

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4793 of 2017

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Arbind Kumar Sinha S/o late Lalan Prasad Sinha Resident of Mohalla, M.I.
Lane Pathar Gali Saristabad, P.S. Gardanibagh, District- Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Road Construction Department Bihar, Patna,
Vishvershriya Bhawan, Bailey Road, Patna.
3. The Engineer in Chief, Road Construction Department Bihar, Patna,
Vishvershriya Bhawan, Bailey Road, Patna.
4. The Superintending Engineer, Road Construction Department Bihar, Patna,
Vishvershriya Bhawan, Bailey Road, Patna.
5. The Executive Engineer National High Way Division Gulzarbagh, Patna
Behind Police Radia, Rajbanshi Nagar, P.S.- Shastri Nagar, Patna.
6. The Treasury Officer, Vishveshraiya Bhawan, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Sinha
For the Respondent/s : Mr. SUSHIL KUMAR, GP-22

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT

Date : 28-03-2018

Heard the learned counsel for the parties on I.A. No.

2498 of 2017 as well as on the merits of the writ petition.

I.A. No. 2498 of 2017 is allowed with consent of the
learned counsel for the parties and it is directed that the prayer
made in paragraph no. 1 of the said I.A. be incorporated as
Prayer No. V of Paragraph No. I of the main writ petition.

The present writ petition has been filed for quashing
the order contained in Memo No. 872 dated 15.06.2013 passed
by the Superintending Engineer, National Highway Work Circle,
Patna, whereby and whereunder the first time bound promotion



granted to the petitioner vide order dated 09.08.1995 has been cancelled with retrospective effect. It has been further prayed to quash the consequential orders as contained in Memo No. 485 dated 12.05.2016, Memo No. 1200 dated 11.11.2016 and Memo No. 294 dated 01.03.2017 issued by the respondent no. 5 whereby and whereunder the pay scales of the petitioner have been reduced and excess amount paid to the petitioner has been directed to be recovered. The petitioner has also prayed for grant of the benefits of first time bound promotion with effect from 08.04.1991. Lastly it has been prayed to quash the order contained in Memo No. 409 dated 23.03.2017 whereby a sum of Rs. 6,47,462/- has been directed to be recovered from the petitioner.

The short facts of the case are that the petitioner was appointed on the post of Toll Clerk under the Public Works Department and thereafter within a year his services were regularized. The petitioner was then granted first time bound promotion with effect from 08.04.1991 vide Memo No. 1072 dated 07.08.1996. However, the monetary benefits were paid with effect from 13.08.1992. Thereafter the petitioner was granted first A.C.P. vide Memo No. 1150 dated 25.10.2006 and the pay scale was revised vide order dated 29.11.2006.



Subsequently, vide Memo No. 1748 dated 07.09.2011 the petitioner was granted third A.C.P. with effect from 08.04.2011.

It is the contention of the petitioner that the petitioner had made representation before the respondent no. 4, upon coming to know that he has been granted less pay scale while being granted the benefits of first A.C.P. and second A.C.P., however, instead of redressing his grievances, the respondents herein vide Memo No. 872 dated 15.06.2013 have cancelled the order contained in Memo No. 1072 dated 09.08.1995 (07.08.1996), with retrospective effect whereby and whereunder the petitioner was granted first time bound promotion with effect from 08.04.1991. In the said order dated 15.06.2013 it has been mentioned that the said first time bound promotion was granted to the petitioner prior to passing the departmental accounts exam and the same was not confirmed by the Commission, Patna Division, Patna as such the said first time bound promotion was granted to the petitioner provisionally. It has been also mentioned in the said order that the petitioner had passed the departmental accounts examination on 26.05.2006, hence the first time bound promotion granted with effect from 08.04.1991 is illegal. Thereafter, the consequential orders, as mentioned hereinabove, have been issued.



The learned counsel for the petitioner has submitted that the present case is squarely covered by an order dated 19.10.2011 passed by this Court in CWJC No. 9539 of 2010. It is submitted that the said order passed by this Court would show that since the petitioner of that case had passed the departmental examination finally, the matter was remanded to the respondents to re-consider their decision to cancel the first time bound promotion and refund the amount of recovery made. The learned counsel for the petitioner has also submitted that the petitioner has already retired on 31.07.2017. Finally it is submitted that at the fag end of his carrer an order dated 23.03.2017 has been issued by the respondent no. 5 directing to recover a sum of Rs. 06,47,462/- by way of monthly instalment of Rs. 30,000/- from the salary of the petitioner herein and the same has been challenged by filing of I.A. No. 2498 of 2017.

