(2002) 01 PAT CK 0135

In the Patna High Court

Case No : C.W.J.C. No. 11942 of 2001

Tejendra Prasad APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 03-01-2002

Acts Referred:

Citation : (2002) 1 PLJR 543

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Surendra Kumar and Amrendra Kr. Srivastava, for the Appellant; S.P. Verma, for State and Subhash Prasad Singh, for Accountant General, for the Respondent

Judgement

P.K. Deb, J.—Although time was granted earlier but no counter affidavit has been filed for and on behalf of the State. It is submitted by the State counsel that no instructions had been received although the same was sought for by the State counsel from the department concerned.

2. A short point is involved in this writ petition. The Petitioner was initially appointed as Health Worker on 1.2.1957 and thereafter he qualified himself in Pharmacy examination and then he was confirmed on 31.1.1960 and as a Pharmacist he retired on superannuation on 31.1.1996. On superannuation the Petitioner had been granted his retrial benefits but in the meantime an order was passed asking the Petitioner vide Annexure-4 to deposit the excess amount drawn by him in course of his service towards excess salary and D.A. as the second time bound promotion granted to him was not regular and, as such, illegal. The Petitioner made various representations before the authorities but his representation had been turned down and ultimately an amount of Rs. 41,867.30 paise had been deducted from the retrial benefits of the Petitioner. No where it is the case that the second time bound promotion given to the Petitioner was on the basis of any mis-representation being made from the side of the Petitioner rather it was granted by the authorities after taking prior approval of the Finance

Department. Now after retirement the second time bound promotion granted to the Petitioner long back during the period of service has been said to be illegal and recovery had been asked to be made of the amount mentioned above and practically such recovery had already been made. If the principle of Sahib Ram''s case is taken into consideration then such recovery is illegal on the face of it. When no mis-representation is there from the side of the Petitioner and he enjoyed the promotion granted to him during the course of his service till the date of retirement then such recovery cannot be granted after the retirement has been made. In that way Annexure-4 is hereby quashed and it is directed to the authorities concerned and the Accountant General to refund the amount if curtailed within a period of eight weeks from the date of presentation of a copy of this order from the side of the Petitioner.

3. The writ petition is thus, disposed of.