

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15527 of 2016

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1. Vijay Kumar Singh son of late Babu Ram Singh, resident of village Malaypur (Kothua), P.S.-Malaypur, District Jamui
 2. Mahendra Sharma son of Late Durga Sharma, resident of West Mohan Bigaha, Police Station Dehri –on-Sone, District Rohtas
 3. Arjun Prasad son of late Satya Narayan Prasad, resident of Mohalla Dilawarpur, Police station Munger District Munger
 4. Md. Samsuddin@Samsuddin Khan, son of late Nazir Khan, residing at Ladli Manzil, Near Lal Kothi, Muslim Nagar, Mohalla Muslim Nagar, Police Station-Daltonganj, District Palamau (Jharkhand)
 5. Lakshman Mandal son of late Babu Lal Mandal, resident of Mohalla Pali, Police Station Dehri on Sone, District Rohtas
 6. Prem Shankar Gupta, son of late Kamta Prasad Gupta, Resident of Mohalla West Mohan Bigaha, Police Station Dehri on Sone District Rohtas
 7. Upendra Prasad Singh son of late Rajendra Prasad, resident of village & P.O. Lakhna, Police Station Gauri Chak, District Patna

.... Petitioner/s

Versus

1. Sone Command Area Development through its Secretary, Sone Bhawan, Daroga Prasad Rai Path, Patna -800001.
2. Chairman, Sone Command Area Development Agency, Sone Bhawan, Daroga Prasad Rai Path, Patna 800001
3. Secretary, Sone Command Area Development Agency, Sone Bhawan, Daroga Prasad Rai Path, Patna 800001
4. Executive Engineer, Sone Command Area Development Agency, Khagaul, District Patna
5. Executive Engineer, Sone Command Area Development Agency, Bhojpur at Arrah
6. Executive Engineer, Sone Command Area Development Agency, Bhabua, District Kaimur
7. Executive Engineer, Sone Command Area Development Agency, Dehri on Sone, District Rohtas
8. Executive Engineer, Sone Command Area Development Agency, Aurangabad, District Aurangabad
9. Chief Estate Officer, Sone Command Area Development Agency, Sone Bhawan, Daroga Prasad Rai Path, Patna 800001

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyanand Roy, Adv.

For the Respondent/s : Mr. Naresh Dikshit, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 07-11-2017



Heard Mr. Gyanand Roy learned counsel for the petitioner and Mr. Lalan Kumar A.C. to Mr. Naresh Dixit learned counsel appearing for the Sone Command Area Development Authority (hereinafter referred to as the 'SCADA').

Seven petitioners have joined this writ petition to question a recovery made by the respondent 'SCADA' stated to be by reason of incorrect grant of time bound promotion to these petitioners.

Facts of the case briefly stated is that all these petitioners were initially appointed as Surveyor in 1975 and were promoted as Junior Engineers in 1985. Their promotions were cancelled forcing them to come before this court in C.W.J.C.No.977 of 1998 and vide judgment and order passed on 17.04.1998 the orders of cancellation of promotion was set aside by a coordinate bench with liberty to the competent authority to proceed in the matter in accordance with law. It is following the judgment of this Court that vide order bearing Memo No. 336 dated 23.5.1998 the promotion of the petitioners was restored a copy of which is at Annexure-5. On completion of 10 years of service in the year 1995, calculated from the date these petitioners were granted regular promotion to the post of Assistant Engineer, that they were granted time bound promotion under the Scheme in force. The order of grant of Promotion to the two of the petitioners i.e. petitioner No. 2 and 6 bearing Memo No. 191 dated 31.5.1998 is on



record at Annexure-6.

It is after a lapse of more than 15 years that the authorities of the 'SCADA' realized that these petitioners had been granted time bound promotion dehors the provision underlying the scheme. A decision to such effect was taken in the meeting of the Establishment Committee of the 'SCADA' held on 25.06.2011 and when it found that the promotion so granted to the petitioner No. 3 and 5 along with one other was not in tune with the stipulations of the scheme. As a consequence, the time bound promotion granted to these petitioners was set aside on 03.09.2011 impugned at Annexure-1 and which decision was circulated in the office across the State vide letter dated 22.08.2013 at Annexure-2. It is following this decision to cancel the time bound promotion that recovery proceeding was started and in so far as petitioner Nos. 1 to 5 is concerned, the recovery was effected in the year 2013-14. While petitioner nos. 2 and 3 superannuated on 28.02.2013 the petitioner no. 1 superannuated on 31.3.2014 the petitioner no. 4 superannuated on 31.10.2014 and the petitioner no.5 superannuated on 30.01.2016.

