

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3455 of 2012

1. BIKRAMA SINGH S/O Late Sitaram Singh
2. Rajendra Prasad Singh
- Petitioner/s
- Versus
1. THE STATE OF BIHAR through the Principal Secretary, Water Resources Department, Govt. Of Bihar, Patna
2. The Secretary, Water Resources Department, Govt. Of Bihar, Patna
3. The Chief Engineer Central Design Organization, Water Resources Department, Govt. Of Bihar, Patna
- Respondent/s
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Appearance :

For the Petitioner/s : Mr. Banwari Sharma, Advocate
: Mr. Shiv Kumar, Advocate
For the Respondent/s : Mr. S.C-9

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 16-04-2024

Heard Mr. Banwari Sharma, learned counsel appearing on behalf of the petitioner and learned counsel appearing for the State.

2. The present writ application has been filed for quashing the order issued vide memo No.1203 dated 26.12.2011 under the signature of the Chief Engineer, Central Design and Research, Water Resources Department, Govt. of Bihar, Patna (Annexure-19) by which the application filed by the petitioners with regard to shifting of their date of promotion to the post of Head Clerk and also cancelled the promotion of petitioner No.1 against need based post of Head Assistant, has been cancelled



without assigning any reason and further direction to the respondents not to shift the date of promotion given to the petitioners on the post of Head Clerk nor the promotion given to the petitioner No.1 against the need based post of Head Assistant be cancelled and pay all the consequential benefits to the petitioners including the recovery amount which has been recovered on account of shifting and cancellation of their promotion date.

3. The petitioners were initially appointed as correspondence clerk in the Irrigation Department on 15.02.1978 and 01.07.1972 respectively. Pursuant to the recommendation of the IVth Pay Revision Committee, a resolution No.10770 dated 30.12.1981 has been issued by the Finance Department, Govt. of Bihar by which the time bound promotion scheme was introduced. Thereafter, the State Govt. issued an order on 29.04.1985 making certain amendments in Rule 157(3)(J) for grant of time bound promotion. By this amendment, it was provided that a service of clerk cannot be confirmed or he shall not be allowed to cross efficiency bar unless he passed the account examination. It further provides that promotion in the selection made shall be made by passing the accounts examination by a clerk. Clause 9 of the amended



Rules provides that in absence of passing the accounts examination by any senior clerk, the junior clerk may be considered for promotion departmentally who had cleared all the papers in accounts examination. In other words the passing of accounts examination was made a condition precedent for time bound as well as selection grade promotion. By Resolution No.6021 dated 18.12.1989 issued by the Finance Department, Govt. of Bihar, some changes were made in the earlier order of time bound promotion scheme. Only change brought about by this Resolution was that the promotion under the senior selection grade scale is to be granted on completion of 12 years of service but the earlier structure of junior selection grade scale remained the same.

4. Again the pay scale at the pattern of Central Pay Scale was revised by the State Govt. vide Resolution No.660 dated 08.02.1999 issued by the Finance Department, Govt. of Bihar w.e.f. 01.01.1996. By this resolution, the Govt. has decided that until and unless the new policy decision is determined by the Govt., the promotion of the employees who are in the scale of junior selection grade/senior selection grade/super time selection grade shall be made against need based post. The petitioners were promoted on the post of Head



Clerk which is in the category of junior selection grade. Subsequently, the promotion of the petitioners and other similarly situated employees were cancelled by office order bearing Memo No. 2194 dated 09.04.1997. The petitioner No.1 filed a writ application bearing CWJC No.9783 of 1997 before this Hon'ble Court which was heard and disposed of on 05.08.1999 with a direction to the respondent authorities to decide the question of promotion of the petitioner in light of Section 6 of the Ordinance within a period of three months.

5. In light of the direction of this Hon'ble Court passed on 05.08.1999 in CWJC No.9783 of 1997 the case of the petitioners were considered for promotion in the senior selection grade-cum-Head Clerk carrying the pay scale of 1400-2600. The promotion in the junior selection grade and senior selection grade were given to the petitioners vide order bearing Memo No. 1655 dated 18.11.1999, the petitioner No.1 has passed the accounts examination on 15.07.1985 and he was granted promotion in the Junior Selection Grade w.e.f. 15.02.1986 and Senior Selection Grade w.e.f. 15.02.1991, the petitioner No.2 was granted promotion in the junior selection grade w.e.f. 01.04.1981 and senior selection grade w.e.f. 05.11.1991 and he has passed the accounts examination on 04.11.1991.



