

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTIONCIVIL APPEAL NO.2671 OF 2009
(Arising out of SLP©No.18372 of 2007)

Paras Nath Singh ...Appellant

Versus

State of Bihar & Ors. ...Respondents

J U D G M E N T**TARUN CHATTERJEE, J.**

1. Leave granted.
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 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 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.

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 post, recovery against him was not justified. The writ petition, 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.

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.

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.

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.

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

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.

.....J.
[Tarun Chatterjee]

New Delhi;
April 21, 2009.

.....J.
[V.S.Sirpurkar]