.578 dated 04.02.1011, the Registrar of the Co-operative Department, Bihar has asked the petitioner to explain as to why his pension may not be reduced.

In this case, a counter affidavit has been filed and a stand has been taken that the promotion from the cadre of peon to the cadre of driver was against the provision and, as such, the Respondents had taken correct step and the petitioner has been asked to explain as to why his pension may not be reduced.

From the pleadings, it is evident that the petitioner was appointed as peon long back on 14.02.1964. Since he was also a good driver and having driving licence, on vacancy being occurred of the driver in Darbhanga Commissionery, the petitioner was appointed/ promoted by the Joint Commissioner against the vacant post of driver and, by letter no.161 dated 24.02.1981 issued under the signature of the Joint Secretary, who was the competent authority. The said letter was forwarded to the Headquarters Office, Co-operative Department, Patna for confirmation. Subsequently, it was also confirmed by the Joint Registrar, Headquarters vide letter no.5364 dated 22.04.1981. Thereafter, the petitioner, while functioning as driver, superannuated after attaining the age of superannuation with effect from 31.05.2004.

The petitioner after retirement was given all retiral dues without any objection.

Learned counsel for the petitioner submits that all of a sudden in the year 2010, the dispute was raised on the basis of a so called report of an Auditor and now they are contemplating to re-fix the pension and also recover the excess amount. So far as recovery of any amount from Class-III and Class-IV employees after retirement in absence of misrepresentation or suppression of facts has finally been disapproved by the Apex Court in a recent Judgment of the Hon'ble Supreme Court, reported in 2015 (1) PLJR, 261 (SC) ; State of Punjab Vs. Rafiq Masih. Admittedly, no step can be taken for recovery of such amount in view of the fact that the petitioner was promoted/appointed as Driver long back in the year 1981 and he continued at the age of retirement from service without any allegation of misrepresentation. So far as Annexure-10, i.e. show cause notice issued to the petitioner on the aforesaid point, is concerned, in normal course, it is not appropriate to interfere with the show cause notice, but keeping in view the fact that the petitioner retired as Class-IV employee long back in the year 2004, thereafter his pension was fixed and he received retiral dues without any objection as such belated stage, even issuance of such notice amounts to infringement of the legal

right of the petitioner and, as such, with a view to protect the right of petitioner, it is necessary to exercise writ jurisdiction in favour of the petitioner. Accordingly, Annexure-10 is hereby set aside. The Respondents are restrained from proceeding further in the light of either recovery or re-fixation of the pension of the petitioner.

With above observation and direction, the writ petition stands allowed.

(Rakesh Kumar, J)

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