6. Pursuant to the order dated 05.08.1999 passed in CWJC No.9783 of 1997, the petitioner No.1 has been granted promotion vide order dated 18.11.1999 in the Junior Selection Grade and Senior Selection Grade Scale and he has also been granted the revised Pay Scale of 4500-7000 in light of Finance Department Resolution No.660 dated 08.02.1999 (Annexure-4). Petitioner No.2 was granted Junior Selection Grade Scale and Senior Selection Grade Scale by office order issued vide Memo No.110 dated 25.01.2000 and he has been granted promotion as head Clerk w.e.f. 01.01.1996 in light of the Finance Department Resolution No.660 dated 08.02.1999 (Annexure-5).

7. The petitioner No.1 has already passed the accounts examination on 15.07.1985 and the petitioner No.2 on 04.11.1991 and in the light of Finance Department Resolution No.660 dated 08.02.1999 and communication letter No. 5552 dated 23.07.2003 the case of the petitioners and others in the Central Design Organization was considered by the Chief Engineer and at the time of consideration, there were only three posts of Head Assistant the Department has granted promotion on the first post to one Raj Ballabh Ram against the need based post of Head Clerk w.e.f. 01.01.1996 and against the post of Head Assistant w.e.f. 01.10.2002. Earlier one Jawahar Lal has



filed writ application bearing CWJC No. 4348 of 2000 claiming therein that he was senior to the petitioner No.1 on the basis of date of appointment in service cadre and accordingly he was promoted to the post of Head Clerk but he has been reverted to the post of clerk. The Hon'ble Court vide order dated 07.07.2005 passed in CWJC No.4348 of 2000 has directed the Chief Engineer to consider the grievance of the petitioner (Jawahar Lal) that juniors to him have been made Head Clerk and he has been reverted from the post of Head Clerk and pursuant to the order dated 07.07.2005 the case of Jawahar Lal was considered by the Department and he was placed just above the petitioner No.1 and due to that third post of Head Assistant on which the petitioner No.1 was promoted earlier was occupied by Jawahar Lal then the petitioner No.1 has filed a representation before the Chief Engineer stating therein that he has been granted promotion as Head Assistant in light of the clarification made by the Finance Department, Govt. of Bihar and he has requested that he should be promoted as Head Assistant.

8. Thereafter, one Ram Shankar Singh has also filed a writ application bearing CWJC No. 10207 of 2009 with a prayer that the petitioner No.1 is junior to him and he has been granted



promotion as Head Clerk from 01.01.1996 so Ram Shankar Singh may also be granted the promotion as Head Clerk from 01.01.1996 and by order dated 21.08.2009 this Hon'ble Court has directed the Chief Engineer to consider the request of the petitioner (Ram Shankar Singh) in accordance with law and if his date of promotion is shifted back then he should also be allowed the consequential benefit. By the impugned order dated 19.01.2010 as contained in Annexure-12 the date of promotion of the petitioner No.1 has been shifted from 01.01.1996 to 01.04.2008 as Head Clerk and petitioner No.2 from 01.01.1996 to 01.02.2001 as Head Clerk and Sri Jawahar Lal has been promoted as Head Clerk w.e.f.01.07.2001 and Head Assistant w.e.f. 01.12.2001. Learned counsel for the petitioner submits that before issuing the present impugned order no notice to show cause or opportunity of hearing was given to the petitioners and present impugned order has been passed is in clear violation of principle of natural justice, equity and fair play. In the aforesaid, the scale of the petitioner has been enhanced not on account of any misrepresentation made on behalf of the petitioner. The learned counsel for the petitioner has relied upon the judgment of the Hon'ble Apex Court in the case of **State of Punjab Vs. Rafiq Masih** reported in **AIR 2015**



S.C.696.

“5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the 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 misrepresentation 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.”

9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality, can be found in Articles 14 to 18, contained in Part III of



the Constitution of India, dealing with "Fundamental Rights". These Articles of the Constitution, besides assuring equality before the law and equal protection of the laws; also disallow, discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracized section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the "Directive Principles of State Policy". These Articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice - social, economic and political, by inter alia minimizing monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting



economic interests of the weaker sections.

10. *In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the*



mandate contained in Article 14 of the Constitution of India.

11. For the above determination, we shall refer to some precedents of this Court wherein the question of recovery of the excess amount paid to employees, came up for consideration, and this Court disallowed the same. These are situations, in which High Courts all over the country, repeatedly and regularly set aside orders of recovery made on the expressed parameters.

12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).



