

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.582 of 2022

In
Civil Writ Jurisdiction Case No.543 of 2011

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1. The State of Bihar
 2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
 3. The Deputy Secretary, Human Resources Development Department, Government of Bihar, Patna.
 4. The Director, Higher Education, Human Resources Development Department, Government of Bihar, Patna.
 5. The Chairman, Maithli Academy, 740/800, Lal Bahadur Shastri Nagar, Patna-800023.
 6. The Director-cum-Secretary, Maithli Academy, 740/800, Lal Bahadur Shastri Nagar, Patna-800023.

... .. Appellant/s

Versus

Raghubir Mochi S/o Late Faudar Mochi, resident of Village and P.O.-Nabani, P.S.-Jhanjharpur, District-Madhubani.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sitaram Yadav, G.P. 16
For the Respondent/s : Mr.Dhirendra Kumar Jha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 02-12-2023

The present appeal is directed against the order dated 01.08.2022 passed in CWJC No. 543 of 2000 by the learned Single Judge by which the writ petition was allowed setting aside the orders dated 06.08.2010 and 23.09.2010 passed by the Director, Higher Education, Bihar Patna and the Director-cum-Secretary, Maithli Academy, Patna respectively.



2. The facts relating to the present case is/are as follows:-

3. The respondent-petitioner belongs to Schedule Caste category and was appointed as Lower Division Assistant in the year 1977 after adopting due process of appointment in the office of Respondent Maithili Academy pursuant to the decision taken by its Executive Committee.

4. The respondent-petitioner was later granted Junior Selection Grade Assistant Scale in the year 1987 vide letter no. 87 dated 04.05.1987.

5. On 10.09.1999, in the meeting of the Executive Committee of the Maithili Academy, a decision was taken to grant promotions to its employees on vacant sanctioned posts and for that purpose, a Promotion Sub Committee was constituted.

6. Two sanctioned posts of Assistant Director were there in the Academy and on second post, name of the respondent-petitioner was recommended by the Promotion Sub Committee on 16.12.1999.

7. It was subsequently placed before the Executive Committee of the Academy in its meeting dated 27.03.2000 and vide Agenda No. 6, the same was approved.



8. Pursuant thereto, the respondent-petitioner was granted promotion to the post of Assistant Director vide an order bearing memo No. 116/2000 dated 04.05.2000 issued by the Director-cum- Secretary of the Academy.

9. The matter of appointment of a regular Director for the Maithili Academy was under consideration of the government and name of the petitioner was also under hectic consideration since 2005 itself.

10. Ultimately, the Department came out with an Office Order bearing Memo No. 867 dated 31.05.2007 by which the respondent-petitioner was made Incharge Director, Maithili Academy for a period of three years or till further orders whichever is earlier.

11. On 19.02.2010, the Chairman-cum-Director wrote to the Director, Higher Education, Bihar, Patna for granting approval to the promotion granted to six of its employees in the year 2000 itself as also payment in the pay scale of the promoted posts.

12. However, the Director, Higher Education directed for cancellation of the promotion granted to those employees including the respondent-petitioner with further direction to recover the payment received by those employees



on the promoted post vide its office letter no. 1131 dated 05.04.2010.

13. The Academy thereafter, issued office order vide letter no. 27/10 dated 13.04.2010 canceling the promotion granted to six employees including the respondent-petitioner.

14. The respondent-petitioner was later issued show cause and the same having been found unsatisfactory, his promotion was cancelled vide memo no. 40/10 dated 06.05.2010 by the Chairman–cum– Director of the Academy.

15. Both the letters issued by the Director, Higher Education bearing letter No. 1131 dated 05.04.2010 and office order bearing Memo No. 27/10 dated 13.04.2010 were challenged by the respondent-petitioner before this Court in C.W.J.C. No. 8994 of 2010.

16. The writ Court vide an order dated 28.06.2010 was pleased to quash the order dated 05.04.2010 issued by the Director, Higher Education and also the office order dated 06.05.2010. The respondent-petitioner was directed to appear before the Director, Higher Education with detailed representation who was directed to pass a reasoned order.

17. The respondent-petitioner thereafter filed his representation whereafter came the order vide memo no.. 2442



dated 06.08.2010 by which the representation was rejected.

18. This followed memo No. 146/10 dated 23.09.2010 by which direction was given for the realization of the excess amount paid to the respondent-petitioner in twenty equal installments.

19. Aggrieved, the writ petition was filed.

20. The respondents filed their counter affidavit and the sum and substance of their pleading was/were that the respondent-petitioner did not fulfil the requisite educational qualification to hold the post of Assistant Director and as such, the orders in question were passed thus justifying the actions taken.

