Purshottam Lal Das & Others vs The State Of Bihar & Others on 10 October, 2006

Equivalent citations: 2006 AIR SCW 5325, 2006 (11) SCC 492, 2007 (1) AIR JHAR R 384, (2006) 111 FACLR 844, (2006) 7 SCJ 888, (2006) 4 SCT 537, (2007) 1 UPLBEC 196, (2006) 7 SUPREME 586, (2006) 4 ESC 452, (2006) 10 SCALE 89, (2007) 1 JCR 22 (SC), (2006) 48 ALLINDCAS 129 (SC), MANU/SC/4407/2006, (2007) 2 SERVLJ 68

Author: Arijit Pasayat

Bench: Arijit Pasayat, Lokeshwar Singh Panta

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           CASE NO.:
Appeal (civil)  4386 of 2006

PETITIONER:
Purshottam Lal Das & Others

RESPONDENT:
The State of Bihar & Others

DATE OF JUDGMENT: 10/10/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
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J U D G M E N T (Arising out of SLP (C) Nos. 20306-20308 of 2005) WITH [Civil Appeal Nos 4387/2006 (Arising out of S.L.P. (C) 1827-1828)] ARIJIT PASAYAT, J.

Leave granted.

In both these appeals challenge is to the legality of the common judgment passed by the Patna High Court dismissing of different Letters Patent Appeals filed by the appellants. By the impugned judgment the High Court dismissed the Letters Patent Appeals. It was held that the view of learned Single Judge dismissing the writ petitions filed by the appellants challenging their reversion as well as recovery of the amounts paid on account of promotion was in order.

Factual position in a nutshell is as follows:-

> Except some of the appellants who were Class IV employees remaining appellants were holding Class III posts, that is, Basic Health Workers. They were promoted to

the post of Clerk in the year 1992. Subsequently, an audit team raised objection to the said promotions expressing the view that the appellants could not have been promoted. On the basis of the audit report action was taken. State Government was of the view that promotions granted were illegal and accordingly the appellants were reverted to the original post held by each one of them. Being aggrieved by the said order, some of the appellants moved the High Court which quashed the orders on the ground that adequate opportunity was not granted to show cause before the action was taken. Thereafter, show cause notices were issued to which the appellants responded. Ultimately they were reverted to the original post held by each and direction was given to recover the excess amounts which had been paid. Writ petitions were filed challenging the orders in that regard. In each case learned Single Judge dismissed the writ petition. As noted above the Letters Patent Appeals were also dismissed.

In support of the appeals learned counsel for the appellants submitted that there was no fault on the part of the appellants and they had been appointed on the basis of the recommendations made by the Selection Committee. Even if it is conceded that there was any procedural irregularity that could not have affected the promotion granted and no action could have been taken after lapse of time. In any event, the recovery of the amount is uncalled for.

Learned counsel for the respondent-State and its functionaries supported the judgment submitting that the courts below had noted the reasons for directing reversion. Even if the appellants had worked in the promotional post yet they were not entitled to the higher salary attached to each of the promotional post. Therefore, the recovery has rightly been directed. Reliance was placed on decisions of this Court in R. Vishwanatha Pillai v. State of Kerala and Ors. (2004 (2) SCC

105), LIC of India v. Sushil (2006 (2) SCC 471) and Ram Saran v. I.G. of Police, CRPF (2006 (2) SCC 541).

The reasons which weighed by the respondent-State to hold that the promotion was illegal does not suffer form any infirmity. Class III employees could not have been promoted as they belong to the technical cadre and the promotional posts related to non-technical cadre. That apart the Class III employees were already holding Class III post and, therefore, there was no question of promotion to the same class. So far as class IV employees are concerned, their promotion was also not considered in terms of statutory provision. The quota of promotion to Class III from Class IV is fixed and the procedure is provided for deciding the question of promotion. The promotions were granted without placing their cases before the Establishment Committee and the Committee which accorded approval was not properly constituted, and the reservation policy was not followed and promotions were given without adopting the procedure relating to advertisement. The High Court also noted that the appointments were made by the Civil Surgeon though a ban had been imposed by the State Government on appointments. Therefore, the order of reversion in each case cannot be faulted.

