
(1999) 08 PAT CK 0126
In the Patna High Court
Case No : C.W.J.C. No. 11689 of 1998

Shiv Narain Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-08-1999

Acts Referred:

Citation : (2000) 1 PLJR 185

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Kali Prasanna Dubey, for the Appellant; R.K. Dutta for the State and Mr. Deo Narain Yadav for the A.G., for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, petitioner is aggrieved by the order, contained in Memo no. 139 dated 17.10.98 passed by the Employees' State Insurance Hospital, Adityapur in the district of West Singhbhum, whereby and whereunder a sum of Rs. 11.697/- has been sought to be recovered on account of the alleged excess payment made because of wrong grant of second time bound promotion during the period 1.4.1986 to 2.1.1993. The petitioner was initially appointed as Peon in the Department of Revenue in Tractor Organisation Scheme on 22.9.1958. His services were, however, terminated due to general retrenchment vide. G.O. no. 309 dated 16.2.1967 with effect from 1.9.1967 (forenoon). Later he was given appointment with effect from 3.1.1968 under the Employees' State Insurance Scheme under A.M.O.'s office order no.19 dated 15.1.1968. Thus, the period of breakage in his service of the State Government is for about four months. However, it is not disputed that the past service of the petitioner was counted for the purpose of pensionary benefits in terms of the provisions contained in Rule 105 of the Bihar Pension Rules read with Government instruction contained in Memo No. Pen 1040/69-8990/F Patna, dated 13.11.1969 of the Finance Department, contained in Annexure-3, condoning the said break in his service.

2. However, it is contended by the learned counsel for the State that the petitioner was wrongly granted second time bound promotion by treating him to be in continuous service right from the date of his initial recruitment. This fact was discovered only after his retirement whereafter the impugned order, contained in Annexure-7 has been passed directing for recovery to be made from him.

Learned counsel for the petitioner submitted that in view of the provisions contained in Rule 105 of the Bihar Pension Rules read with the aforementioned Government instructions, communicated to all Departments of the Government, once the break in service was condoned the petitioner became entitled for getting of the benefits including for the purpose of grant of time bound promotion and as such there was no infirmity in giving him time bound promotion with effect from 1.4.1986. It was further submitted by him that in any view of the matter in view of the law settled by the Apex Court in the case of Sahib Ram Vs. State of Haryana and Others, , the recovery of such alleged excess payment cannot be made unless it is shown that payment was made on account of any misrepresentation of the employee concerned.

3. This court finds substance in the said submission of the learned counsel for the petitioner. It is not the case of the Respondents that the said alleged excess payment by virtue of grant of second time bound promotion was made to the petitioner on account of any mis-representation by him.

The Supreme Court in the case of Sahib Ram vs. State of Haryana & others (supra) held :

Admittedly, the appellant does not possess the required educational qualification. Under the circumstances, the appellant would not be entitled to relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any mis-representation made by the appellant that the benefit of the higher pay scale was given to him, but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances, the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.

4. Having regard to the said principle decided by the Apex Court, the Respondent-Authority cannot proceed to make recovery of the alleged excess payment of the salary on account of second time bound promotion granted to the petitioner, it is not the case of the respondents that the said payment was made on account of any mis-representation of the petitioner. Accordingly, the impugned order, contained in Annexure-7 is quashed and the writ application is allowed, but without costs, insofar as it relates to recovery part is concerned. Consequently order, contained in Annexure-A to the Supplementary Counter Affidavit passed

by the Director is also quashed with respect to the recovery part. Respondents are directed to issue necessary order for payment of pensionary dues accordingly within two weeks of the receipt/of production of the copy of this order. Petitioner is also entitled for interest over the delayed payment according to the provisions contained in the Government instruction No. PC-2-1-16/79/3155 dated 7.11.1981. The Respondents shall calculate the interest and issue necessary sanction order for payment of the same along with the aforementioned dues.