

Abdul Aziz Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Aug-11-2017

Appellant : Abdul Aziz

Respondent : State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 1123 of 2012
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Abdul Aziz, S/o Abdul Hussain, R/o Minu Computer Dudhani, Dumka Petitioner
VERSUS1 The State of Jharkhand.

2. The Principal Secretary, Water Resource Department, Govt. of Jharkhand,
Ranchi.

3. Chief Engineer, Water Resource Department, Govt. of Jharkhand, Ranchi.

4. The Superintending Engineer, Water Resource Division, Dumka 5. The
Treasury office, Dukma 6. The Accountant General, Govt. of Jharkhand, Doranda,
Ranchi ... Respondents.

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For Petitioner : Dr. S.K. Verma, Advocate For Respondents : Mrs. Sweta Singh,
Advocate

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CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK08 11.08.2017 Heard

learned counsel for the petitioner and learned counsel for the respondents. The petitioner has approached this Court with a prayer for quashing the memo No. 1219 dated 21.11.2011 (Annexure-9), whereby the recovery order has been passed for recovery of an amount Rs. 2,61,353/- after the retirement. Further prayer has been made to pay the retiral benefits after quashing the same and for granting other consequential benefits for which the petitioner is entitled. Factual Matrix:- The petitioner was appointed as Tracer by the Executive Engineer, Water Resource Circle, Dumka vide letter No. 979 dated 28.04.1971, in the pay scale of Rs. 85-110. On 27.06.1978, the petitioner was regularized on the post of Tracer in the scale of Rs. 205-284. The petitioner vide office order No. 991 dated 11.04.2007 was given promotion as Draftman Grade-II in the scale of Rs. 1400-2300/-. Thereafter, vide memo No. 2720 dated 24.12.2008, being order No. 77 issued from the office of Chief Engineer, Water Resource Department, Deoghar, the promotion granted to the petitioner, was cancelled and order of recovery was issued. It is the case of the petitioner that vide letter No. 155 dated 06.03.2010 and letter No. 973 dated 27.09.2010, the Superintending Engineer asked the Chief Engineer to settle and decide the dispute regarding recovery of the amount and passed order after reconsideration, so that at the time of retirement, payment of the petitioner regarding retiral benefits could not remain disputed. On 27.04.2010, the petitioner requested the Chief Engineer to allow the promotion granted earlier with retrospective effect but the same has not been decided and recovery order has been passed. It is the further case of the petitioner that Superintending Engineer vide letter No. 303 dated 09.03.2011 and letter No. 674 dated 23.05.2011 informed the Chief Engineer that for recovery of the amount of Rs.96,230/-, the same has been calculated w.e.f 15.11.2000 to 10.04.2007, is recoverable from the petitioner. The petitioner has stated that vide memo No. 1637, Deoghar dated 03.09.2011, the Chief Engineer, Water Resource Department has cancelled the promotion given to the petitioner w.e.f. 27.06.1991 and subsequently, the pay scale has also been reduced. It is the specific case of the petitioner that he retired on 31.05.2011 from the post of Draftsman Grade-II and after retirement, it is most surprising that a letter No. 1219 dated 21.11.2011 showing a total amount Rs. 2,61,353/- to be recovered from the petitioner has been issued, wherein it has also been mentioned that an amount of Rs. 24,000/-

has already been deducted. The provisional pension has been given to the petitioner keeping 10% deduction with the department vide letter No. 1218 dated 21.11.2011. Subsequently, the petitioner represented before respondent authorities but the respondents are sitting tight over the matter. Hence, this writ petition has been preferred. Learned counsel for the petitioner submits that the impugned order is not tenable in the eyes of law. Respondents are relying on the Rule 58 of the Bihar Service Code and Rule 74 of the Bihar Financial Rule for denying the benefits to the petitioner for the promotion given to him with retrospective date. Learned counsel further submits that in view of judgment delivered by Hon'ble Patna High Court reported in 1999 (1) PLJR272(Ranjit Sahay Jamuar & Anr. Vs. State of Bihar & Ors.) based on the decision of Division Bench of Hon'ble Patna High Court reported in 1990 (2) PLJR248(Dr. Paras Nath Prasad Vs. State of Bihar & Ors.), provision of Rule 58 of Bihar Service Code and Rule 74 of the Bihar Financial Rule have no application to the case of the petitioner for the simple reason that those rules envisage promotions given in the normal course of administration and at the due time when the right of promotion accrued to the concerned employee. In view of ratio held by Hon'ble Patna High Court, the respondents cannot cancel the promotion given to the petitioner and cannot pass order of recovery and as such, consequential order of recovery is bad in law as well as on fact. Per contra counter-affidavit has been filed by the respondents. Learned counsel for the respondents submits that the petitioner was given promotion illegally, in view of the fact that no promotion can be given from retrospective effect and as such promotion given from retrospective effect is illegal and arbitrary and not tenable in the eyes of law. As such, consequential benefits given to the petitioner, in view of the promotion given to him by retrospective effect, has rightly been recovered from the petitioner and there is no infirmity in the impugned order. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that the case of the petitioner needs consideration. Admittedly, the same issue fell for consideration before the Division Bench of Patna High Court and the same view has been reiterated by the Single Judge in the case of Ranjit Sahay Jamuar & Anr. Vs. State of Bihar & Ors. reported in 1999 (1) PLJR272 In that case a controversy was raised on the ground that petitioner therein was granted promotion with retrospective effect according to

provision of Rule 58 of Bihar Service Code and 74 of Bihar Financial Rules. The said rules have no application to the case of the petitioner for the simple reason that those rules envisage promotions given in the normal course of administration at due time when the right of promotion accrued to the concerned employees. By referring to the earlier judgment of Division Bench of Hon'ble Patna High Court reported in 1990 (2) PLJR, 248 (Dr. Paras Nath Prasad Vs. State of Bihar & Ors.), in which it has been held that an employee has been given promotion with retrospective effect cannot be denied the material benefits accruing from the promotion and the position is now well established. In catena of decisions of Hon'ble Apex Court it has been held that after retirement, no amount can be recovered from the retirement benefits i.e. pension and gratuity. In case of State of Punjab & Ors. Vs. Rafiq Masih (white washer) reported in 2015 (4) SCC334 it has been held that no amount from the retirement benefits i.e. pension and gratuity, can be recovered without following the procedures of law. In the instant case, the recovery order dated 21.11.2011 has been issued after retirement of the petitioner. No procedures have been followed before passing the impugned order, neither there was any fraud and misrepresentation on the part of the petitioner. As a cumulative effect of the aforesaid rules, observations and judicial pronouncements this Court is of the considered view that the impugned order dated 21.11.2011 is not tenable in the eyes of law as well as the order dated 24.12.2008 (Annexure-3) is also not tenable in the eyes of law. Resultantly, both the orders are quashed and set aside and writ petition is allowed. If amount is already recovered, the same be refunded to the petitioner within a period of six weeks' from the date of receipt of a copy of this order with statutory interests. (Dr. S.N. Pathak, J) punit/ -

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