Per contra, the learned counsel for the respondents has submitted that in the counter affidavit filed by the respondents, it has been stated that the petitioner was wrongly granted first time bound promotion with effect from 08.04.1991 and the benefits were also illegally given with effect from 13.08.1992 since the first time bound promotion was given to the petitioner without confirmation by the Divisional Commissioner. It has



been further submitted that the petitioner had passed the departmental exam finally on 26.05.2006, hence any promotion could not have been granted prior to the said date. Finally, it has been submitted that the petitioner has retired on 31.07.2017 and no recovery has been made since the same has been stayed by this Court.

I have heard the learned counsel for the parties and have perused the materials on record and I find that on merits, neither any pleadings are there on record to assail the withdrawal / cancellation of first time bound promotion granted to the petitioner with effect from 08.04.1991 nor the learned counsel for the petitioner, during the course of the argument, has challenged the veracity of the cancellation of the first time bound promotion granted to the petitioner with effect from 08.04.1991, on merits, and the only issue raised in the present petition is with regard to the respondents herein being precluded from making any recovery since the first time bound promotion was given by the respondents voluntarily without any misrepresentation on the part of the petitioner herein and moreover the impugned order dated 15.06.2013, cancelling the first time bound promotion granted to the petitioner has been passed after a lapse of almost two decades, i.e. at the fag end of



the career of the petitioner herein which is clearly impermissible in the eyes of law.

Another aspect of the matter is that the order of recovery has been passed on 23.03.2017 whereas the petitioner has retired on 31.07.2017 i.e. within a period of one year from the date of superannuation of the petitioner.

It is a trite law that in case excess payment has been made on account of revision of salary due to promotion etc., without there being any misrepresentation or fraud on the part of the employee but on account of mistake on the part of the respondents, no recovery of the amount paid in excess to the employees can be made and the entire process of recovery is rendered iniquitous and arbitrary. In this regard, the law is well settled by a catena of decisions and authoritative pronouncements made by the Hon'ble Supreme Court from time to time, some of them being the judgments reported in (2009) 3 SCC 475 (Syed Abdul Qadir vs. State of Bihar); (1995) suppl. 1 SCC 80 (Sahib Ram vs. State of Haryana); (1994) 2 SCC 521 (Shyam Babu Verma vs. Union of India); (1997) 6 SCC 139 (B. Ganga Ram vs. Regional Joint Director); (2006) 11 SCC 492 (Purshottam Lal Das vs. State of Bihar); (2000) 10 SCC 99 (Bihar State Electricity Board vs. Bijay Bhadur); (2006) 11 SCC



709 (B.J. Akkara vs. Government of India University); (1995) suppl. 1 SCC 18 (Sahib Ram vs. State of Haryana. It may be relevant to mention here that the Hon'ble Apex Court, in its judgment reported in **(2015) 4 SCC 334 (State of Punjab vs. Rafiq Masih)**, has summed up the various judicial pronouncements on the issue of recovery, which is the subject matter of the present case, and has authoritatively held, in paragraph nos. 18 and 19, as follows:

“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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from 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.*

19. *We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above."*

This Court is of the view that in view of the dictum of the Hon'ble Apex Court on the issue involved in the present case, the present case squarely falls under situation I to V mentioned under paragraph no. 18 of the judgment rendered by the Hon'ble Apex Court in the case of Rafiq Masih (supra), for the reason that the petitioner is firstly a class-III employee, secondly, the recovery order has been passed on 23.03.2017 whereas the petitioner has retired on 31.07.2017, hence the order of recovery has been passed within one year of the due date of retirement of the petitioner herein and lastly there has been admittedly no misrepresentation on the part of the petitioner herein and in fact the first time bound promotion was



granted voluntarily by the respondents and in the counter affidavit it has been accepted that it was the mistake of the respondents. Though another issue which might have arisen for consideration in the present case is as to whether the order granting first time bound promotion with effect from 08.04.1991 is liable to be cancelled despite the petitioner having ultimately passed the departmental accounts exam in the year 2006, however, the same is not necessary to be adjudicated in the present proceeding in as much as the petitioner has succeeded on the first issue itself.

The writ petition is allowed, the office order no. 45, contained in Memo No. 409 dated 23.03.2017, by which recovery of Rs. 6,47,462/- has been sought to be made from the petitioner, is quashed and it is directed that no recovery shall be made from the petitioner as a consequence of cancellation of the first time bound promotion to the petitioner with effect from 08.04.1991.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
CAV DATE	19.03.2018
Uploading Date	31.03.2018
Transmission Date	

