

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20917 of 2011

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Raj Kumar Mahto S/O Late Ram Bahadur Mahto R/O Village- Pulkari, P.O.-
Saraia Via Manjhaul, District- Begusarai

... .. Petitioner

Versus

1. The State of Bihar
2. The Secretary Road Construction Department, Government Of Bihar, Patna
3. The Superintendent Engineer Road Construction Department, Road Circle,
Darbhanga.
4. The Executive Engineer, Road Construction Department, Darbhanga
5. The Accountant General, Bihar .

... .. Respondents

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Appearance :

For the Petitioner/s	:	Ms.Perna Rishi, Advocate
For the Respondent/s	:	Mr.Kinkar Kumar, SC-9
		Ms.Dipika Sharma, AC to SC-9

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 16-02-2023 Heard Ms. Perna Rishi, learned counsel for the

petitioner and learned Mr. Kinkar Kumar, learned S.C.-9 for

the State.

Petitioner, in the present case, is seeking setting
aside of the order as contained in Memo No. 1473 dated
24.10.2011 passed by the respondent no. 3 cancelling the
time bound promotion granted to the petitioner with effect
from 12.10.1990. Petitioner further prays for issuance of a
writ of mandamus directing the respondents to grant all the
admissible dues on account of the time bound promotion
and the ACPs.



Learned counsel for the petitioner submits that the petitioner was appointed on the post of Correspondence Clerk with the Public Works Department, Purnea vide letter no. 55 dated 11.01.1980. He was granted first time bound promotion w.e.f. 12.01.1990 upon completion of his ten years of service vide Annexure '3' to the writ application. The time bound promotion was, however, cancelled vide Annexure '1' to the writ application after about 11 years.

On perusal of the counter affidavit, it transpires that upon examination of the service book of the petitioner it was found that the first time bound promotion was provisionally granted to the petitioner w.e.f. 12.01.1990 but that could not be confirmed as the same was granted without passing the departmental accounts examination.

The petitioner, however, passed the departmental accounts examination on 12.10.2007 i.e. after 31.12.1995. The respondents took a plea that the first time bound promotion was provisionally granted subject to the conditions that if it is found that the time bound promotion has been wrongly granted then the excess payment made to the petitioner shall be recovered.



Earlier this Court vide order dated 02.12.2011 while directing the State to file counter affidavit passed an interim order that till further order no step for recovery shall be taken pursuant to Annexure '1'.

During pendency of this writ application certain developments have taken place. The petitioners similarly situated namely, Kusheshwar Nath Pandey and Vijay Kumar Mishra lost their respective cases before this Court and the matter went to the Hon'ble Supreme Court in Civil Appeal No. 6987-6988/2016 (Vijay Kumar Mishra Vs. State of Bihar and others). The Hon'ble Supreme Court found that the judgment in Kusheshwar Nath Pandey was subject matter of Civil Appeal No. 6658/2013. By judgment and order dated 05.08.2013 the Hon'ble Supreme Court has reversed the decision in Kusheshwar Nath Pandey. Further the Hon'ble Supreme Court relied upon the judgment in the case of **State of Punjab vs. Rafiq Masih (White Washer)** reported in **(2015) 4 SCC 334** (paragraph 18) wherein it has been held that where the employee is not at fault no recovery should be made from him, particularly if the realization of the mistake made by the department is after



an unreasonable period of time. The Hon'ble Supreme Court, therefore, set-aside the order passed by the Division Bench and restored the order passed by the learned Single Judge in the case of Vijay Kumar Mishra.

Following the judgment of the Hon'ble Supreme Court, this Court allows this writ application. The impugned order is quashed. Petitioner shall be entitled for the consequential benefit.

(Rajeev Ranjan Prasad, J)

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