

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23282 of 2011

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Avinash Singh S/o Parsuram Singh, resident of village-Fullidoomar, P.S.-
Katoriya Bhagalpur Now Banka.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Water Resources Department, Bihar, Patna.
3. The Engineer-in-Chief, Water Resources Department, Irrigation, Circle, 2.
4. The Superintending Engineer, Water Resources Department, Irrigation, Circle-2, Jamui.
5. The Executive Engineer Water Resources Department.
6. The Irrigation Circle-2, Jamui.
7. The Treasury, Jamui.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Satya Prakash Parasar, Adv.
For the Respondent/s : Mr. Anil Kumar Singh, GP-26

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 18-04-2019

Heard learned counsel for the petitioner and learned
counsel for the State.

2. In this case, the petitioner is challenging the order dated 23.01.2010 (Annexure-1 series) passed under the signature of Chief Engineer, Water Resources Department, Bhagalpur, vide Memo no. 277, whereby and whereunder the time bound promotion granted to the petitioner with effect from 01.03.1991 has been cancelled with retrospective effect and also ordered for recovery of the excess payment.



3. During the argument, the petitioner limited his prayer with respect to recovery of the amount which has been paid under the A.C.P. Scheme

4. The facts in the present case are not in dispute that the petitioner was initially appointed in work charge establishment with effect from 07.03.1973 on the post of Chowkidar (Guard) and subsequently, vide letter no. 4160 dated 14.12.1974, the service of the petitioner was confirmed in the regular establishment. While working later on, his services have been regularised in Class-III post. The petitioner was adjusted in the Class-III post on 16.06.1981. The petitioner was transferred to Ganga Pump Nahar Division, Sultanganj, Chief Engineer, Irrigation, Bhagalpur, accordingly his joining was accepted from 26.06.1981 and he started discharging duty. The services of the petitioner was confirmed, vide no. 1405 dated 16.06.1981 with the certain modification in Class-III post as Correspondent Clerk with effect from 01.03.1981 in the pay scale of Rs.155-190, accordingly vide letter no. 654 dated 14.03.1985, the salary of the petitioner was refixed in the pay scale of Rs.284-324. The salary of the petitioner was revised from time to time, inasmuch as was granted the annual increment and was made Correspondent Clerk on 01.03.1981. After completion of 10 years of service, he was granted the 1st time



bound promotion w.e.f. 01.03.1991. Later on, vide Memo no. 277 dated 23.01.2010, after delay of about twenty years, the benefit of time bound promotion has been withdrawn and by letter no. 886 dated 21.09.2011 (Annexure-1 series page-17), direction has been given to recover the extra amount paid to the petitioner.

5. In the counter affidavit, it has been stated by the State that the petitioner remained unsuccessful in three times in passing Hindi Noting and Drafting Examination and, as such, time bound promotion granted to the petitioner with effect from 01.03.1991 was withdrawn. This order has been passed in the year 2010. By that time, the petitioner has already crossed the age of 50 years, inasmuch as he had taken three chances in clearing the Hindi Noting and Drafting Examination unsuccessfully. As per the Circular of the State Government, in the event, a person has already crossed the age of 50 years, Government servant failed to pass the examination, the State Government on the application of the government servant would consider the grant of exemption from passing the Hindi Noting and Drafting Examination. As the petitioner was granted the benefit of time bound promotion without any suppression of fact and misrepresentation. After retirement, the order of time bound promotion has been withdrawn as well as passed the order of recovery as per the judgment of the



Hon'ble Supreme Court passed in State of Punjab vs. Rafiq Masih [White Washer] reported in 2015 (1) PLJR 261 SC the order of recovery of the said amount is illegal. It will be relevant to quote paragraph 12 of the judgment which is 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 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"

6. In such view of the matter, the order for realisation of extra amount paid to the petitioner is set aside. However with respect to time bound promotion, the petitioner would file an application from exemption of passing the Hindi Noting and Drafting Examination as he has crossed the age of 50 years. If such application is filed, the Authority would consider the matter sympathetically and take decision in accordance with law, preferably within a period of six months from the date of receipt or production of a copy of this order. If any amount has been recovered from the petitioner, the same will be returned to him with 5% interest.

7. Accordingly, this application is disposed of.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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