So far as the recovery is concerned, in a normal course if the promotion/appointment is void ab initio, a mere fact that the employee had worked in the concerned post for long cannot be a ground for not directing recovery. The cases relied upon by the learned counsel for the State were rendered in different backdrop. In those cases the appellants were guilty of producing forged certificates or the appointments had been secured on non-permissible grounds. In that background this Court held that recovery is permissible. On the contrary, the fact situation of the present case bears some similarity to the cases in Sahib Ram v. State of Haryana (1995 Supp.(1) SCC

18), Bihar State Electricity Board and Anr. v. Bijay Bhadur and Anr. (2000 (10) SCC 99) and State of Karnataka and Anr. v. Mangalore University Non-teaching Employees' Association and Ors. (2002 (3) SCC 302).

In Bihar State Electricity Board's case (supra) it was held as follows:

> "9. Further, an analysis of the factual score at this juncture goes to show that the respondents appointed in the year 1966 were allowed to have due increments in terms of the service conditions and salary structure and were also granted promotions in due course of service and have been asked after an expiry of about 14-15 years to replenish the Board exchequer from out of the employees' salaries which were paid to them since the year 1979. It is on this score the High Court observed that as both the petitioners have passed the examination though in the year 1993, their entitlement for relief cannot be doubted in any way. The High Court has also relied upon the decision of this Court in the case of Sahib Ram v. State of Haryana (1995 Supp (1) SCC 18), wherein this Court in para 5 of the Report observed: (SCC p.20) "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.
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> 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."

10. The High Court also relied on the unreported decision of the learned Single Judge in the case of Saheed Kumar Banerjee v. Bihar SEB (CWJC No. 710 of 1994 disposed of on 27.01.1995). We do record our concurrence with the observations of this Court in Sahib Ram case (supra) and come to the conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time. The act or acts on the part of the appellant Board cannot under any circumstances be said to be in consonance with

equity, good conscience and justice. The concept of fairness has been given a go-by. As such the actions initiated for recovery cannot be sustained under any circumstances. This order, however, be restricted to the facts of the present writ petitioners. It is clarified that Regulation 8 will operate on its own and the Board will be at liberty to take appropriate steps in accordance with law except, however, in the case or cases which has/have attained finality.

In Mangalore University Non-teaching Employees' case (supra) it was held as follows:

> "12. Though the above discussion merits the dismissal of the Writ Petitions and the denial of relief to the respondents, we are of the view that on the special facts of this case, the employees of the University have to be protected against the move to recover the excess payments upto 31.03.1991. When the concerned employees drew the allowances on the basis of financial sanction accorded by the Competent Authority i.e. the Government and they incurred additional expenditure towards house rent, the employees should not be penalized for no fault of there is. It would be totally unjust to recover the amounts paid between the 1.4.1994 and the date of issuance oft he G.O. No. 42 dated 13.2.1996. Even thereafter, it took considerable time to implement the G.O. It is only after 5th March, 1997 the Government acted further to implement the decision taken a year earlier. Final orders regarding recovery were passed on 25.3.1997, as already noticed. The Vice- Chancellor of the University also made out a strong case for waiver of recovery upto 31.3.1997. That means, the payments continued upto March 1997 despite the decision taken in principle. In these circumstances, we direct that no recovery shall be effected from any of the University employees who were compelled to take rental accommodation in Mangalore City limits for want of accommodation in University Campus upto 31.3.1997. The amounts paid thereafter can be recovered in instalments. As regards the future entitlement, it is left to the Government to take appropriate decisions, as we already indicated above. "

High Court itself noted that the appellants' deserve sympathy as for no fault of theirs, recoveries were directed when admittedly they worked in the promotional posts. But relief was denied on the ground that those who granted had committed gross irregularities.

While, therefore, not accepting the challenge to the orders of reversion on the peculiar circumstances noticed, we direct that no recovery shall be made from the amounts already paid in respect of the promotional posts. However, no arrears or other financial benefits shall be granted in respect of the concerned period.

The appeals are accordingly disposed of. No costs.