

Nawal Kachhap and Ors Vs. State of Jharkhand and Ors

Nawal Kachhap and Ors Vs. State of Jharkhand and Ors

SooperKanoon Citation : sooperkanoon.com/111426

Court : Jharkhand

Decided On : Dec-06-2017

Appellant : Nawal Kachhap and Ors

Respondent : State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No.23 of 2012

=====

1. Nawal Kachhap, son of late Birsa Kachhap.

2. Ramchandra Barda, son of late Madray Barda.

3. Ramsingh Purty, son of late Ram Purty. Petitioners VERSUS1 The State of Jharkhand through Secretary, Water Resource Department, Govt. of Jharkhand, Ranchi.

2. The Chief Engineer, Subarnarekha Multipurpose Project, Icha Galudih Complex, Adityapur, Jamshedpur.

3. The Superintending Engineer, Kharkai Dam Circle, Icha Chaliama, Adityapur, Jamshedpur.

4. The Superintending Engineer, Kharkai Nahar Circle, Adityapur, Jamshedpur. ... Respondents.

=====

For Petitioners : Dr. H. Waris, Advocate For Respondents : Mrs. Chandra Prabha,
SC-IV Mr. Vishal Kumar Rai, JC to SC-IV

=====

with W.P. (S) No.31 of 2012

=====

Sakari Lamay, son of late Damu Lamay, resident of village Kelugoat, P.O. Icha, P.S. Rajnagar, District Saraikela-Kharsawan Petitioner VERSUS1 The State of Jharkhand through Secretary, Water Resource Department, Govt. of Jharkhand, Ranchi.

2. The Chief Engineer, Subarnarekha Multipurpose Project, Icha Galudih Complex, Adityapur, Jamshedpur.

3. The Superintending Engineer, Subarnarekha Project, Kharkai Dam Circle, Icha Chaliama, Adityapur, Jamshedpur. ... Respondents.

=====

For Petitioner : Dr. H. Waris, Advocate For Respondents : Mrs. Chandra Prabha,
SC-IV Mr. Vishal Kumar Rai, JC to SC-IV

=====

2 with W.P. (S) No.33 of 2012

=====

Babu Lal Pradhan, son of late Sarve Pradhan, resident of village Kuju, P.O. Icha, P.S. Rajnagar, District Saraikela-Kharsawan Petitioner VERSUS1 The State of Jharkhand through Secretary, Water Resource Department, Govt. of Jharkhand, Ranchi.

2. The Chief Engineer, Subarnarekha Multipurpose Project, Icha Galudih Complex, Adityapur, Jamshedpur.

3. The Superintending Engineer, Kharkai Dam Circle, Icha Chaliama, Adityapur, Jamshedpur. ... Respondents.

=====

For Petitioner : Dr. H. Waris, Advocate For Respondents : Mrs. Chandra Prabha,
SC-IV Mr. Vishal Kumar Rai, JC to SC-IV

=====

=====

Pito Baso Mahato, son of late Mohan Mahato, resident of village Nimdih, P.O. Gulya, P.S. Rajnagar, District Saraikela-Kharsawan. Petitioner VERSUS1 The State of Jharkhand through Secretary, Water Resource Department, Govt. of Jharkhand, Ranchi.

2. The Chief Engineer, Subarnarekha Multipurpose Project, Icha Galudih Complex, Adityapur, Jamshedpur.

3. The Superintending Engineer, Kharkai Dam Circle, Icha Chaliama, Adityapur, Jamshedpur.

4. The Executive Engineer, Kharkai Dam Division No. 1, Musabani, East Singhbhum. ... Respondents.

=====

For Petitioner : Dr. H. Waris, Advocate For Respondents : Mrs. Chandra Prabha, SC-IV Mr. Vishal Kumar Rai, JC to SC-IV

=====

3 CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK C.A.V. on 23.11.2017 Pronounced on 06/12/2017 Dr. S.N. Pathak, J.

Heard learned counsel for the petitioners and learned counsel for the respondents.

