

(2003) 08 PAT CK 0095
In the Patna High Court
Case No : L.P.A. No. 1314 of 2002

Sahdeo Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Citation : (2003) 08 PAT CK 0095

Judgement

1. Heard, learned Counsel for the Appellants and the Respondent-State.
2. The present appeal has been filed against the order dated 4.10.2002 in C.W.J.C. No. 15311 of 2001 whereby a Bench of this Court did not interfere with the order of the Respondent-authority, for recovery of the amount granted to him due to increment admissible to an employee who had successfully passed the Hindi Noting and Drafting examination. Learned single Judge found that admittedly the Appellant did not pass the Hindi Noting and Drafting examination and, therefore, he was not entitled for increment. Thus, the aforesaid recovery was held to be justified.
3. The contention on behalf of the Appellant is that the Appellant had never misrepresented before the authority that he had passed the Hindi Noting and Drafting examination or suppressed any material fact which was required to be communicated. It has further been contended that after his superannuation and even after grant of provisional pension, the aforesaid order for recovery has been passed without providing him an opportunity of hearing and explaining the position. The Appellant relied on the case of Sahib Ram Vs. State of Haryana and Others, in which the Supreme Court while considering a case of upgradation of pay scale for Librarians in colleges held that the aforesaid upgradation of pay scale was given due to wrong construction of relevant order by the authority concerned, without any misrepresentation by the employee. It was held that in such circumstances the recovery of payment already made was bad and the same was restrained. Another order of the Supreme Court, which was relied upon, is in the case of (Union of India v. Lala Jagannath Prasad) as reported in :

1995 Supp (1) S.C.C. 282 wherein also while considering the case of weightage granted in seniority to temporary officers, the Court held that if higher seniority was granted consequent upon an erroneous order of the High Court and the employee concerned having already retired when the High Court's decision was recovered by the Supreme Court, in such circumstances also pension and other retiral dues cannot be reduced or recovery made. Relying on the aforesaid two judgments of the Supreme Court it has been contended by learned Counsel for the Appellant that in the present case it was the authority who on their own motion had granted the increment to the Appellant when no suppression was ever made by him. He had already superannuated from service. Now whether the authority could be allowed to reduce his pay scale and subsequently direct for recovery.

4. Admittedly, in view of the judgments as relied upon this Court holds that as no material suppression has been made and the Appellant has already superannuated, such recovery cannot be made. As such, the order of the learned writ Court dated 4.10.2002 is erroneous and hence, set aside and consequently the order dated 26.7.2001 contained in Annexure-1 in this appeal also stands quashed and the Appellant has to be paid all his retiral dues as usual.

5. This appeal is disposed of accordingly.