

(2003) 05 PAT CK 0053
In the Patna High Court
Case No : C.W.J.C. No. 14924 of 2001

Baij Nath Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-05-2003

Acts Referred:

Citation : (2003) 3 PLJR 407

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Harendra Pratap Singh, for the Appellant; Gopal Krishna, for the Respondent

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—In this writ petition, Petitioner is aggrieved by the recovery vide Annexures-1 and 2 on account of cancellation of first time sound promotion and second time bound promotion.

2. It appears that Petitioner was (sic) granted first time bound promotion vide order contained in letter No. 2249 dated September, 1995 of the Director, statement of Statistics and Evaluation, Patna, contained in Annexure-A with effect from 29.9.1985 and second time bound promotion vide Director's letter No. 639 dated 29.2.1992, a photostat copy whereof has been placed at page 28 of the brief with effect from 19.8.1989. The said promotions were granted provisionally in anticipation of the approval of the concerned Department. It was further made clear that in case it is found by the concerned Department that the said promotions were wrongly given then excess amount drawn as salary on account of such promotion shall be recovered. Later first time bound promotion was cancelled and order for recovery was passed vide order dated 14.2.1998, contained in Annexure-B. Meanwhile, the Petitioner superannuated from service on 28.2.1997. However, the sanction order was issued for pension and gratuity and pursuant to it the Accountant General has issued pension Intimation Memo, photocopy of which has been annexed as part of Annexure-1 at page 23. After

issuance of the said P.P.O. the Administrative Officer issued instruction to the Treasury Officer, which is placed at page 22 as part of Annexure-1, in which it is mentioned that first time bound promotion has been cancelled, and as such, the Petitioner was asked to deposit the excess amount of Rs. 34,457.55 drawn by him, but the same has not been deposited and consequently recovery of the said amount has been made from pension of the Petitioner.

3. It is submitted by the learned Counsel for the Petitioner that after issuance of P.P.O. the impugned recovery is not permissible, more so, when it is not even alleged that the said excess payment was made to the Petitioner on account of any misrepresentation or fraud. He further submitted that before canceling the promotion and consequential recovery, the Petitioner was not given any opportunity, and, thus, the impugned recovery is fit to be set aside on this ground also. In support of this, he has relied upon order of the Division Bench in the case of *The Secretary, Department of Planning and Development and Another Vs. Awadh Muni Prasad and Another*, . However, the Petitioner has not challenged the validity of the order canceling his promotion contained in Annexure-B. Under such circumstances, this Court finds it difficult to go into the correctness of the order canceling promotion in the present writ application. The Petitioner may challenge its validity in an appropriate proceeding before appropriate forum.

4. As regards recovery, this Court finds that so long the order of cancellation of promotion is not held to be bad, there is no illegality in making recovery in view of the condition that the promotions were given in anticipation of approval of the concerned Department and in case the concerned Department finds it to be wrong the excess amount drawn on account of such promotion shall be refunded.

5. Accordingly, this Court does not find any merit in this writ application and the writ application is, thus, dismissed. However, dismissal of this writ petition shall not come in the way of the Petitioner from agitating his grievance against the order canceling his promotion in an appropriate proceeding before appropriate forum.