

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16342 of 2013

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Bhabesh Prasad Singh S/o Late Anandi Prasad Singh, resident of village- Koranda,
P.S- Shahkund, District- Bhagalpur. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Rural Development Department,
Old Secretariat, Patna.
 2. Principal Secretary, Rural Development Department, Old Secretariat, Patna.
 3. District Magistrate- cum- Collector, Banka.
 4. Block Development Officer, Banka.
 5. Accountant General Bihar, Birchand Patel Road, Patna. Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Alim Jang Khan
For the State : Mr. Sarvesh Kr. Singh, AAG-13
Mrs. Sunita Kumari, AC to AAG-13
For the Accountant General Mr. Arun Kumar Arun, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 14-12-2016

Heard learned counsel for the petitioner, State and the
Accountant General.

In this case, the petitioner is challenging the order dated
27th April 2004 passed by the Collector, Banka, thereby the order was
passed for deduction of Rs. 47,996/- from the retiral dues of the
petitioner on the ground that he was wrongly given the Time Bound
Promotion from 1983, as he has not passed the Hindi Noting and
Drafting Examination before 1983.

The petitioner entered into the service as Panchayat
Sevak on 02.11.1973. Under the Time Bound Promotion after
completion of 12 years of service, he was given the 1st Time Bound
Promotion along with other Panchayat Sevak. On reaching the age of



60 years, the petitioner has superannuated from service on 31.12.2003.

The petitioner had earlier moved before this Court in C.W.J.C. No. 10632 of 2004 along with others and by a common order, the direction was given to pay the retiral dues and the petitioner was given the benefit of retiral dues, but the Authority has recovered the aforesaid amount from the retiral dues of the petitioner, as he was wrongly given the Time Bound Promotion from 1983 on account of the fact that he has not passed the Hindi Noting and Drafting Examination before 1983.

The Authority has passed the order having said that as the petitioner has passed the Hindi Noting and Drafting Examination on 06.11.1991, he was given the benefit of Time Bound Promotion with effect from 07.11.1991, if any excess amount was paid to the petitioner that would be recovered from his retiral dues and in pursuance thereof, the recovery has been made of the aforesaid amount.

The counsel for the petitioner submits that the petitioner was given the benefit of Time Bound Promotion not on the basis of the fraud or misappropriation, but it is an act of the Officers of the Department. The Authority had given the Time Bound Promotion to the petitioner along with others, but in the counter affidavit, no



whisper has been made by the State that the petitioner has obtained the Time Bound Promotion by fraud or misappropriation.

The present case is squarely covered by the judgment reported in 2015 (1) PLJR (S.C.) 261 (State of Punjab and others vs. Rafiq Masih [White Washer] and others) there the Hon'ble Supreme Court has held with respect to class-III and class-IV employees, if any excess payment is made, in that circumstance, it will not be equitable to recover the amount after superannuation.

It will be relevant to quote paragraph 12 of the said judgment, which is as follows:-

“12. 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 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."*

In view of the judgment of the Hon'ble Supreme Court, this Court finds that the order of recovery is completely illegal, not sustainable and the same is set aside, if any excess amount has been recovered from the petitioner that will be returned to him along with 5% simple interest.

Accordingly, this petition is allowed.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.12.2016
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