

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 8562 of 2007

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Most Mithlesh Devi Wife Of Late Doctor Sinha Resident Of Village- Bhadari,
P.O. + P.S. Nalanda, District- Nalanda

.... Petitioner/s

Versus

1. The Bihar State Food & Civil Supplies Corporation Limited through Its Managing Director Sone Bhawan, Bir Chand Patel Path, Patna-1
2. The Managing Director, Bihar State Food And Civil Supplies Corporation Limited, Sone Bhawan, Bir Chand Patel Path, Patna-1
3. The Chief Of Administration, Bihar State Food And Civil Supplies Corporation Limited, Sone Bhawan, Beer Chand Patel Path, Patna-1
4. The Desk Officer, Bihar State Food And Civil Supplies Corporation Limited, Sone Bhawan, Bir Chand Patel Path, Patna-1
5. The District Manager, Bihar State Food and Civil Supplies Corporation Limited, Nawada

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Bishnu Kant Dubey, Panchu Ram, Arun
Kr Sinha & Sanjeev Kr, Advocates

For the Respondent/s : N O N E

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 13-04-2018

Heard learned counsel for the petitioner. None appears
on behalf of the respondents.

2 The original petitioner approached this Court for quashing the Office Order dated 01.10.2003 under Memo No 6009 whereby first time bound promotion granted to him with effect from 22.07.1987 has been cancelled and a direction has been issued for consequential recovery of payment made in lieu of the time bound promotion. In view of demise of the original writ petitioner, his wife



was substituted in his place under order dated 22.07.2013 passed on IA No 2196 of 2009. Learned counsel for the petitioner submits that the reasons assigned in the said order are unsustainable inasmuch as the benefit of first time bound promotion, was in fact due to him as the Department, under its Letter dated 19.08.1996, has taken a conscious decision considering the petitioner's husband's appointment with effect from 18.07.1977 on the post of Salesman. By considering his appointment with effect from 18.07.1977, he has correctly been allowed first time bound promotion in terms of the Office Order dated 27.06.1986 bearing Memo No 8428 whereby the Bihar State Food and Civil Supplies Corporation Limited (for brevity, *the Corporation*) has taken a conscious decision to adopt the scheme of time bound promotion in terms of the Resolution dated 30.12.1981 of the Finance Department, Government of Bihar. The State Government had accepted the recommendations of the 04th Pay Revision Committee and time bound promotion scheme has been introduced in the State services by the Resolution dated 30.12.1981. The petitioner's case is that since the Department has granted the benefit after due consideration, there was no occasion to withdraw the same since bare perusal of Annexure 2 shows that in fact there was a fresh appointment of the petitioner's husband on the post of Salesman with effect from 07.07.1977. The post of Salesman subsequently



merged into the post of Assistant under Office Order dated 25.08.2000 and, as such, having discharged the duties on the post of Salesman/Assistant for 10 years subsequent upon his appointment on 07.07.1977, he was entitled to the benefit of first time bound promotion. He further submits that the impugned office order purporting to take away the said benefit by holding that he was wrongly granted the same benefit is unsustainable. One alternative submission, which has been advanced on behalf of the petitioner is that even if for the sake of argument, it is accepted that the benefit of time bound promotion was wrongly granted to him then after benefits under such grant having been continued for such a long time, the impugned order in so far as it purports to effect recovery from the petitioner in respect of the said grant of first time bound promotion, without any misrepresentation by the petitioner's husband, and relying upon the own conscious decision of the Corporation could not be sustained.

3 The stand of the respondents in the counter affidavit is that the benefit of first time bound promotion in terms of the Government Resolution dated 30.12.1981 became due to an employee after completion of 10 years, only if no regular promotion has been granted from his initial appointment. Stand of the respondents is that in fact the petitioner's husband had been promoted to the post of



Salesman/Assistant by order dated 07.07.1977 which is Annexure 1 to the writ petition and that the same is not an appointment order. Such regular promotion having been granted to the petitioner's husband, he would not be entitled to the benefit of first time bound promotion as it cannot be said that he has stagnated.

