
(2017) 12 JH CK 0008
In the Jharkhand High Court
Case No : 117 of 2009

Sunita Yadav & Ors

APPELLANT

Vs

The State of Jharkhand & Ors

RESPONDENT

Date of Decision : 06-12-2017

Acts Referred:

[Bihar Boards Miscellaneous Rules, 1958](#), Rule 157(3)

Citation : (2017) 12 JH CK 0008

Hon'ble Judges : Dr. S. N. Pathak

Bench : SINGLE BENCH

Advocate : Ritu Kumar, ?Samavesh Bhanj Deo, ?Vikash Kumar, ?Shatakshi, ?H.K. Mehta

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.

2. Petitioners have approached this Court with a prayer for issuance of writ in the nature of certiorari for quashing the Officer Order Nos. 90 and 89, as contained in Memo Nos. 3246 and 3245, both dated 21.10.2008 [Annexures-10 and 11 respectively] whereby they have been communicated that due to non-passing of the Accounts Examination, 1st Time Bound Promotion granted to them in the year 1995 is being canceled and it has been decided to recover Rs.1,10,686/- and Rs.1,04,075/- respectively from them in 60 installments without initiating any departmental proceeding or without following the procedures of law. Further prayer has been made for quashing the office order no. 128, as contained in Memo No. 3693, dated 25.08.2005 (Annexure-6), issued by the Conservator of Forest, Hazaribagh Circle, Hazaribagh by which 1st Time Bound Promotion granted to the petitioners with effect from 24.09.1995 and 09.10.1995 (respectively), have been canceled on the ground that they had not passed the Accounts Examination and it was also decided to recover excess amount paid to them in one installment.

3. The facts in short giving rise to the instant writ petition is that petitioners were appointed and joined as Assistant Clerks on 24.09.1985 and 09.10.1985 respectively and they performed their duties to the satisfaction of all concerned. No departmental proceeding was ever initiated or is pending against them nor any criminal case was ever lodged or pending against them. The Secretary, Forest and Environment Department, Bihar, vide Letter No. 1997, dated 03.05.1988 informed the Principal Chief Conservator of Forest, Bihar, Ranchi that as per order of the Finance Department for the purpose of grant of Time Bound Promotion to the Non-Gazetted Officers, passing of Departmental Examination or Accounts Examination is not at all essential. The same was communicated to all Chief Conservator of Forest and Divisional Forest Officers that as per decision of the Finance Department, passing of departmental examination and accounts examination is not at all necessary/ essential for the purposes of grant of time bound promotion. The Principal Chief Conservator of Forest, Bihar, Ranchi, vide his letter no. 1203, dated 19.03.1996 informed to all the concerned officers that if any employee has completed requisite service period and has not been granted even one promotion, then he/she would be entitled for the Time Bound Promotion because it does not change nature of their job.

It is specific case of petitioners that they were not granted even one promotion during their service tenure. Petitioner no. 1 was granted 1st Time Bound Promotion with effect from 24.09.1995 by Office Order No. 10, as contained in Memo No. 173, dated 15.02.1996 and the petitioner no. 2 was granted 1st Time Bound Promotion with effect from 09.10.1995 by Office Order No. 138, as contained in Memo No. 2907, dated 07.09.1996, both in the pay scale of Rs.1400 - 40 - 1800 - 50 - 2300. Petitioners and other similarly situated persons were also getting benefits including the financial benefits of their 1st Time Bound Promotion. Petitioners are aggrieved by issuance of Office Order No. 128, Memo No. 3693, dated 25.08.2005 (Annexure-6), issued under the signature of the Conservator of Forest, Hazaribagh Circle, Hazaribagh, whereby the 1st Time Bound Promotion granted to the petitioners, had been canceled with a further direction to recover entire salary/ amount paid to them towards the 1st Time Bound Promotion in one installment on the ground that they had not passed the Accounts Examination.

Aggrieved by cancellation of 1st Time Bound Promotion as well as order of recovery, the petitioners have knocked door of this Court.

