

Seetaram Singh Vs. the State of Bihar and ors.

Seetaram Singh Vs. the State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/136739

Court : Patna

Decided On : May-01-2002

Judge : R.N. Prasad, J.

Appeal No. : C.W.J.C. No. 2099 of 2002

Appellant : Seetaram Singh

Respondent : The State of Bihar and ors.

Judgement :

R.N. Prasad, J.

1. The petitioner is Supervisor grade-III. He was in the scale of Rs. 975-1540/-. He was granted first time bound promotion vide letter dated 28.10.1994. Annexure-C with effect from 1.1.1991 and was allowed pay scale of Rs. 1200-1800/-. The petitioner was getting pay-scale of Rs. 1200-1900/-. However, the order dated 18.1.2002, Annexure-10, was issued wherein it has been alleged that Supervisor grade-I I was wrongly mentioned against the petitioner and he was wrongly allowed pay-scale of Rs. 4000-6000/-. Accordingly, the same was corrected and he was allowed pay-scale of Rs. 3050-4590/-. The petitioner has challenged the order, Annexure-10 in this writ petition on the ground that order impugned is arbitrary. There was nothing wrong in granting the pay-scale to the petitioner.

2. A counter-affidavit has been filed on behalf of respondents wherein it has been stated that petitioner was Supervisor grade-III in the scale of Rs. 975-1540/-. The petitioner and six other Supervisors of grade-III were granted first time bound promotion in the scale of Rs. 1200-1800/- and were getting the same pay-scale. In the meantime, 6th Pay Revision Commission report came, the State Government accepted its recommendation vide resolution dated 8.2.1999 Annexure-D, and decided to abolish the existing facilities of time bound promotions and it shall cease to be applicable with effect from 1st January, 1996, if any such promotion however, was due under the Rules before 1st January, 1996 it would be given and the payment of arrears in the existing scale would be made only up to 31st December, 1995 after which the promotion would be deemed to have been automatically terminated and while fixing pay in the revised scale, such promotions given, after 21st December, 1995 would not be taken into consideration. In terms of the aforesaid resolution the petitioner and six others, who were allowed first time bound promotion, were entitled to be paid salary as per resolution Annexure-D, in the existing pay-scale of Rs. 975-1540/- and corresponding revised pay-scale of Rs. 3045-4590/- as mentioned in Schedule-III of the resolution, Annexure-D. Ignoring the mandate of the resolution, Annexure-D, the pay of the petitioner was fixed in the scale of Rs. 4000-6000/- with effect from 1.1.1996, whereas, pay-scale of other say Supervisors grade-III who got first time bound promotion in the higher scale of Rs. 1200-1800/- along with the petitioner was fixed in the scale of Rs. 3045-4590/-. Pay scale of the petitioner in the scale of Rs. 4000-5000/- was fixed out of mistake and as such order has been passed for recovery of the amount already paid under wrong fixation of pay-scale.

3. From the material on record and submission made by learned Counsel for the parties admitted position is that petitioner was Supervisor grade-III. He was in the pay-scale of Rs. 975-1540/-. He was granted time bound promotion with effect from 1.1.1991 in the scale of Rs. 1200-1800/-. He was getting salary/revised scale accordingly. However, on receipt of 6th pay revision commission report the Government accepted the same and resolution to the aforesaid effect was published in Bihar Gazette, Annexure-D. Para 11 of Annexure-D categorically states that scheme of time bound promotion is abolished with effect from 1.1.1996. The persons who were entitled to time bound promotion but not granted shall be

granted but the same shall terminate on 1.1.1996. The scale which the employee was getting on 31.12.1995 will not be taken into consideration for fixing pay in the revised scales.

4. Learned Counsel for the petitioner, however, submitted that since the petitioner was allowed pay-scale of Rs. 4000-6000/- the same cannot be reduced. In this regard it would be pertinent to mention herein that in the order impugned, Annexure-10, it has been stated that against the name of petitioner Supervisor grade-II has wrongly been mentioned. In the counter-affidavit also it has been stated that the petitioner was Supervisor grade-III. He was allowed pay-scale of Supervisor grade-III. He was wrongly shown as Supervisor grade-II, moreover no document has been brought on the record to show that he was Supervisor grade-II. He was wrongly been allowed pay-scale of Rs. 4000-6000/-. The facility of time bound promotion was abolished by the State Government and the time bound promotion granted terminated automatically with effect from 1.1.1996 and for revising pay-scale such promotion given were not to be considered after 31st December, 1995. Therefore, the petitioner would be entitled to revised pay-scale in the pay-scale of Rs. 975-1540- i.e. 3050-4590 which he was getting prior to 1st time bound promotion. At this juncture it would be pertinent to mention herein that employer has right to change the service condition but not in the manner which would be detrimental to the employee. In other words, it can be said that the employee cannot be put to loss by reducing the pay which he was getting prior to change. Moreover, it has categorically been stated in the counter-affidavit that petitioner was Supervisor grade-III but it has wrongly been stated that he was Supervisor grade-II. Furthermore, in the reply to rejoinder filed by the respondents it has been stated that pay-scale of the petitioner has been fixed which is not less than what he was getting on 31.12.1995 rather it has been fixed something more than he was getting. Therefore, it is evident that the petitioner was not but to any monetary loss in any manner. Thus I find no substance in the submission of learned Counsel for the petitioner.

5. Learned Counsel for the petitioner further pointed out that there was no misrepresentation on the part of the petitioner in obtaining pay-scale. It is the fact that he was Supervisor grade-III but there is nothing on the record to show that the

petitioner was in any way concerned in granting pay-scale to him. Therefore, the payment which has been made out of mistake of the respondents, cannot be recovered now. On the other hand, learned Counsel for the respondents pointed out that higher scale has wrongly been allowed to the petitioner and as such respondents are entitled to recover the said amount. In the case of *Sahib Ram v. State of Haryana* 1995 Suppl (1) SCC 18, it has been held that if any monetary benefit is allowed without any representation/mis-representation of the employee, the same cannot be recovered subsequently. The said view has been affirmed in the case of *B.S.E.B. v. Bijay Bahadur* : (2000)10SCC99 . Therefore, on consideration this much is obvious that petitioner was allowed pay-sclae not on his misrepresentation. Therefor, the same cannot be recovered.

6. Thus on consideration as discussed above, the writ petition is disposed of with the observation/direction as indicated above.

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