

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5971 of 2011

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RINA KUMARI wife of Prof. Ashok Kumar, resident of B/2, Old Post Office Lane Chitragupta Nagar, PO-Patrakar Nagar, PS. Kankar Bagh, District Patna and presently residing at Goshala Road, PO-Khagaria, PS-Chitra Gupta Nagar District Khagaria and post as District Education Officer, Khagaria.
... Petitioner/s

Versus

THE STATE OF BIHAR and ORS ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vishnudeo Narayan, Sr. Adv. Mr. Chandra Shekhar Jha, Adv.
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA-7 Mr. Goal Krishna, AC to GA-7

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 07-03-2019

Heard learned counsel for the petitioner and learned counsel for the State.

During the argument, prayer has been confined with respect to recovery of the amount which has been paid to the petitioner on account of grant of time bound promotion and later on, the same was withdrawn in view of the order passed in C.W.J.C. No. 6768 of 1996.

The short fact of this case is, the petitioner was appointed on the basis of recommendation in 33rd Combined Competitive Examination of Bihar Public Service Commission on the sanctioned post in Bihar Education Service (Class-II) after completing the entire formalities in the year 1988. The petitioner joined the aforesaid post on 21.09.1988 and after completion of the training, she was posted as Area Education Officer, Bhojpur



at Ara in the year 1990. Thereafter, she was transferred to several other places and presently she is posted as District Education Office, Khagaria since 12.05.2010. In view of the order passed in C.W.J.C. No. 9095 of 1995 and M.J.C. No. 1399 of 1997, she was granted Junior Selection Grade in the pay scale of Rs.3000-4500 and later on, the Director, Administration-cum-Joint Secretary, Human Resources Development Department, Government of Bihar (respondent no. 3) issued a Notification no. 803 dated 29.06.2004, promoted the petitioner and others against the identified post as per Resolution no. 660 dated 08.02.1999 issued by the Finance Department, Government of Bihar and accordingly her pay was revised to Rs.10000-15200. In view of order dated 31.05.2007 passed in C.W.J.C. No. 6768 of 1996 the officers working in Adult Education Department were amalgamated into Bihar Education Service and by the said order of this Court they became senior to these persons and on that account their promotion were withdrawn but before that they were served with the letter no. 2/p 1-04/09 (Chhaya)-63/1308 dated 01.07.2010 whereby the explanation was sought from this petitioner within fifteen days as to why promotion given to him be not cancelled in view of the absorption of the officers of the Adult Education into the Bihar Education Service. He sought the copy of order passed in



the writ petition, but the copy of same was not furnished and later on, the order has been passed withdrawing the promotion by the impugned order vide Notification no. 117 dated 24.1.2011 (Annexure-3) recalled the promotion of the petitioner and others and gave direction for recovery of the excess amount.

The learned counsel for the petitioner submits that the petitioner was granted promotion at the behest of the order passed by this Court, no illegality was committed when the benefit was conferred but later on, on account of change a situation after merger of two cadres, the petitioner became junior, on that account, the benefit of promotion has been withdrawn. He further submits that during that period, she discharged the duty on the promoted post validly and properly. Subsequent events cannot be allowed to play prejudice with the petitioner. Singular grievance has been raised recovery of excess payment made from the petitioner.

The learned counsel for the State submits that till date no recovery of the excess payment has been made and, as such, the grievance of the petitioner is uncalled for.

Having considered the rival contentions of the parties, the petitioner was granted the promotion on the junior selection grade on the basis of order passed by this Court as well as after



the enforcement of 5th Pay Revision Committee Report vide Notification no. 660 dated 08.02.1999, the posts were identified and the petitioner was granted pay scale of Rs.10000-15200 which was a valid decision on the day the order was passed and subsequent events cannot put the petitioner disadvantage position in the nature of recovery of excess payment as there cannot be any excess payment as on the day when she was granted promotion was against the sanctioned post. Merely demotion of the petitioner later on will not be disentitled the petitioner to claim protection from recovery of the amount which has already been paid to her on the promoted post.

In view of the aforesaid discussion, the order for recovery of excess payment is set aside as she cannot be put her peril because of the subsequent events that has taken place.

With the above observation, this petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.03.2019
Transmission Date	N/A