(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

9. In the present case, petitioner No.1 has been retired from the service w.e.f. 31.01.2010 and petitioner No.2 has also been retired from the service on 31.03.2008 and the order impugned was passed after the retirement of the petitioners i.e. on 26.12.2011.



10. Learned counsel for the State submits that earlier the seniority of clerk cadre was maintained by the Parent Department i.e. Water Resources Department, Govt. of Bihar, Patna later on it is directed to maintain seniority (Gradation) of Muffasil Cadre maintenance Ordinance No.1035 of 1998 on the basis of their respective first joining in this case and as per direction, the first provisional gradation list was notified for the muffasil cadre by letter No.271 dated 20.02.1999 inviting representation against any discrepancies. Petitioner No.1 was placed at Sl. No.43 (ka). He was given Jr. Selection Grade w.e.f. 15.02.1986 and Sr. Selection Grade on 15.02.1991 on the basis of passing the Accounts Examination on 15.07.1985. By order of the Finance Department No.8094 dated 21.01.2000, the compulsion of passing the accounts examination was relaxed to those employee who have been promoted or their promotion due before 01.09.1983. Some of the employees moved before this Hon'ble Court in CWJC No.10207 of 2009 and CWJC No.4348 of 2000 by which they were challenged their position in gradation list and effective date of marking for Head Clerk and Head Assistant. Both the writ petitioners were heard and respective order was passed by this Hon'ble Court and thereafter the respondents were taken steps and the whole case



to gradation list prepared as on 01.01.1996 was deeply reviewed in the light of their 1st joining in the cadre as per direction of aforesaid respective orders, departmental order No.2207 dated 03.09.2005 as well as Finance Department Order No.8094 dated 21.11.2000 by which the compulsion of passing the accounts examination was relaxed to the employee who has been promoted or their promotion due before 01.09.1983. After review the whole matter the entire previous gradation list was rearranged by the Department Order No.60 dated 19.01.2010 canceling all previous orders issued vide different letters and dates, the petitioner No.1 was placed on gradation 43(ka) and marked for head clerk on 01.04.2008 instead of 01.01.1996 and the petitioner No.2 was placed on Gradation 22 and marked for Head Clerk on 01.02.2001 instead of 01.01.1996. Learned counsel for the State submits that the petitioners filed a fresh writ petition bearing CWJC No.4501 of 2010 for quashing the Office order No. 60 dated 19.01.2010 and the same was disposed of vide order dated 06.09.2011 with the certain direction and in light of the order dated 06.09.2011 passed in CWJC No.4501 of 2010 alongwith the representation of the petitioners. The answering respondents fixed the date for hearing on 21.11.2011 and also the Department informed to the



petitioners vide letter No.1067 dated 09.11.2011 to ensure their presence on fixed date. Learned counsel for the State submits that the respondents after considering all facts, the Chief Engineer, Central Design and Research, Water Resources Department, Govt. of Bihar, Patna passed a reasoned order after clarifying all the points vide memo No.1203 dated 26.12.2011 which is impugned in the present writ petition and observed that the office order No.60 dated 19.01.2010 will be effects and there is no illegalities or irregularities in the present case.

11. Having heard the parties and have gone through the material available on the record, I find that the respondents have not levelled any allegation against the petitioners herein that they have misrepresented or committed fraud for the purpose of wrong fixation of pay, grant of grand pay, in fact the respondents have conceded that wrong pay fixation was done on account of their mistake and according to the principle of law settled in the case of **State of Punjab Vs. Rafiq Masih** (Supra) no recovery can be affected from the petitioners , firstly, since they have already attained the age of superannuation prior to passing of the order recovery and secondly since there have been no misrepresentation or fraud committed by the petitioners



leading to wrong pay fixation/wrong grant of grade pay though the respondent authorities are precluded from making any recovery from the petitioners.

12. This Court is of the view that the present case of squarely covered by the judgment rendered in the case of **State of Punjab Vs. Rafiq Masih** (Supra) especially since the petitioners have already superannuated and secondly it is mistake of the respondents admittedly, which is excess payment to the petitioners herein on account of wrong fixation of pay. This Court is left with no option in the facts and circumstances of the present case but to quash the order dated 26.12.2011 and directed the respondent authorities to act accordingly and pay all the consequential benefits to the petitioners within a period of eight weeks from the date of receipt/production of a copy of this order.

13. Accordingly, this writ application is allowed.

(Rajesh Kumar Verma, J)

Nitesh/-

AFR/NAFR	AFR
CAV DATE	08.04.2024
Uploading Date	16.04.2024
Transmission Date	NA