21. The writ Court took up the matter on 01.08.2022 and in absence of proper assistance, the Director was summoned. According to him, two posts of Assistant Director was created on 08.01.1977. However, there was no answer to the question put to him as to what is the method of recruitment to the post of Assistant Director like whether it is through direct recruitment or for promotion/ deputation/ appointment by transfer or any other method, as also the educational qualification.

22. This followed the supplementary counter



affidavit of the respondents pointing out that as per the letter of 26.02.1977, the educational qualification for Assistant Director is M.A.

23. Learned Single Judge thereafter noticed that in CWJC No. 9317 of 1988 decided on 13.03.1989, the Academy took decision to promote the petitioner to the post of Assistant Director on 11.03.2000 on which post, he continued upto 31.05.2007 when he was assigned the next higher post of Director on in-charge basis from 31.05.2007 to 27.05.2009.

24. In the light of the aforesaid facts, the learned writ Court held that the orders in question passed by the Director, Higher Education on 06.08.2010 and consequential order dated 23.09.2010 passed by the Chairman-cum-Director Mithili Academy have to go, which were accordingly quashed with a direction to calculate his monetary benefits with 6 percent interest and pay the same within three months with further direction to refund the amount, if any realized.

25. Aggrieved, the present appeal by the State of Bihar.

26. The only point put forward by the learned State Counsel is that when the education qualification was M.A. for the post of Assistant Director which admittedly, the



respondent-petitioner did not possess. the learned Single Judge erred in quashing the orders in question. He thus justified the decision taken by the appellants.

27. This Court has gone through the facts of the case, the orders passed by the appellants-respondents as also the order dated 02.12.2023 passed by the learned Single Judge in CWJC No. 543 of 2011. The admitted fact is that the respondent-petitioner while serving with the Academy was promoted to the post of Assistant Director by a committee in the year 2000. He remained on the said post for the next 7 years when he was made the In charge Director on 31.05.2007.

28. The appellant-respondent have failed to clarify how the committee took a decision in the year 2000 promoting him as an Assistant Director on which post, he continued for next one decade. In between, he also served as an Incharge Director of the Academy.

29. Learned counsel appearing for the appellants harped on the document which was attached as Annexure-J to the writ petition to support the case that the educational qualification of M.A. was necessary. Annexure-J is the proceeding of the Academy of 26.02.1977 where its sub-committee in its meeting gave a proposal that for the post of



Assistant Director, educational qualification will be M.A.

30. There is nothing on record to show that the said proceeding was adopted and made compulsory. In between, lots of water has flown down the ganges including the aggrieved person knocking the doors of the Court and getting judicial orders.

31. In that background, the learned Single Judge in its order dated 01.08.2022 after incorporating the promotional order, in paragraph 4 held as follows:-

“In the light of these facts and circumstances and the fact that petitioner was promoted to the post of Assistant Director, while holding such post he was assigned next higher post duty as Director from 31.05.2007 to 27.05.2009. Thereafter, he was put back to the post of Assistant Director and he has attained age of superannuation and retired from service during pendency of the present petition. In the light of these facts and circumstances, petitioner has made out a case so as to interfere with the impugned decision of the respondents.

Accordingly, orders dated 06.08.2010 and 23.09.2010, Annexures - 13 and 14 respectively stand set aside. The concerned respondent is hereby directed to calculate monetary benefits which is due to the petitioner and disburse the same along with 6% interest. The



above exercise shall be completed within a period of three months from the date of receipt of this order. Writ petition stands allowed.

If any amount already recovered for the petitioner, the COURT same shall be refunded within a period of one month from the date of receipt of this order.”

32. An Officer joins a post, serves to the best of his ability, is promoted to the post of Assistant Director by the highest body of the Academy. However, a decade later, the employer realizes that the promotion is/was invalid and accordingly passes orders which also include direction for realization of the amount that he has received while serving as an Assistant Director in twenty installments. Nothing can be described more unfortunate than what has been meted out to the respondent-petitioner.

33. In the case of **State of Punjab and Others vs. Rafiq Masih (White Washer)** reported in **(2015) 4 SCC 334**, the Hon’ble Apex Court in paragraph 12 held as follows:-

“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 these



entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a reads reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

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

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

(iii) Recovery from 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.”



34. The aforesaid order of the Hon’ble Apex Court fully applies in the present case, the order of cancellation being iniquitous harsh and arbitrary. The order was also passed in the year 2010 while the respondent-petitioner retired in the year 2011. It is not the case of the appellants that there was any misrepresentation on the part of the respondent-petitioner.

35. Thus in our view, the reasoned order dated 01.08.2022 passed by the Writ Court need no interference. The appeal stands dismissed.

36. No order as to costs.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	NAFR
CAV DATE	N/A
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