

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12852 of 2022

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Ramashish Singh S/o Harkeshwar Singh, R/village - Berhma, Ward No. - 6,
P.S. Barh, Distt. - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary Road Construction Department Govt. of Bihar.
2. The Secretary Finance Department Govt. of Bihar.
3. The Superintending Engineer, National High Way Work Circle Patna Bihar.
4. The Executive Engineer National High way Division Guljarbag Patna.
5. The Treasury Officer, Visheshwaraiya Bhawan Baily Road Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Dr. Anjani Pd. Singh, Advocate

For the Resp-State : Mr. Mahtab Alam, AC to SC-20

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 15-07-2024

Heard the parties.

2. The petitioner is aggrieved by the order dated 11.08.2022 as contained in Memo No. 800 issued by the Executive Engineer, National Highway Division, Gulzarbagh, Patna, whereby an amount of Rs. 3,27,220/- has been directed to be recovered from the retiral benefit(s) of the petitioner.

3. The short facts, which led to the filing of the present writ petition, are that the petitioner was initially appointed on 08.04.1982 as work charge chowkidar-cum-cook. Subsequently, the petitioner was absorbed under the regular establishment vide Office Order no. 31 read with Memo No. 1830 dated 28.02.2014 issued by the Road Construction



Department, Bihar, in the light of the Resolution No. 10710 dated 17.10.2013 of the Finance Department, Government of Bihar.

4. On being found eligible for time bound promotion, the petitioner was accorded the benefit of time bound promotion vide Letter No. 5927(s) dated 01.08.2018. The petitioner was thus granted promotional pay-scale and accordingly disbursed the consequential enhanced salary and other benefits. After serving satisfactory service of more than 38 years, the petitioner came to be superannuated on 31.01.2021.

5. After superannuation of the petitioner, all of a sudden, the Finance Department, Government of Bihar vide its Letter No. 1134 dated 11.02.2021 reported to the Deputy Secretary, Lokayukt, Bihar, Patna that persons absorbed/regularized under the provision of Resolution No. 10710 dated 17.10.2013 are not entitled for time bound promotion. Pursuant to the letter issued by the Finance Department, the Engineer-in-Chief, Road Construction Department, Bihar vide Memo No. 5431 dated 17.08.2021 issued direction to all the Superintending Engineers and the Executive Engineers of the Road Construction Department to submit their report.



6. In compliance with the aforesaid direction, the Superintending Engineer, National Highway Circle, Patna vide his Memo No. 639 dated 24.08.2021 reported to the Engineer-in-Chief, Road Construction Department that vide Office Order bearing no. 29 read with Memo No. 549 dated 23.07.2021, the time bound promotion granted to the petitioner and others have been set aside/cancelled.

7. Consequent upon the afore-noted letter issued by the Superintending Engineer, National Highway Circle, Patna, the Executive Engineer, NH Division, Gulzarbagh, vide his office order bearing Memo No. 798 dated 31.08.2021, cancelled the time bound promotion of those who have been regularized on or after 28.02.2014 including the petitioner and directed to initiate a process for recovery of excess paid amount. This led to issuance of the impugned order contained in Memo No. 800 dated 11.08.2022 directing for recovery of 3,27,220/- from the retiral benefit(s) of the petitioner after making necessary correction in his pay-scale.

8. The learned counsel for the petitioner assailing the impugned order vigorously contended that in the entire service career of the petitioner, he was neither charged nor was put under any departmental proceeding nor was served with a show-



cause notice. However, all of a sudden, after retirement of the petitioner, a unilateral process of recovery was initiated. The petitioner who had been serving the office as Class-IV employee, had neither been instrumental in getting the time bound promotion nor there is any charge that the petitioner had obtained the time bound promotion by making misrepresentation or playing fraud upon the authorities.

9. Any recovery from the employee belonging to Class-IV after his retirement, is not only iniquitous or harsh but in the teeth of the mandate of the highest court of the land. Reliance has also been placed on a judgment of the Hon'ble Apex Court in the case of **State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors. [(2015) 4 SCC 334]**.

10. On the other hand, learned counsel for the State refuting the contention of the petitioner has contended that the recovery order has been passed by the respondent/Executive Engineer, NH Division, in the light of the Letter No. 1134 dated 11.02.2021, issued by the Finance Department. The afore-noted letter of the Finance Department was issued in compliance with the order of Hon'ble Member (J), Lokayukt, Bihar. In any event, the petitioner was not found entitled for time bound promotion and accordingly it has rightly been cancelled. It is also the



contention of the learned counsel for the State that as the petitioner was working under the work charge establishment and subsequently he was absorbed in the regular establishment, thus, the time bound promotion was not applicable to the petitioner in the light of the Resolution No. 10710 dated 17.10.2013.

11. This Court has heard the rival submissions of the learned counsels for the respective parties and also perused the materials available on record.

12. The only question posed before this Court as to whether the impugned order directing for recovery of the excess amount from retiral benefit(s) of the petitioner is sustainable in law or not.

13. Admittedly, the petitioner was appointed under work charge establishment and subsequently his service was absorbed under the regular establishment and after serving so many years, he came to be superannuated on 31.01.2021. At no point of time, during the service period of the petitioner, any objection had been raised with regard to the entitlement of the time bound promotion or grant of any higher pay-scale and the petitioner has been allowed to superannuate respectfully.

14. The issue of recovery from Class-IV employee(s) after retirement has been set at rest through various verdicts of



the Hon'ble Apex Court. The Hon'ble Supreme Court in the case of **Rafiq Masih** (supra), considering the issue whether the employee(s) against whom an order of recovery (of the excess amount) has been made, should be exempted in law from reimbursement of the same to the employer, has held that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work. The recovery of excess amount made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer.

15. The Hon'ble Supreme Court reiterating various judgments on this point and issue, finally summarized few situations, wherein recoveries by the employers would be held impermissible in law. It would be worthy to quote para-18 of the judgment for appreciation of the issue:

"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 herein above, we may, as a ready 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."

16. Further, in the case of **Thomas Daniel v. State of Kerala and Others [2022 SCC OnLine SC 536]**, the Hon'ble Supreme Court succinctly held that the increments granted to an employee while in service cannot be recovered from him after his retirement on the ground that the said increments were



granted on account of an error.

17. Admittedly, present is not a case where there is any whisper that the petitioner was instrumental in getting benefit(s) by playing fraud upon the authorities or anyhow caused misrepresentation. The petitioner a Class-IV employee has been accorded the benefits of time bound promotion by the competent authority during his service period. Any decision cancelling the time bound promotion after severance of tie of employer and employee unilaterally, is not merely unsustainable but iniquitous or harsh as well as against the mandate of the law.

18. In premise of the aforesaid settled legal position, this Court is constrained to set aside the impugned order as contained in Memo No. 800 dated 11.08.2022 (Annexure-5) after declaring it unsustainable in law. Any order which is made basis of the impugned order is also held to be not sustainable to the extent it directs recovery of excess amount from retiral benefit(s) of the petitioner.

19. The respondent authorities are directed to ensure refund of the recovered amount to the petitioner, preferably within a period of six weeks from the date of receipt/production of a copy of this order.

20. The writ petition stands allowed.



21. There shall be no order as to cost(s).

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20-07-2024
Transmission Date	

