

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2375 of 2007

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Awadh Muni Prasad, S/o Late Sarjee Prasad, R/o Village- Basdhiya, P.S. Kargahar,
District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary Department of Planning and Development, Bihar, Patna.
3. The Director, Directorate of Statistics and Evaluation, Bihar, Patna.
4. The Accountant General, Bihar, Patna.
5. The Treasury Officer, Sichai Bhawan, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhay Kumar Singh and Mr. Siddhartha Kumar Singh, Advocates
For the Accountant General	:	Mr. Vivekanand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 12-04-2018

Heard learned counsel for the petitioner and
Accountant General. Nobody appears on behalf of the State.

2. The petitioner has moved the Court for the following
reliefs:

*“That, this is an application for issuance
of appropriate writ(s), order(s) and direction(s)
commanding the Respondent to fix pension at Rs.
4707/- w.e.f. 1/2/1998 on the basis of last paid
drawn by the petitioner, modifying the pension
which is being paid wrongly, arbitrarily illegally at
4159/- by quashing memo no. 2134 dated
21/11/2005 and memo No. 134 dated 11/1/2007
passed by the Respondents which is bad in eye of
law and has no legal legs to stand, with benefits of*



D.C.R. Gratuity, Leave Encashment, commutation of pension with statutory interest, thereof, awarded by the Hon'ble Court, as per norms and Rules."

3. The petitioner has been approaching the Court time and again. Initially, in C.W.J.C. No. 8599 of 1999, he came against withholding of 10% of his pension and 25% of his gratuity, which was disposed off with a direction to the authorities to pay him the remaining amount. The same was assailed by the authorities in L.P.A. No. 464 of 2001 and by order dated 07.01.2002 the authorities were directed to take fresh decision in the matter as to whether Time Bound Promotions or regular promotion granted to the petitioner was valid. Thereafter, the authorities decided the matter and held that the petitioner having been granted regular promotion, not being entitled to Time Bound Promotions, the same was withdrawn and it was directed to adjust the excess amount which was paid to the petitioner on account of Time Bound Promotions. When, as a consequence, the pension of the petitioner was reduced from Rs. 4707/- to Rs. 4159/-, his representation to the authorities to restore the same having been rejected, he again moved the Court in C.W.J.C. No. 5276 of 2004. In the said writ petition, the Court by order dated 14.03.2005, directed the authorities to consider afresh as to whether any recovery has been made from the petitioner from the post of Junior Statistical Assistant (Supervisor) and as to



whether the recovered amount has been refunded to the petitioner after holding him disentitled for Time Bound Promotions; the authorities having considered the matter, have passed a detailed order on 21.11.2005, which is impugned in the present writ application. The same has also been affirmed by the Secretary of the Department by order dated 11.01.2007, which is also under challenge in the present writ application.

4. Learned counsel for the petitioner submitted that once the authorities have recovered the benefit of regular promotion, he is entitled to his Time Bound Promotions being retained and in terms thereof, his pension fixed on the basis of the Time Bound Promotions being Rs. 4707/-, the same cannot be revised treating such promotions to be bad and re-fix the pension in terms of regular promotion granted to him which came to Rs. 4159/-. Learned counsel submitted that when in the year 1996 itself, the recovery of the benefit of regular promotion amounting to Rs. 5791/- has been made, the authorities not having recovered the excess amount paid to the petitioner in terms of his Time Bound Promotions, they are precluded from cancelling the Time Bound Promotions and upholding the regular promotion to the petitioner. Learned counsel submitted that though separate petitions were filed before the Director as well as the Secretary, they have decided the matter



against the petitioner *dehors* the factual or legal aspects.

5. Though, nobody has appeared on behalf of the State but from the materials on record, the Court finds no merit in the present writ application. Whatever had happened prior to 2001, when a Division Bench of this Court by order dated 07.01.2002 in L.P.A. No. 464 of 2001, had given the authorities liberty to take a fresh decision in the matter as to whether Time Bound Promotions or regular promotion granted to the petitioner was valid, any event which may have occurred prior to that date gets washed away and the issue is revived leaving it open to the authorities to take a fresh view. In terms thereof, the authorities have taken a decision that the petitioner having been granted regular promotion, was not entitled to Time Bound Promotions and accordingly, the same have been withdrawn with a further direction to recover the excess amount which he had drawn pursuant to such Time Bound Promotions. The Court would pause here. With regard to the validity of such decision, the Court finds that the authorities have taken a right view in law for the reason that once the regular promotion is prior in time to the first Time Bound Promotion, the earlier regular promotion has to be considered to be valid if not otherwise held to be impermissible or wrongly given. In the present case, once there is no dispute that the regular promotion was in accordance with law, the same has to be