4 It is submitted that in course of verification of service book of employees, the office of the Accountant General has communicated its objection to the grant of first time promotion to the petitioner under Letter dated 05.12.2000. The petitioner was duly noticed and afforded an opportunity to explain whether he would be entitled to time bound promotion, and whether the grant of the said benefit was in accordance with law. Petitioner's husband had submitted his response which is Annexure 6 to the writ petition wherein he has claimed that he has been considered to have been appointed afresh as Salesman with effect from 18.07.1977 under order dated 07.07.1997. Having stagnated as Salesman for 10 years, he has rightly been granted benefit of first time bound promotion with effect from 1987.

5 Having considered the aforesaid response of the petitioner's husband, relying upon the Government of Bihar Resolution dated 30.12.1991 in the Finance Department noticed above as also the Office Order dated 27.06.1986 bearing Memo No 8428



whereby said Government Resolution was adopted in the services of the Corporation, a decision has been taken to withdraw the benefit of first time bound promotion granted to the petitioner as the same was found contrary to the stipulations contained in the scheme of time bound promotion. It is submitted that since the grant itself has been found to be illegal, the respondents were duly competent to make recoveries in respect of the amount which has been paid as a result of grant of time bound promotion contrary to the Government Resolution.

6 Having heard the learned counsel for the petitioner and considering the stand of the respondents, as emanating from the counter affidavit, this Court finds that Annexure 2 does consider the petitioner to be freshly appointed as Salesman with effect from 1977 under order dated 07.07.1997. However, such consideration in Annexure 2 is contrary to the order dated 07.07.1977 which clearly shows that the petitioner was only made to officiate as Salesman from the date of his joining on the post. The same is not an order of fresh appointment of the petitioner on the post of Salesman. It appears that since persons were required for performing the duties of Salesman, petitioner's husband who, at that time was working as Night Guard, had been asked to function on the higher post of Salesman in the pay scale of Rs 200-275. The respondents are right in their decision that



since the petitioner has already got the benefits of the higher scale of Salesman later merging into the post of Assistant by virtue of letter dated 24.08.2000 (Annexure 4), he cannot be said to be stagnating since his appointment and as such the grant of first time bound promotion was rightly objected by the office of the Accountant General.

7 In view of the aforesaid consideration, this Court does not propose to interfere with the withdrawal of first time bound promotion granted to the petitioner's husband.

8 Recoveries, in respect of payments made under the said grant by virtue of a conscious and considered decision of the respondents, as contained in Annexure 2 dated 19.08.1996, sought to be made from the petitioner's husband on account of withdrawal of first Time Bound Promotion even though the petitioner's husband had made no misrepresentation nor was he in any manner responsible for the grant of such benefit by the Department, is an issue on which this Court does not approve the decision of the respondents. The benefit of first Time Bound Promotion was granted to the petitioner's husband under order dated 24.08.2000 (Annexure 4). Recoveries are purported to be effected in respect of the excess amounts paid on account of first time bound promotion granted with effect from the year, 1987 by the impugned Office Order dated 01.10.2003. Another



intervening circumstance, during pendency of the instant writ petition, is that the original writ petitioner, to whom the benefit had been granted, had passed away and his wife has been substituted in the instant proceedings. The recoveries said to be made are in respect of excess payment made for a period 1987 till 01.10.2013 which is much more than five years. The petitioner's husband, admittedly, belongs to Class III service even after his promotion to the post of Salesman/Assistant. Thus, the recovery of excess amount, in the facts and circumstances of the instant case, appear to be iniquitous and harsh. The petitioner's reliance on the judgment in the case of State of Punjab & Others –Versus- Rafiq Masih (White Washer) reported in 2015 (1) PLJR 261 (SC) appears to be appropriate in the facts of the instant case.

9 This Court would, therefore, holds that the respondent-Corporation was not justified in directing for recoveries in respect of the excess payment made on account of the benefit of first time bound promotion. The effect of impugned order dated 01.10.2003 taking away benefit of the first time bound promotion can only have prospective effect.

10 In view of these findings, the respondent-Corporation would be obliged to recalculate the entitlement in respect of the post retiral dues of her deceased husband by not affecting any recovery in



respect of the excess payment made on account of first time bound promotion till the date of the order whereby it has been withdrawn being 01.10.2003. The admissible amounts due under the various headings of the post retirement benefits must be paid within a period of three months from the date of receipt/production of a copy of this order.

11 The writ petition is allowed to the extent indicated above.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.04.2018
Transmission Date	NA