2. Since issues involved in all these writ petitions are similar, hence, they are being disposed of with a common order.

3. The petitioners in all the four writ petitions have approached this Court with a common prayer for quashing the order dated 20.10.2011, so far it relates to the petitioners, issued by the Chief Engineer, Subarnarekha Multipurpose Project, Icha Galudih Complex Adityapur, Jamshedpur (respondent No. 2), whereby the promotions given to the petitioners in the Junior Selection Grade and Senior Selection Grade have been amended/ cancelled and excess salary drawn on account of promotional posts of Junior Selection Grade and Senior Selection Grade has been ordered to be recovered after about more than 22 years of

promotion in Junior Selection Grade and more than 17 years of promotion in Senior Selection Grade on the ground that petitioners were entitled for promotion from the date of their passing of Accounts examination.

4. The facts derived from the aforesaid writ petitions are as follows:- W.P.(S). No. 23 of 2012 Initially petitioner No. 1 was appointed on the post of Correspondence Clerk and petitioner Nos. 2 and 3 were appointed on the post of Sub-divisional Clerk vide office order dated 31.01.1984 of Chief Engineer, Subarnarekha Multipurpose Project, Jamshedpur and their names appear respectively at Sl. Nos. 19, 36 and 38 in the list and petitioner Nos. 1 and 2 were posted at Kharkai Nahar Sub-division and petitioner No. 3 was posted at Mechanical Sub-division, Icha Chaibasa. It has further been stated that petitioner No. 1 joined his respective post on 02.02.1984 whereas, petitioner Nos. 2 and 3 joined their respective posts on 04.02.1984 and started discharging their duties to the satisfaction of the respondent-authorities. Thereafter, on the recommendation of the Departmental Establishment Committee headed by the Chief Engineer, Icha Galudih Complex, Adityapur, Jamshedpur petitioner No. 1 was promoted to the post of Junior Selection 4 Grade in the scale of Rs.1400-2300 w.e.f. 02.02.1989 and to the post of Senior Selection Grade in the scale of Rs.1400-2600 w.e.f. 02.02.1994 by office order dated 09.11.1999 of the Chief Engineer. Similarly, petitioner Nos. 2 and 3 were also promoted to the post of Junior Selection Grade w.e.f. 04.02.1989 and to the post of Senior Selection Grade w.e.f.04.02.1994 vide office order dated 20.12.1999 respectively. It is the specific case of the petitioners that after about more than 22 years of their promotion in Junior Selection Grade and after about more than 17 years of their promotion in Senior Selection Grade, the Chief Engineer, Icha Galudih Complex, Adityapur, Jamshedpur has issued office order as contained in memo No. CE1381 dated 20.10.2011, whereby the promotions given to the petitioner Nos. 1, 2 and 3 in Junior Selection Grade and Senior Selection Grade by the aforesaid office orders dated 09.11.1999, 12.11.1999 and 20.12.1999 were amended/ cancelled and excess salary drawn on the said promotional posts during the last 22 years and 17 years have been order to be recovered. The cancellation of the promotion order was based on non-passing of the accounts examination and as the petitioners passed the said examination much later than the issuance of promotion order, hence, in view of letter dated

20.10.2011, the earlier order of promotion was amended/ cancelled and promotions were given to the petitioners on the date on which they have passed the accounts examinations. W.P.(S). No. 31 of 2012 Initially the petitioner was appointed on the post of Junior Assistant, Kharkai Dam Circle, Icha Chaliama vide office order dated 13.03.1984 of Chief Engineer, Subarnarekha Multipurpose Project, Jamshedpur and his name appear at Sl. No. 11 in the list. It has further been stated that petitioner joined his services on 15.03.1984 and started discharging his duties to the satisfaction of the respondent-authorities. Thereafter, on the recommendation of the Departmental Establishment Committee headed by the Chief Engineer, Icha Galudih Complex, Adityapur, Jamshedpur petitioner was promoted to the post of Junior Selection Grade in the scale of Rs.1400-2300 w.e.f. 15.03.1989 and to the post of Senior Selection Grade in the scale of Rs.1400-2600 w.e.f. 15.03.1994 by office order dated 27.10.1999 of the Chief Engineer. It is the specific case of the petitioner that after about more than 22 years of his promotion in Junior Selection Grade and after about more than 17 years of his promotion in Senior Selection Grade, the Chief Engineer, Icha Galudih 5 Complex, Adityapur, Jamshedpur has issued office order as contained in memo No. CE1381 dated 20.10.2011, whereby the promotion given to the petitioner in Junior Selection Grade and Senior Selection Grade by the aforesaid office order dated 27.10.1999 was amended/ cancelled and excess salary drawn on the said promotional posts during the last 22 years and 17 years have been order to be recovered. The cancellation of the promotion order was based on non-passing of the accounts examination and as the petitioner passed the said examination much later than the issuance of promotion order, hence, in view of letter dated 20.10.2011, the earlier order of promotion was amended/ cancelled and promotion was given to the petitioner from the date on which he has passed the accounts examination. W.P.(S). No. 33 of 2012 Initially the petitioner was appointed on the post of Correspondence Clerk, Kharkai Dam Circle, Icha Chaliama vide office order dated 14.11.1986 of Chief Engineer, Subarnarekha Multipurpose Project, Jamshedpur and his name appear at Sl. No. 1 in the list. It has further been stated that petitioner joined his services on 20.11.1986 and started discharging his duties to the satisfaction of the respondent-authorities. Thereafter, on the recommendation of the Departmental Establishment Committee headed by the

