

(2002) 01 PAT CK 0049
In the Patna High Court
Case No : C.W.J.C. No. 8472 of 2000

Sri Krishna Mohan Mandal	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Citation : (2002) 2 BLJR 1019 : (2002) 1 PLJR 612

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Judgement

Narayan Roy, J.—Heard Counsel for the parties.

2. Orders, as contained in Annexures 7 and 8 are under challenge in this writ application.

3. Vide order, as contained in Annexure 7 pay scale of the petitioner has been revised and he has been put to a lower scale, whereas by order, as contained in Annexure 8, second time-bound promotion given to the petitioner has been cancelled and direction has been issued to realize the excess payment made to the petitioner.

4. Learned Counsel appearing on behalf of the petitioner submitted that only after superannuation of the petitioner these two orders were issued by the authorities and that also without affording him an opportunity of being heard, as required under the principles of natural justice.

5. It appears that vide order dated 1.9.2000 this Court stayed the operation of the orders, as contained in Annexures 7 and 8 and directed the State Government to file a counter-affidavit. Till date excess amount paid to the petitioner has not been realized pursuant to the interim order of stay granted by this Court.

6. Two sets of counter-affidavits have been filed on behalf of Respondent Nos. 1 and 2 stating therein, inter alia, that the scale, which was given to the petitioner

by the Divisional Commissioner was not permissible and he was not competent to do so, therefore, the scale of the petitioner has been revised by the impugned order, as contained in Annexure 7, and the petitioner was not entitled for second time-bound promotion on the basis of period served in a particular cadre and that, too, when he does not get regular promotion. The counter-affidavits filed on behalf of Respondent Nos. 1 and 2 are silent on the question as to whether any opportunity of being heard was given to the petitioners before passing of the orders, as contained in Annexures 7 and 8.

7. It is altogether a different question as to whether the particular scale given to the petitioner was permissible or not and as to whether he was entitled to get second time-bound promotion. But, once this right had accrued to the petitioner and he has availed the benefits, the authorities were required to follow the principles of natural justice before passing the impugned orders.

8. Learned Counsel appearing on behalf of the petitioner further submits that now the pension of the petitioner has already been fixed to the petitioner as per the reduced scale and pension payment order has already been issued by the Accountant-General and he is not aggrieved by that. However, a grievance has been made against that part of the order, whereby and whereunder direction has been issued to realize the excess payment on account of payment of higher scale and benefit of second time-bound promotion.

9. It is not in dispute that the orders impugned were passed after retirement of the petitioner and realization of the excess amount from the petitioner was stayed by this Court as far back as on 1.9.2000.

10. Considering the facts and circumstances of the case, therefore, it would not be justiciable to this Court to uphold that part of the direction, whereby and whereunder directions have been issued to realize the excess amount paid to the petitioner. The authorities, in this view of the matter, are directed not to realize the excess amount already paid to the petitioner before his retirement, as pension of the petitioner has already been fixed as per the revised promotional scale of the petitioner.

11. With this direction/observation, this application is disposed of.