

[2009] 6 S.C.R. 791

PARAS NATH SINGH

v.

STATE OF BIHAR & ORS.

(Civil Appeal No.2671 of 2009)

APRIL 21, 2009

[TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ.]

SERVICE LAW:

Promotion – Provisional First Time Bound Promotion – Cancellation of after 10 years – Orders for recovery from salary of employee – Held: Employee being almost illiterate and belonging to Class IV, did not know implication of giving the undertaking-Amount not to be recovered, but the amount already recovered not to be paid back to employee.

The appellant, who was promoted from a Class IV post, was granted provisional First Time Bound Promotion, but the same was cancelled after 10 years and the consequential amount received by him was directed to be recovered. The employee having failed before the High Court filed the appeal.

Allowing the appeal in part, the Court

HELD: The fact that the appellant was only a Class IV employee and almost an illiterate person; he did not know the implications of giving the undertaking at the time of provisional First Time Bound Promotion. In the absence of any fraud and misrepresentation attributed to the appellant, and the amount being not so excessive, in particular, Rs.1,01,529.50 only, out of which certain amount has already been recovered from the salary of the appellant, a lenient view should be taken and the amount already paid to the appellant shall not be recovered.

A However, the amount already recovered, shall not be paid back to the appellant. [Para 6 and 7] [793-D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2671 of 2009.

B From the Judgment & Order dated 21.02.2007 of the High Court of Judicature at Patna in L.P.A. No. 692 of 2006.

M.P. Jha, Ramekbal Roy and Harshvardhan Jha for the Appellant(s).

C Gopal Singh and Manish Kumar for the Respondent(s).

The Judgment of the Court was delivered by

TARUN CHATTERJEE, J. 1. Leave granted.

D 2. The appellant was appointed on the post of Orderly in the Department of Planning and Development in the State of Bihar and he has since retired. In 1972, more precisely on 29th of August, 1972, the appellant was promoted to the post of Machine Boy and subsequent to such promotion, he was made
E Routine Clerk on 13th of June, 1974 and was allowed to function as such on the said post. On 15th of April, 1995, the appellant was given provisional First Time Bound Promotion with effect from 13th of June, 1984. After about 10 years, more precisely on 19th of September, 2005, the First Time Bound Promotion
F granted to the appellant was cancelled. In view of such cancellation of promotion, direction was issued by the State/ Respondent to recover Rs. 1,01,529.50 from the salary of the appellant at the rate of Rs. 5000/- per month.

G 3. Aggrieved by the aforesaid order directing recovery, the appellant filed a writ petition before the High Court of Judicature at Patna contending that since the time bound promotion given to him was at the fag end of his employment and that the appellant, once having worked in the time bound promotional
H post, recovery against him was not justified. The writ petition,

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however, was dismissed by a learned Judge of the High Court and affirmed by a Division Bench of the High Court in a Letters Patent Appeal. A

4. Feeling aggrieved, the appellant has filed this special leave petition, which on grant of leave, was heard in presence of the learned counsel for the parties. B

5. Having heard the learned counsel for the parties and considering the fact that the State Authorities had allowed the appellant to work for about 10 years and paid the salary at the enhanced rate, in which the appellant had no role to play except that he had given an undertaking to the Authorities that in the event, his First Time Bound Promotion was cancelled, in that case, he would be bound to refund the same. C

6. Having considered the fact that the appellant was only a Class IV employee in the State of Bihar and almost an illiterate person and did not know the implications of giving such undertaking and in the absence of any fraud and misrepresentation attributed to the appellant and the amount being not so excessive, in particular Rs. 1,01,529.50, out of which certain amount has already been recovered from the salary of the appellant by the State Authorities, we are of the view that a lenient view should be taken and the amount already paid by the State Authorities to the appellant shall not be recovered. D
E

7. However, whatever amount that has already been recovered, shall not be paid back to the appellant. F

8. In view of the above, the impugned Judgments of the High Court are set aside and the writ petition filed by the appellant stands allowed. For the reasons aforesaid, the appeal is allowed to the extent indicated above. There will be no order as to costs. G

R.P.

Appeal partly allowed.

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