

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15134 of 2015

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Nageshwar Prasad, Son of Late Jamuna Prasad, R/v-Nagawa, P.S.-Vaishali,
District-Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Agriculture Director, Bihar, Patna.
3. Plant Protection Officer, Bihar, Patna.
4. Junior Plant Protection Officer, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Baidya Nath Thakur, Adv.
For the Respondent/s : Mr.Md. N. Hoda Khan, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 01-09-2023

1. The present writ petition has been filed for quashing office order dated 19.04.2005, issued by the Agriculture Director, Bihar, Patna i.e., the Respondent No.2, whereby and whereunder Second Time Bound Promotion granted to the petitioner with effect from 01.04.1981 has been cancelled. It is further prayed to restore the Second Time Bound Promotion granted to the petitioner with effect from 01.04.1981.

2. The brief facts of the case according to the petitioner are that the petitioner was appointed on the post of Wheel Operator by the Respondent No.4, vide memo dated 21.06.1955 and then he had joined the said post on 01.07.1955. The Director Administration, Agricultural, Bihar, Patna vide



memo dated 29.04.1972, granted promotion to the petitioner on the post of Plant Protection Supervisor and while working on the said post, the petitioner superannuated with effect from 28.02.1993. The Respondent No.2 had then granted Second Time Bound Promotion to the petitioner with effect from 01.04.1981, vide memo dated 08.10.1999 in the pay scale of Rs.580/- Rs.860/-. It is submitted that wrongly the said scale was mentioned as Rs.1320/- Rs.2040/- which had then stood rectified vide Corrigendum dated 07.03.2004. Nonetheless, the Respondent No.2 vide memo dated 19.04.2005, has cancelled the Second Time Bound Promotion granted to the petitioner vide memo dated 08.10.1999. The learned counsel for the petitioner has submitted that withdrawal of Second Time Bound Promotion after 24 years on the basis of objection raised by the Finance Department, Bihar, Patna is unsustainable in the eyes of law. It is submitted that the aforesaid memo dated 08.10.1999 has been cancelled without giving any opportunity of hearing, much less issuance of any show cause to the petitioner herein, hence the impugned order dated 19.04.2005 is fit to be set aside.

3. Per contra the learned counsel for the Respondent-State has submitted, by referring to the counter affidavit, filed in the present case that the order dated 19.04.2005 has been



challenged after a decade, hence the present writ petition is fit to be dismissed on the ground of delay and laches, alone. It is further submitted that the Second Time Bound Promotion was given by the Respondent No.2 vide memo dated 26.05.1999 provisionally, which was rectified by a Corrigendum letter dated 08.10.1999 and 07.03.2004, respectively. It is also submitted that upon the opinion of the Finance Department, Bihar, Patna, the Respondent No.2 has issued the impugned order dated 19.04.2005, cancelling the Second Time Bound Promotion granted to the petitioner vide order dated 26.05.1999, hence there is no illegality in the impugned order dated 19.04.2005.

4. I have heard the learned counsel for the parties and perused the materials available on record, from which it is apparent that though the petitioner was granted Second Time Bound Promotion, vide memo dated 26.05.1999 with effect from 01.04.1981, however, after a lapse of considerable time, the same has been cancelled vide the impugned order dated 19.04.2005, which is patently illegal, not only in view of the fact that no opportunity has been granted to the petitioner to put forth his defence, prior to passing of the impugned order dated 19.04.2005, but the said order dated 19.04.2005 has been passed, cancelling the Second Time Bound Promotion granted



to the petitioner vide memo dated 26.05.1999, much after the petitioner superannuated on 28.02.1993, which is not permissible in the eyes of law. Moreover, the law regarding recovery is no longer *res integra* and has been well settled in a catena of decisions reported in ***(2009)3 SCC (Syed Qadir vs. State of Bihar); (1995) Suppl.1 SCC 80 (Sahib Ram vs. State of Haryana); (1994) 2 SCC 52 (Shyam Babu Verma vs. Union of India) ; (1997) 6 SCC 139 (B.Ganga Ram vs. Regional Joint Director) ; (2006) 11 SCC 492 (Purshottam Lal Das vs. State of Bihar) ; (2000) 10 SCC 99 (Bihar State Electricity Board vs. Bijay Bhadur); (2006) 11 SCC 7089 (B.J. Akkara vs. Government of India University) and (1995) suppl. 1 SCC 18 (Sahib Ram vs. State of Haryana) and the one reported in (2015) 4 SCC 334 (State of Punjab vs. Rafique Masih).***

5. The Hon'ble Apex Court, times without number has reiterated the well settled principle of law to the effect that no recovery can be effected from persons like the petitioner, who have already attained the age of superannuation since there has been neither any misrepresentation nor any fraud has been committed by them, leading to payment of excess amount of salary whereas it is the negligence and the laches on the part of the respondent authorities which has led to excess payment of



salary. The present case is squarely covered, not only by a catena of judgments rendered by the Hon'ble Apex Court, referred to herein above, but also by the latest judgment rendered by the Hon'ble Apex Court in the case of **Rafique Masih (supra)**, paragraph-18 whereof is reproduced herein below:-

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid



accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover".

6. Having regard to the facts and circumstances of the case, it is held that the impugned order dated 19.04.2005, passed by the Respondent No.2, cancelling the Second Time Bound Promotion granted to the petitioner with effect from 01.04.1981 is an ex-parte order, not only passed behind the back of the petitioner, but also in violation of the principles of natural justice, hence is not sustainable in the eyes of law, thus is quashed.

7. As a consequence of quashing of the impugned order dated 19.04.2005, passed by the Respondent No.2, the respondents are precluded from making any recovery from the petitioner and in case any recovery has been made from the petitioner with regard to the amount paid on account of grant of Second Time Bound Promotion, the same shall be refunded back to the petitioner, forthwith in view of the principles laid down in this regard, by the Hon'ble Apex Court in the case of



Rafique Masih (supra).

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
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