

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6192 of 2003

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Baij Nath Pandey, aged about 65 years, son of Late Kapil Dev Pandey, resident of village- Dhandiha, P.O. Dhandiha, P.S. Koelawar, District-Bhojpur (Arrah), Bihar

.... Petitioner/s

Versus

1. The State of Bihar, through the Secretary cum Commissioner, Planning and Development Department, Bihar, Patna (Respondent No. 3)
2. The Chief Secretary, Government of Bihar, Patna
3. The Secretary cum Commissioner, Department of Planning & Development, Bihar, Patna
4. The Director, Department of Statistics and Evaluation, Bihar, Patna
5. The Senior Joint Director, Department of Statistics and Evaluation, Bihar, Patna
6. The Administrative Officer, Department of Planning (Statistics and Evaluation Nideshalaya), Government of Bihar, Patna
7. The Secretary cum Commissioner, Department of Finance, Bihar, Patna
8. The Director, Provident Fund, Bihar, Patna
9. The Treasury Officer, Patna Secretariat, Sinchai Bhawan, Patna
10. The Treasury Officer, Bhojpur (Arrah)
11. The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Harendra Pratap Singh Mrs. Priyanka Singh
For the State	:	Mr. P.N. Sharma, A.C. to A.G.
For the Respondent-11	:	Mrs. Nivedita Nirvikar Mr. Manoj Kumar

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 29-06-2018

The present writ petition has been filed for quashing the order dated 14.02.1998 passed by the Director, Department of Statistics and Evaluation, Bihar, Patna i.e. respondent no. 4, as contained in Annexure-3 to the writ petition, whereby and where under it has been directed to cancel the first time bound promotion and recover the financial benefits given to them as a consequence of cancellation of the said first time bound promotion of those Block



Statistical Supervisor/Junior Statistical Assistant who have got the benefit of promotion and have been promoted to the post of Block Statistical Supervisor/Junior Statistical Assistant. The petitioner has further prayed for quashing the order dated 21.3.2001 passed by the respondent no. 4 as also the order dated 06.06.2001 passed by the Administrative Officer, Department of Planning (Statistics) and Evaluation (Nideshalaya), Government of Bihar, Patna i.e. the respondent no. 6, whereby and where under the petitioner has been directed to deposit a sum of Rs. 34,497.55 in the Government Treasury as well as the petitioner has been informed that earlier he was directed to deposit a sum of Rs. 34,457.55 by means of challan, however, the office has not been informed about the compliance of the said directions. The petitioner has also challenged the order dated 16.10.2001 passed by the respondent no. 4 whereby the office order no. 707 dated 02.3.1998, where under the second time bound promotion was granted to the petitioner, has been cancelled and the salary of the petitioner has been fixed as Rs. 1600-2780/- with effect from 19.8.1989 instead of Rs. 1800-3330/- and the pay has been fixed at Rs. 2050/-. The order dated 05.4.2002 passed by the respondent no. 5, where under it has been directed to adjust the amount recoverable, from the 10 per cent amount of gratuity withheld and whereby it has also been stated that the amount of excess pension being paid to the petitioner per month is Rs. 195/- (old scale) and Rs. 257/- (new scale),



has been challenged. The order dated 23.5.2002 passed by the Accountant General, Bihar, Patna, by which the pension and gratuity amount of the petitioner has been revised and a sum of Rs. 37,444.65/- has been sought to be recovered, has also been challenged.

The learned counsel for the petitioner has argued that since the petitioner has stood retired from the post of Junior Statistical Assistant with effect from 28.2.1997, the impugned orders are against the principles of law laid down by the Hon'ble Apex Court especially since there has been no misrepresentation on the part of the petitioner herein and for no fault of his, recovery has been sought to be made after the retirement of the petitioner herein.