As I have observed although the recovery was effected from the salary of these petitioners except the petitioner No.2 in whose case the recovery was effected from his gratuity, none of them raised a voice of protest against the recovery. Although the petitioner



No.5 has superannuated recently on 30.1.2016 but even he did not choose to protest against the recovery made in the year 2013 until filing of the present writ petition on 14.09.2016 much after his superannuation.

Mr. Gyanendra Roy learned counsel for the petitioners has very passionately argued for the petitioners in reference to the judgment of the Supreme Court reported in **(2015)4 SCC 334 [State of Punjab & Ors. vs. Rafiq Masih (White Washer)]** to submit that in view of the position settled by the Supreme Court in paragraph 18 of the judgment even if the petitioners were not found entitled to time bound promotion the authorities of the 'SCADA' were not in their jurisdiction to effect any recovery. Mr. Roy learned counsel for the petitioner would not dispute that under the Scheme in force these petitioners were not entitled to the time bound promotion. Mr. Roy would also not dispute that at any stage did these petitioners object against the recovery.

On the other hand, Mr. Lalan Kumar learned counsel for the SCADA has resisted his argument on the plea of illegal grant of time bound promotion to these petitioners to which they were not found entitled and that the recovery was only a consequence of cancellation of such illegal grant.

Having heard learned counsel for the parties, I find rather



peculiar that there is nothing on record of the proceeding which would confirm that rules of natural justice was observed in the case. In fact except for the discussion in Annexure-1 regarding the decision taken by the Establishment Committee on the illegal grant of time bound promotion to the Assistant Engineer which resulted in cancellation of the promotion of petitioner No. 3 and 5 there is no other order on record to direct for such recovery either in the case of petitioner nos. 3 and 5 or in the case of other petitioners yet a recovery was effected. Equally, surprising is that even though there was recovery effected despite no order of recovery nor any proceeding initiated, none of these petitioners chose to come before this Court. The reliance by Mr. Roy to the judgment of the Supreme Court in the case of **Rafiq Masih** (supra) is well placed but then its application requires a consideration in each case and it would have to be tested as to whether the principles would be applicable in the case in question. In so far as the present case is concerned, as I have mentioned in the earlier part of this judgment, the recovery was already effected in the case of petitioner no. 1 to 5 in the year 2013 and none of them chose to raise any objection to the recovery.

In such circumstance I am not persuaded to grant indulgence to the prayer made by petitioner No.1 to 5 who have awoken from slumber after a lapse of 3 years to seek a judicial remedy without



even bothering to raise a voice of protest before the respondents.

In consideration of the conduct of these petitioner No. 1 to 5 who have willingly surrendered to the recovery process, the principles so laid down in the case of **Rafiq Masih** (surpa) would not be applicable because the petitioners never complained of arbitrariness in the action.

In the peculiar circumstances so noted the claim raised by the petitioner no. 1 to 5 having been raised after a long lapse of almost three years without there being any document on record which would reflect a protest by these petitioners before the authorities of 'SCADA', I do not feel inclined to grant indulgence to the relief prayed and the writ petition in so far as the petitioner no. 1 to 5 is concerned is accordingly disposed of.

In so far as petitioner nos. 6 and 7 are concerned, the details present at paragraph 18 of the writ petition would show that these petitioners superannuated on 29.2.2016 and though recovery has been effected in the year 2016 from the salary of the petitioner no. 6 and from the gratuity payable to the petitioner no. 7 in the year 2016 but the exercise is without notice and without opportunity to these petitioners to defend themselves. In the circumstances noted the grievance raised in the writ petition, in so far as petitioner nos. 6 and 7 is concerned, is remitted for consideration by the Chairman,



‘SCADA’ respondent No. 2 for its disposal afresh in accordance with law but only after opportunity of hearing to the said petitioners, expeditiously and preferably within six weeks from the date of filing of the representation.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.11.2017
Transmission Date	NA