Chief Engineer, Icha Galudih Complex, Adityapur, Jamshedpur petitioner was promoted to the post of Junior Selection Grade in the scale of Rs.1400-2300 w.e.f. 20.11.1991 by office order dated 30.12.1999 of the Chief Engineer. It is the specific case of the petitioner that after about more than 19 years of his promotion in Junior Selection Grande, the Chief Engineer, Icha Galudih Complex, Adityapur, Jamshedpur has issued office order as contained in memo No. CE1381dated 20.10.2011, whereby the promotion given to the petitioner in Junior Selection Grade by the aforesaid office order dated 30.12.1999 was amended/ cancelled and excess salary drawn on the said promotional posts during the last 19 years have been order to be recovered. The cancellation of the promotion order was based on non-passing of the accounts examination and as the petitioner passed the said examination much later than the issuance of promotion order, hence, in view of letter dated 20.10.2011, the earlier order of promotion was amended/ cancelled and promotion was given to the petitioner from the date on which he has passed the accounts examination. 6 W.P.(S). No. 42 of 2012 Initially the petitioner was appointed on the post of Sub-divisional Clerk, Mechanical Division, Icha Chaibasa vide office order dated 13.03.1984 of Chief Engineer, Subarnarekha Multipurpose Project, Jamshedpur and his name appear at Sl. No. 8 in the list. It has further been stated that petitioner joined the post and started discharging his duties to the satisfaction of the respondent-authorities. Thereafter, on the recommendation of the Departmental Establishment Committee headed by the Chief Engineer, Icha Galudih Complex, Adityapur, Jamshedpur petitioner was promoted to the post of Junior Selection Grade in the scale of Rs.1400-2300 w.e.f. 15.03.1989 and to the post of Senior Selection Grade in the scale of Rs.1400-2600 w.e.f. 15.03.1994 by office order dated 20.12.1999 of the Chief Engineer. It is the specific case of the petitioner that after about more than 22 years of his promotion in Junior Selection Grande and more than 17 years of promotion in Senior Selection Grade, the Chief Engineer, Icha Galudih Complex, Adityapur, Jamshedpur has issued office order as contained in memo No. CE1381dated 20.10.2011, whereby the promotion given to the petitioner in Junior Selection Grade and Senior Selection Grade by the aforesaid office order dated 20.12.1999 was amended/ cancelled and excess salary drawn on the said promotional posts during the last 22 years and 19 years have been order to be recovered. The

cancellation of the promotion order was based on non-passing of the accounts examination and as the petitioner passed the said examination much later than the issuance of promotion order, hence, in view of letter dated 20.10.2011, the earlier order of promotion was amended/ cancelled and promotion was given to the petitioner from the date on which he has passed the accounts examination 5. Aggrieved by the said orders, the petitioners in the above writ petitions represented before the respondent-authorities vide their representation dated 04.11.2011 (in W.P.S. No. 23 of 2012); representation dated 31.10.2011 (in W.P.S. No. 31 of 2012, W.P.S. No. 33 of 2012) and representation dated 24.12.2011 (in W.P.S. No. 42 of 2012) but no heed was paid to their said representations and hence, these writ petitions have been preferred by the petitioners for redressal of their grievances.