Per contra, the learned counsel for the respondents, referring to the counter affidavit filed on behalf of the respondents, has submitted that originally the petitioner was appointed on the post of Complier in the year 1964 and thereafter he was granted the benefit of promotion by being promoted to a higher post of Junior Statistical Assistant in the year 1975, i.e. prior to the implementation of the scheme of time bound promotion. It has been stated that the first and second time bound promotions are to be granted after 10/25 years respectively of uninterrupted service on the same post on which the incumbent was primarily appointed. However, the incumbents who have got regular promotion prior to completion of the aforesaid period



of 10/25 years on the appointed post are not eligible for grant of time bound promotion. It is submitted by the learned counsel for the respondents that in the instant case, the petitioner received regular promotion to the post of Junior Statistical Assistant from the post of Complier within a span of nine years from the date of his appointment, hence he was not entitled for grant of time bound promotion.

I have heard the learned counsel for the parties and perused the materials on record as also gone through the relevant file produced by the respondents regarding the service career of the petitioner herein. I find that the petitioner along with others was given first time bound promotion with effect from 29.9.1985 by an order dated 30.09.1995 passed by the Director, Statistical and Evaluation, Directorate, Bihar, Patna on account of completion of 10 years of service on the post on which the petitioner and others were working. The said first time bound promotion, which was granted to the petitioner by an order dated 30.09.1995 has been cancelled by the impugned order dated 14.2.1998 on the ground that the petitioner had already been promoted to the post of Junior Statistical Assistant in the year 1975, therefore, there was no question of stagnation, hence the petitioner was not entitled to grant of first time bound promotion.

The learned counsel for the petitioner while assailing the impugned order dated 14.2.1998 passed by the respondent no. 4 by



which the first time bound promotion granted to the petitioner herein has been cancelled, has neither referred to any averment made in the writ petition so as to make out a case for quashing of the said order dated 14.2.1998 nor the learned counsel for the petitioner has been able to show any provision of law to the effect that in case an incumbent has already been granted promotion, such incumbent would not be liable to be granted the benefit of first time bound promotion. Admittedly, in the instant case, the petitioner was appointed in the year 1964 on the post of Compiler and thereafter he was promoted to the post of Junior Statistical Assistant with effect from 29.9.1975, hence prior to the completion of 10/25 years of service on the post of Compiler the petitioner had been granted promotion, hence he was not entitled to the first time bound promotion. In any case the aforesaid issue regarding cancellation of the first time bound promotion of the petitioner herein should not detain this Court inasmuch as much water has flown in the present case and the petitioner has also retired on 28.2.1997, as such now the only question which is pertinent to be decided is as to whether recovery is permissible from the retiral dues of the petitioner as a result of the cancellation of the first time bound promotion, which is a consequence of the cancellation of the first time bound promotion by the impugned order dated 14.2.1998 passed by the respondent no. 4. The law in this regard has been settled by the Hon'ble Apex Court in



a catena of decisions and by authoritative pronouncements made by the Hon'ble Supreme Court from time to time, some of them being the judgments reported in (2009) 3SCC 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) and (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 is squarely covered by the aforesaid judgments whereby



and where under it has been postulated that recovery from a retired employee is impermissible in law. In the present case, since the petitioner has retired on 28.2.1997 whereas the order cancelling first time bound promotion and orders directing for recovery of the excess pay paid to the petitioner has been passed thereafter, as well as admittedly no fault has been attributed to the petitioner herein for being wrongly granted the benefit of first time bound promotion, the impugned orders, as aforesaid, whereby and where under recovery has been sought to be made from the retiral benefits of the petitioner herein are liable to be set aside. Accordingly, the impugned orders dated 14.2.1998(Annexure-3), 21.03.2001 (Annexure-11), 06.06.2001(Annexure-15), 16.10.2001 (Annexure-18), 05.04.2002 (Annexure-19) and 23.05.2002 (Annexure-20), to the extent recovery is sought to be made from the petitioner herein is quashed and the respondents are directed to refund the amount recovered from the retiral dues of the petitioner herein within a period of four weeks from today.

The writ petition is allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
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