



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1827 OF 2021

Lotan Shrawan Thakur And Others
VERSUS
The State Of Maharashtra And Another

Mr.Yogesh Bolkar, Advocate h/f. Mr.K.B.Jadhav, Advocate for petitioners
Ms.Sai S. Joshi, AGP for respondent no.1
Mr.A.D.Aghav, Advocate for respondent no.2

**CORAM : R.G.AVACHAT AND
ABASAHEB D. SHINDE, JJ.**
DATE : DECEMBER 18, 2025

ORDER :-

Heard.

2. The challenge in this Writ Petition is to the order dated 02.11.2020, passed by respondent - Zilla Parishad, directing re-fixation of the pay-scale of the petitioners. The re-fixation was directed on the ground that the petitioners have been wrongly granted time bound promotional scale.

3. The petitioners are thirty four in number. All of them have retired before 2023. They have been granted time bound promotional pay scale way back in 2010. Re-fixation has been directed after about ten years of grant of such relief. It is informed that some of the

petitioners are septuagenarian and even few of them are on bed due to ill-health.

4. The Apex Court in the case of **Kusheswar Nath Pandey Vs. State of Bihar and ors., (2013)12 SCC 580**, observed thus:-

Service Law - Promotion - Time-bound promotion scale/increment/scheme - Revocation of time-bound promotion granted eleven years earlier on ground that same was irregularly granted since appellant employee had not passed promotional exam prior thereto - Held, unsustainable - Appellant was not at all in any way at fault - It was a time-bound promotion which was given to him and some eleven years thereafter, the authorities of the Government woke up and according to them the time-bound promotion was wrongly given and that the relevant rules are being relied upon and that too after the appellant had passed the required examination - This approach was totally unjustified

The Apex Court in paragraphs 3, 6 and 9 observed thus:-

3. The facts leading to this case are as under. The appellant herein joined the service under the State of Bihar on 5-5-1979 and on 29-8-1981, he was promoted as a correspondence clerk. An order was subsequently issued by the Finance Department on 13-11-1998 granting him promotion with effect from 1-9-1991 which was a time-bound promotion. Subsequently it was found that this promotion was irregular for not passing a promotional examination prior thereto and therefore the orders were issued on 16-9-2009 and 5-10-2009 for cancelling this time-bound promotion.

4.

5.

6. Mr. Rai, learned Senior Counsel for the appellant points out that there was no fraud or misrepresentation on the part of the appellant. The appellant was given a time-bound promotion by the Department concerned. If at all the examination was required to be passed, he had passed it subsequently in 2007 much before the cancellation orders were issued in 2009. Mr Rai relied upon two judgments of this Court in Bihar SEB v. Bijay Bhadur, (2000)10SCC 99 and Purshottam Lal Das v. State of Bihar, (2006)11 SCC 492 wherein it has been held that recovery can be permitted only in such cases where the employee concerned is guilty of producing forged certificate for the appointment or got the benefit due to misrepresentation.

7.

8.

9. In our view, the facts of the present case are clearly covered under the two judgments referred to and relied upon by Mr Rai. The appellant was not at all in any way at fault. It was a time-bound promotion which was given to him and some eleven years thereafter, the authorities of the Bihar Government woke up and according to them the time-bound promotion was wrongly given and that the relevant rules are being relied upon and that too after the appellant had passed the required examination.

5. Learned counsel for the respondent - Zilla Parishad relied on the decision of the Jammu and Kashmir High Court in the case of Sita Ram and others Vs. UT of J&K and others [WP(C)No.2416/2024 c/w. WP(C) No.3034 of 2024. Paragraph 14 thereof reads thus:-

“14. In the instant case, as we have pointed out earlier, the petitioners never disputed that the benefit which was given to them was under a mistake of fact and was, therefore, capable of

being corrected by the respondents. The entire emphasis of the petitioners in the OA was to prevent the respondents from recovering the benefits already availed of. The Tribunal accepted their plea and granted the relief aforesaid. However, the claim of the petitioners to avail the benefit of a mistake of fact despite the mistake having been detected and corrected, is totally misconceived and, therefore, rightly not accepted by the Tribunal. We, therefore, find no fault with the judgment impugned passed by the Tribunal.

6. In view of the aforesaid position and since we are bound by the decision of the Apex Court, relief needs to be granted to the petitioners. We should not be construed to have been granting relief to the petitioners on merit of the matter. Relief is granted only in view of the fact that the time bound promotional scale was granted to them way back in 2010. The order granting such pay scale is sought to be revised/reviewed after ten years. In the meanwhile, the petitioners cleared the departmental examination. Admittedly, all the petitioners have superannuated. The Writ Petition is, therefore, allowed in terms of prayer clauses (B) and (C).

[ABASAHEB D. SHINDE, J.]

[R.G. AVACHAT, J.]

KBP