

(2002) 01 PAT CK 0127
In the Patna High Court
Case No : L.P.A. No. 464 of 2001

The Secretary, Department of Planning and Development and Another APPELLANT

Vs

Awadh Muni Prasad and Another RESPONDENT

Date of Decision : 07-01-2002

Acts Referred:

Citation : (2002) 1 PLJR 386

Hon'ble Judges : P.N. Yadav, J; Nagendra Rai, J

Bench : Division Bench

Advocate : Rajeshwar Prasad, for the Appellant; Abhay Kumar Singh, for the Respondent

Judgement

1. Heard learned Counsel for the parties.
2. The writ Petitioner-Respondent was Assistant Statistical Officer in the Department of Statics and Evaluation under the Department of Planning and Development. He superannuated on 31.1.1998. 10 percent of his pension and 25 percent of gratuity was withheld by the authority on the ground that Rs. 41,524.05 was wrongly paid to him on the basis of provisional first lime bound promotion.
3. Learned Single Judge allowed the claim of the writ Petitioner-Respondent on the ground that the amount was paid to the writ Petitioner on the basis of provisional promotion granted by the State Government and there was no misrepresentation or fraud on his part and thus the said amount cannot be recovered from him.
4. We are unable to agree with the said view of the learned Single Judge. The promotion given was itself provisional one with a clear stipulation that in case it is not found in order, the amount paid to him on account of that promotion shall be recovered. In that view of the matter, the letter granting provisional promotion was withdrawn and the amount paid to the writ Petitioner was ordered

to be recovered.

5. However, learned Counsel appearing for the writ Petitioner-Respondent drew our attention to Annexure-B to the memorandum of appeal and Annexure-A to the counter affidavit filed on behalf of the writ Petitioner-Respondent and stated that earlier the promotion given to the writ Petitioner as Junior Statistical Assistant was not found to be correct and the benefit given to him on that account had been withdrawn and in that view of the matter the first time bound promotion given to the writ Petitioner was according to law.

6. It is to be stated that under the resolution of the Finance Department, when a Government employee has not been given any promotion within ten years of his service, then he will be granted first time bound promotion and after completion of 25 years of service, he will be given second time bound promotion.

7. The writ Petitioner-Respondent was appointed on the post of compiler and it appears from the record that on 21.9.1967 he was promoted to the post of Junior Statistical Assistant and thereafter he was granted first time bound promotion with effect from 1.4.1981 vide Annexure-C to the memorandum of appeal. There was clear stipulation in the said document (Annexure-C) that in case the promotion was not found to be correct, the same would be withdrawn and the monetary benefit given in pursuance of that would be recovered. It is also admitted position that the writ Petitioner-Respondent was given second time bound promotion after completion of 25 years of his service. There is no dispute about grant of second time bound promotion.

8. From perusal of Annexure-B to the memorandum of appeal and Annexure-A to the counter affidavit filed on behalf of the writ Petitioner-Respondent, it appears that the Petitioner was given regular promotion to the post of Junior Statistical Assistant as also first time bound promotion. The authorities found that the regular promotion granted to the writ Petitioner was itself not correct and as such direction was given to withdraw the benefit conferred to him on account of regular promotion. Later on grant of first time bound promotion was withdrawn and order for recovery of the amount paid to him on account of first time bound promotion was also passed.

9. The authorities cannot withdraw both the benefits. The authorities had granted regular promotion as well as provisional first time bound promotion. If the writ Petitioner was granted regular promotion, then he was not entitled for first time bound promotion. Be that as it may, confusion has been created in view of different orders passed by the authorities with regard to both the promotions.

10. After having heard the counsel for the parties and considering the materials on the record, we are of the view that if the amount paid to the writ Petitioner-Respondent by virtue of promotion to the post of Junior Statistical Assistant has already been recovered, in that situation, the benefit accrued to him on account of first time bound promotion cannot be withdrawn. In view of the confusion created by passing withdrawal order, it is a fit case where the concerned

authority should decide as to whether first time bound promotion or the regular promotion is valid one after giving an opportunity of hearing to him. However, the decision is to be taken within two months from the date of production of a copy of this order by the writ Petitioner-Respondent before the authorities concerned. The writ Petitioner should be allowed the benefits of only one promotion and the benefits of the other promotion be withdrawn if not already withdrawn by making recovery.

11. With the aforesaid direction, this appeal stands disposed of.