4. Mrs. Ritu Kumar, learned counsel for the petitioners assisted by Mr. Samavesh Bhanj Deo, Mr. Vikash Kumar and Ms. Shatakshi, strenuously urges that action of the respondents in passing order of cancellation of 1st Time Bound Promotion and recovery of amount paid to them towards 1st Time Bound Promotion is not tenable in the eyes of law. The respondents authorities, without adhering to principles of natural justice, have passed the order of cancellation of 1st Time Bound Promotion granted to the petitioner after more

than ten long years. Learned counsel further argued that passing of departmental examination was not the requirement in view of Letter No. 3345, dated 14.06.1988 and letter no. 1203, dated 19.03.1996, issued by the Principal Chief Conservator of Forest, Bihar, Ranchi. To buttress her arguments, learned counsel has placed reliance on the order of this Court in the cases of

(i) Kedar Prasad Singh Vs. State of Bihar and others [C.W.J.C. No. 42 of 1989(R);

(ii) Uday Kant Jha and others Vs. State of Bihar and others [C.W.J.C. No. 1824 of 1995(R)];

Learned counsel further argued that in view of ratio laid down in the aforesaid Judgment, passing of the Accounts Examination was not the requirement for the benefits of Time Bound Promotion and as such, order of recovery based on cancellation of Time Bound Promotion is not justified and hence fit to be quashed and set aside.

5. Per contra counter affidavit has been filed.

Mr. Himanshu Kumar Mehta, learned Additional Advocate General vehemently opposed contention of learned Counsel for the petitioners and further argued that in view of Rule 157(3) of Bihar Board's Miscellaneous Rules, 1958, passing of Accounts Examination is a must for grant of 1st Time Bound Promotion. Learned AAG justified the impugned order and argued that any promotion granted erroneously can be canceled if it is found that the same has been granted without following the Rules.

6. Be that as it may, having gone through rival submission of the parties, this Court is of the considered view that case of the petitioner needs consideration. From perusal of relevant material facts on record, it is evident that Time Bound Promotion was granted with effect from 1995 by the competent authority which has been canceled in the year 2005 i.e. after

more than 10 years of its grant when there was no allegation of fraud or misrepresentation on part of the petitioners.

Learned counsel for the petitioners has referred to the communication issued by the Principal Chief Conservator of Forest, Bihar to all the Chief Conservator of Forest and Divisional Forest Officers communicating that in view of letter no. 1997, dated 03.05.1988 of the Department of Forest and Environment, requirement of passing of departmental examination for the purpose of time bound promotion is not mandatory as per orders of the Finance Department. promotion granted in the year 1995 in such circumstances could not have been revoked after 10 years by the respondent authorities. It is settled principles of law that any order visiting civil consequences cannot be passed without following cardinal principles of natural justice.

I find instant case is squarely covered by the ratio rendered by the Apex Court

in the case of Kusheshwar Nath Pandey Vs. State of Bihar & Ors. reported in (2013) 12 SCC 580 wherein cancellation of Time Bound Promotion granted 11 years earlier by the respondents - State of Bihar was found to be wholly unjustified. In similar circumstances, in the case of S. Naseemuddin Vs. The State of Jharkhand & Ors. reported in (2014) 4 JLJR 70, when said person was granted First Time Bound Promotion with effect from 1st March, 1987 on the post of Assistant under the Department of Forest & Environment, the show cause notice issued in the year 2010 seeking to annul such time bound promotion was quashed by the Court following the ratio rendered by the Apex Court in the case of Kusheshwar Nath Pandey (Supra).

7. In the instant case it is found that cancellation of Time Bound Promotion after long length of time would entail undue hardship upon the petitioners when admittedly no fraud or misrepresentation has been found on their part and as such, it would be inequitable to uphold decision of the respondents canceling Time Bound Promotion granted to them and effecting recovery of amount after more than 10 long years, though it has specifically been said in the counter affidavit that in view of stay order passed by this Court, amount has not been recovered. Therefore, following the ratio laid down in the case of Kusheshwar Nath Pandey (Supra) and also in view of Full Bench decision in the case of Normi Toppo Vs. State of Bihar, the impugned orders cannot be held to be proper and equitable in the eye of law.

8. As a cumulative effect of the aforesaid observations, rules, guidelines and judicial pronouncements, I am of the considered view that impugned Office Order Nos. 90 and 89, as contained in Memo Nos. 3246 and 3245, both dated 21.10.2008 [Annexures-10 and 11 respectively] and office order no. 128, as contained in Memo No. 3693, dated 25.08.2005 (Annexure-6) are hereby quashed. As a result, the order to recover Rs.1,10,686/- and Rs.1,04,075/- respectively from the petitioners also stand quashed. It is made clear that if no amount has been recovered pursuant to the impugned order, the same shall not be recovered but if any amount has been recovered, the same shall be refunded to the petitioners within a period of three months from the date of receipt/ production of a copy of this order.

The writ petition is accordingly allowed.