considered to be a valid one and, thus, the petitioner had forfeited his right to be considered for Time Bound Promotion. Moreover, by order dated 07.01.2002 in L.P.A. No. 464 of 2001, when the Court had given liberty to the authorities to consider the matter afresh, such liberty not having been assailed or interfered with and having attained finality, the authorities having taken a view, the petitioner cannot argue the matter with regard to what had happened prior to the order passed by the Court dated 07.01.2002 in L.P.A. No. 464 of 2001. Even with regard to the stand taken by learned counsel for the petitioner that once in the year 1996, they had recovered Rs. 5791/- on account of the benefit granted to the petitioner in terms of his regular promotion, the benefit given to him under the Time Bound Promotions not being recovered, his Time Bound Promotions be upheld, is totally erroneous and misconceived. Even if on facts, the Court accepts that in terms of his Time Bound Promotions being withdrawn, the recoverable amount was Rs. 43606.45/-, whereas with regard to the benefit which he got under regular promotion being Rs. 5791/-, which was recovered, it would be an absurd proposition in law if it is held that because the authorities should have deducted a bigger amount, they are estopped from implementing the order which they have passed i.e., upholding the regular promotion and denying the Time Bound Promotions, which



too, in terms of the liberty given to them by order dated 07.01.2002 in L.P.A. No. 464 of 2001. As per the own showing of the petitioner, even if it is accepted that Rs. 5791/- was adjusted/recovered in the year 1996, when the liberty was by order dated 07.01.2002 in L.P.A. No. 464 of 2001, to re-decide the issue and the authorities having done so, the recoverable amount, after adjusting the amount which had already been recovered, which came to Rs. 37815.45/-, still remaining outstanding would not lead to a conclusion in law that because recovery has not been made from the petitioner of the entire amount, the Time Bound Promotions have to be given effect and the regular promotion has to be deemed to have been withdrawn, there cannot be such contorted view or assumption in the facts and circumstances of the present case. Even later on by order dated 14.03.2005 in C.W.J.C. No. 5276 of 2004, it is clear that the Court, from the tenor of the discussions in the order, has made it clear that if upon denial of Time Bound Promotions and upholding of regular promotion, the petitioner is entitled to get refund, the same was required to be adjusted. The following portion of the order dated 14.03.2005 in C.W.J.C. No. 5276 of 2004 being relevant is quoted hereinbelow:

“ In this view of the matter, it would not be appropriate for this Court to issue any positive direction to the authorities and the matter requires fresh consideration by the authorities as to whether



any recovery has been made from the petitioner from the post of Junior Statistical Assistant (Supervisor) and as to whether the recovered amount has been refunded to the petitioner after holding him disentitled for time bound promotions.

The authorities concerned, in that view of the matter, are directed to decide these questions after affording an opportunity of hearing to the petitioner within a period of three months from the date of receipt/production of a copy of this order.”

6. From the aforesaid, it is clear that the Court had observed that the authorities were required to consider afresh as to whether any recovery had been made from the petitioner from the post of Junior Statistical Assistant (Supervisor) and as to whether the recovered amount was refunded to the petitioner after holding him disentitled for Time Bound Promotions. In the present case, when the amount recoverable is far more from the amount which has to be adjusted/refunded, more specifically the recoverable amount being Rs. 43606.45/- whereas the amount, even if earlier adjusted being Rs. 5791/-, there is no question of any refund and rather it would be a case of further recovery of the remaining amount of Rs.37815.45/-. Further, the Court would refer to the order dated 31.10.2002 in C.W.J.C. No. 9895 of 2002, in terms whereof, no further recovery had been made. Thus, the petitioner cannot now claim the benefit that as recovery has not been made of the benefits from his Time Bound Promotions and only recovery has been made with regard to



his regular promotion, which was very less than the amount which was paid to him under the Time Bound Promotions, such argument does not hold any water for the reason that the authorities would obviously have recovered the amount had it not been for the intervention of the Court prohibiting the same. Thus, no advantage can be derived from such conduct of the respondents which was not in terms of what they had ordered or what was their intention with regard to the order they had passed, which itself was in terms of the liberty given to them by order dated 07.01.2002 in L.P.A. No. 464 of 2001. Thus, the petitioner having retained the benefit of Time Bound Promotions which was prohibited from being recovered under the order of the Court would not give scope to the petitioner to claim that because the recovery has not been made from him of the benefit given under the Time Bound Promotions, he shall be entitled to retain the benefit of Time Bound Promotions and not the regular promotion.

7. In any view of the matter, the Court finds that the issue with regard to the decision taken by the authorities to hold that the Time Bound Promotions were not permissible in view of the regular promotion granted to the petitioner which was prior in time and also such decision being taken in terms of the liberty given by the Court by order dated 07.01.2002 in L.P.A. No. 464 of 2001, the



authorities have rightly re-fixed the pension of the petitioner to what he would be entitled in law. The Court finds no error in such re-fixation of the pension.

8. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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