

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAC) No.746 of 2014

Manimala Sethy

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

22.11.2022

Order No

02.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard Mr. B.K. Mishra on behalf of Mr. Sambit Rath, learned counsel for the Petitioner and Mr. A.P. Das, learned ASC appearing for the Opp. Parties.

3. The present writ petition has been filed challenging the order dtd.01.02.2014 passed by the CDMO, Keonjhar-O.P. No. 2 under Annexure- A/3 to the writ Petition.

4. The present writ petition was filed on the ground that the Petitioner while continuing in the establishment of O.P. No. 2, he was provisionally promoted as a Sr. Clerk vide order dtd.11.09.2009 under Annexure-A/1. Subsequently, the said order was further extended vide order dtd.15.04.2010 under Annexure-A/2. But while continuing in the said capacity, the order of promotion initially issued on 11.09.2009 was withdrawn vide the impugned order dtd.01.02.2014 under Annexure-A/3 and direction was issued to recover the excess amount drawn during the period the Petitioner enjoyed the said promotional post.

5. Learned counsel for the Petitioner submitted that the Petitioner was suo moto given the benefit of promotion vide order under Annexure-A/1 and he was allowed to continue as such till the impugned order under Annexure-A/3 was issued. It is also submitted that prior to issuance of Annexure-A/3 no show-cause was issued and the said order was issued in complete violation of the principle of natural justice.

6. Learned counsel for the Petitioner further submitted that since the Petitioner has no role with regard to taking the benefit of promotion the direction contained in impugned order to recover the excess amount is not legally sustainable in view of the decision of the Hon'ble Apex Court reported in the case of **Purshottam Lal Das & Ors. Vs. State of Bihar & Ors. ((2006) 11 SCC 492)** and another decision reported in the case of **Paras Nath Singh Vs. State of Bihar & Ors. ((2009) 6 SCC 314)** as well as the leading decision rendered in the case of **State of Punjab v. Rafiq Masih** reported in **(2015) 4 SCC 334**.

7. Mr. Das, learned ASC on the other hand made his submission basing on the stand taken in the counter affidavit. It is submitted that in view of the stand taken in Para 5 of the counter filed by the O.P. No. 2, there is no illegality in directing for recovery of the excess amount drawn by the Petitioner. Para-5 of the counter is reproduced hereunder:-

“5. That in reply to Para 6.5, it is submitted that provisional promotion is not authorized under law and drawal of salary against the post of Sr. Clerk on the strength of provisional promotion needs to be recovered. Which is also settled principle of law as decided by the Hon'ble apex court in the case of Chandi Prasad Uniyal.”

8. Heard learned counsel for the Parties. Perused the materials available on record. This Court after going through the same finds that prior to issuance of the impugned order at Annexure- A/3, no opportunity of hearing has been given nor any show-cause was ever issued to the Petitioner to take his stand against such withdrawal of the promotion. This Court also finds that the Petitioner has not role with regard to taking the benefit of promotion and consequential receipt of the financial benefits.

9. Therefore, in view of the decision rendered in the case of *State of Punjab v. Rafiq Masih* reported in (2015) 4 SCC 334, wherein it has been held that no recovery can be effected from an employee, if she has no role in getting the benefit, this Court is inclined to quash the direction to recover the excess amount as indicated in Annexure-A/3. It is observed that no recovery can be effected from the Petitioner for the period the Petitioner enjoyed the benefit of promotion.

10. The writ Petition is accordingly allowed with the aforesaid observation.

(Biraja Prasanna Satapathy)
Judge

Sneha