

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8292 of 2016

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Ashok Kumar Jha, Son of late Bharikchan Jha, Resident of Mohalla- Balbhadrapur (West Tola), P.O- Laheriasarai, District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Joint Secretary, Public Health Engineering Department, Government of Bihar.
2. The Joint Secretary, Public Health Engineering Department, Government of Bihar.
3. The Principal Secretary, Finance, Government of Bihar, Old Secretariat, Patna.
4. The Principal Secretary, General Administration Department, Government of Bihar, Old Secretariat, Patna.
5. The Executive Engineer, Public Health Division, Madhubani.
6. Incharge Officer, Finance (P.C.F.C.) Department, Bihar, Patna.
7. The Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Girish Chandra Jha, Advocate
For the State : Mr. Madhaw Prasad Yadav, G.P. 23
For the A.G. : Mr. Ajit Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-11-2017

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

2. The petitioner is aggrieved by reduction of his pension.

3. The petitioner was promoted to the post of Assistant Engineer with effect from 20.06.2011 and thereafter superannuated on 31.01.2015. Upon his promotion, though he was given the pay scale of the higher post but in view of the requirement that within two years, if he has not passed the departmental examination, the benefit would stand withdrawn and the same not having been



complied with, the authorities have taken the stand that the amount paid has to be recovered/adjusted.

4. Learned counsel for the petitioner submitted that at the age of 56 years, the petitioner was promoted and he continued to get the benefit and even upon his superannuation, the provisional pension was fixed on the basis of his last pay drawn, which was in the higher scale. It was submitted that the petitioner was not aware of such requirement of passing the departmental examination and after superannuation, coming to know of such requirement, he has also filed an application seeking such exemption. It was submitted that persons above 50 years of age are entitled for being considered for exemption from passing departmental examination and the petitioner having applied, the Department should consider his request. It was further submitted that there is no misrepresentation or concealment of fact on the part of the petitioner.

5. Learned counsel for the State submitted that as per the circular of the State Government itself, such promotion is subject to the person clearing the departmental examination within two years of such promotion. It was submitted that in the present case, admittedly, neither the petitioner cleared the departmental examination nor was there any application by him seeking exemption, at the relevant time.

6. Having considered the matter, the Court does not find



any merit in the present writ application. First and foremost, ignorance of law cannot be a plea, that too, by a person who has superannuated from the post of Assistant Engineer. The policy of the State Government by which promotion is granted itself stipulates that such promotion would be subject to the person clearing the departmental examination within two years. Furthermore, it is also provided that such stipulation may not be enforced against persons who are above 50 years of age and who after having sought exemption have been granted the same by the competent authority.

7. In the present case, the petitioner not having applied for any exemption, the policy being very clear that the same has to be claimed and when the petitioner did not raise any claim or sought any exemption, the authorities could not have *suo motu* given exemption. Moreover, the exemption is not only discretionary but also it shall be deemed to take effect from the date on which such application for exemption is made. In the present case, for the first time, such application seeking exemption has been made by the petitioner after his superannuation. Thus, for all practical purposes, it was an infructuous application and *ab initio* unworthy of any consideration, for it could not have resulted in any benefit to the petitioner after his superannuation.

8. In the present case, when the relevant provisions for



grant of promotion itself envisaged clearing of the departmental examination within two years and the same neither having been done nor any exemption sought or granted, retiral benefits cannot be based on such excess payment made in the higher scale from the public exchequer.

9. In the present case, the fact that two increments were granted to the petitioner on account of such promotion but him not having passed the departmental examination within two years, the fixation of pension on the basis of such two extra increments has been reduced and the same has resulted in reduction of pension now being paid to the petitioner. Thus, when the amount paid to the petitioner earlier during his service period was not payable to him, as he had not cleared the departmental examination, any fixation of pensionary benefits, based on the higher amount, cannot be legally justified. In the present case, the authorities have not recovered any payment already made to the petitioner and have only recalculated/re-fixed the pension on the basis of the pay to which the petitioner was entitled due to non passing of the departmental examination. This, the Court finds reasonable, just and also equitable as no recovery has been made. The petitioner being an Assistant Engineer is expected to be aware of the requirement and also the conditions upon which such promotion was given to him and he



cannot take the plea that because he continued to get a higher scale till his superannuation, the authorities cannot re-fix his pension in a lower scale. As has been submitted by learned counsel for the petitioner since the petitioner has worked on the post of Assistant Engineer, he is entitled to the pay of the same, the issue is irrelevant in the present case, for the reason that the payment made to the petitioner for the period he has worked on the post of Assistant Engineer, is not being recovered by the authorities. The only thing which has been done is that notionally, for the purpose of fixing pensionary benefits, the benefit of two increments wrongly given to him have been withdrawn and accordingly, the amount has been fixed. The Court finds no illegality in such exercise.

10. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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