

Arun Kumar Srivastava Vs. State of Bihar and ors.

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Court : Patna

Decided On : May-07-2004

Judge : R.S. Garg, J.

Acts : Service Law

Appeal No. : CWJC No. 13966 of 2003

Appellant : Arun Kumar Srivastava

Respondent : State of Bihar and ors.

Advocate for Def. : Ranjan Kumar JC to SC-II

Advocate for Pet/Ap. : N.K. Agrawal, Sr. Adv. and Sanjeet Kumar Adv.

Disposition : Petition allowed

Prior history : R.S. Garg, J. 1. Heard learned counsel for the parties. 2. The petitioner joined the services as Drug Inspector in the year 1973. In accordance with the rules of 1974 he was required to pass the Hindi Noting and Accounts examination within five years of coming into force of the rules, i.e., before 1979. According to the petitioner, despite his best efforts he could not clear the examination, but the increments were given to him regularly since after his joining the services and despite the fac

Judgement :

R.S. Garg, J.

1. Heard learned counsel for the parties.

2. The petitioner joined the services as Drug Inspector in the year 1973. In accordance with the rules of 1974 he was required to pass the Hindi Noting and Accounts examination within five years of coming into force of the rules, i.e., before 1979. According to the petitioner, despite his best efforts he could not clear the examination, but the increments were given to him regularly since after his joining the services and despite the fact that he did not pass the examination. The petitioner was issued a notice on 7.3.2003 to show cause as to why the increments be not stopped and the amount received under the increments be not recovered from him. The petitioner has now come to this Court, Inter alia, submitting that he made his best efforts to pass the examination but unfortunately could not. It is also submitted by him that after amendment of the rules he made an application to the State Government seeking exemption from passing the departmental examination and as the application for exemption was pending consideration, no orders could be passed against the interest of the petitioner.

3. The respondents in their counter-affidavit have submitted that after 1979 no increments would be given to the petitioner because he had not passed the departmental examination. It is also submitted by him that the petitioner might not have played any fraud or made misrepresentation but if he was not entitled to the increments he cannot swallow the public money. For the representation it is submitted that during the pendency of this writ application the same has been rejected.

4. As the representation made by the petitioner has already been rejected, this Court is not required to make any observation on that aspect.

5. The petitioner shall be free to challenge the said order before the appropriate forum in appropriate proceedings.

6. So far as recovery of the over paid amount is concerned, this Court must observe that in almost identical situation in the matter relating to the employees of

the Bihar State Electricity Board who could not pass the Hindi Noting and Drafting Examination but were getting the benefits of the increments the department issued an order for recovery, the High Court set aside the said order and the Supreme Court ultimately approved the order passed by the High Court and observed that if there was no misrepresentation on the part of such employees then recovery of the over paid amount would not be made. The said matter is reported in Bihar State Electricity Board and Anr. v. Bijay Bahadur and Anr., (2000) 10 SCC 99.

7. Being in parity with the said judgment. I hereby hold that the respondents would not be entitled to propose recovery or make any recovery of the amount which has been paid to the petitioner despite his not passing the departmental examination.

8. Learned counsel for the petitioner, however, further submits that the respondents be directed to continue the benefits of the increments because the petitioner did not play any fraud with the authorities nor made any misrepresentation.

9. In the matter of Bihar State Electricity Board and another, (supra) the facts before the Supreme Court were that the increments were given during 14/15 years of services and the respondents (the employees) had passed the examination in 1993. In the present matter undisputedly, the petitioner has yet not passed the examination and his application for exemption has already been rejected. Under the circumstances, the petitioner though would not be answerable to refund the money already received by him, but he would not be entitled to the benefits of increments since after 1979 as till date he has not passed the examination. The respondents, if advised, may issue orders in accordance with the observation made by this Court.

10. The petition to the extent indicated above is allowed.

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