6. Mr. H. Waris, learned counsel appearing for the petitioners strenuously urges that without any notice or any opportunity of hearing, the promotion earlier granted to the petitioners have been amended/ cancelled, 7 which is completely illegal, arbitrary and in complete violation of principles of natural justice. Learned counsel further argued that there was no fault or misrepresentation on the part of the petitioners for getting promotion. It was only respondents, who were responsible for grant of promotion and as such, order of recovery of excess amount is not tenable in the eyes of law on the ground that the petitioners have not cleared the accounts examination at the time of grant of promotions. Learned counsel relied on the judgments of this Court in case of Md. Shamsuddin & Ors. Vs. State of Bihar & Ors., reported in 1983 PLJR347 and argues that in view of the said judgment it cannot be said necessary for a person to pass departmental examination in accounts before promotion to the selection grade post, if otherwise he is found fit and as such, the impugned order is fit to be quashed and set aside.

7. Per contra counter-affidavit has been filed by the respondents. Mrs. Chandra Prabha, learned SC-IV assisted by Mr. Vishal Kumar Roy, learned counsel appearing for the respondents vehemently opposes the contentions of the learned counsel for the petitioners and argues that there is no any illegality or infirmity in the impugned order as passing of accounts examination is mandatory requirement and any promotion could only be considered and granted from the date of passing

of the accounts examination and as such, rightly an order has been passed for recovery of the excess amount as on the date of promotion, the petitioners had not cleared the accounts examination. Learned counsel further argued that principles of natural justice does not arise in the cases of the petitioners as cancellation is as per rules. Such promotion has been given to the petitioner on the basis of seniority as per gradation list. Any promotion which is not as per rules and on inquiry found to be erroneous, the excess payment must be recovered. It has further been submitted that vide resolution No. 660 dated 08.02.1999, the government has decided to abolish the existing facilities of time bound promotion and selection grade, which is effective from 01.01.1996 and hence, promotion given after 31.12.1995 will not be taken into consideration.

8. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that following common issues are to be decided in all these writ petitions:- (I) Whether any order of recovery can be passed after lapse of 22 years/ 19 years/ 17 years or after lapse of time without adhering to the principles of natural justice? 8 (II) Whether the petitioners are entitled for promotion to the post of Junior Selection Grade and Senior Selection Grade even though they have not cleared the accounts examination? 9. The Full Bench of Honble Patna High Court in case of Maheshwar Prasad Singh & Ors. Vrs. State of Bihar & Ors., reported in 2000 (4) PLJR262 has held as under:-

24. I find that the requirement for finally passing the Accounts examination for promotion to the selection grade was for the first time introduced on 29th April, 1985 and thus, I am of the view that any promotion of a Clerk which became due in the selection grade, which had been created in 1964, the junior selection grade created by Annexure-2 and the senior selection grade created in the year 1981 cannot be denied on account of non-passing finally in Accounts examination till framing of the said amended Rule in the year 1985, and thus, the petitioners are also entitled for consequential fixation of their inter se seniority vis--vis the private respondents.

10. In the instant case, admittedly the petitioners have passed the accounts examination on different dates and they were granted promotions to the post of

Junior Selection Grade and Senior Selection Grade vide office order No. 1195 dated 09.11.1999 of the Chief Engineer prior to passing of accounts examination. Admittedly, the promotion was granted much after 1985. The exemption from passing the departmental examination was abolished as per the State Notification after framing of the Rule in the year 1985 and any promotion given after 1985 to the post of Junior Selection Grade or Senior Selection, the requirement of passing accounts examination was a must and as such, there is no error in amending the promotion order from the date of passing of the accounts examination. As far as the recovery part is concerned certainly any order visiting civil consequences cannot be given effect without following the procedure of law and without adhering to the cardinal principles of natural justice. In the instant cases, the orders of promotion continued for more than 22 years and even without issuance of any show-cause, the amounts have been ordered to be recovered, which is not tenable in the eyes of law.

11. As a cumulative effect of the aforesaid facts, rules, guidelines, observations and judicial pronouncements, I hereby set aside and quash the 9 recovery order dated 20.10.2011 but as far as correction in the promotion order is concerned, it remains the same as per the amended date of promotion i.e. from the date of passing of the accounts examination. Needless to say if any amount has already been recovered, the same may be refunded to the petitioners within a period of six weeks from the date receipt/production of a copy of this order.

12. Resultantly, the writ petitions stand partly allowed. (Dr. S.N. Pathak, J.) kunal/-

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com