

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5795 of 2001

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Sharda Devi w/o Late Narendra Kumar Singh, resident of Bakhtiyarpur, P.S.
Bakhtiyarpur, District Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Water Resources (Irrigation) Department, Sinchai Bhawan, Patna
2. Deputy Secretary, Water Resources (Irrigation) Department, Sinchai Bhawan, Patna
3. Engineer-in-Chief –cum- Additional Commissioner- cum- Special Secretary, Water Resources (Irrigation) Department, Government of Bihar, Sinchai Bhawan, Patna
4. Joint Secretary, Water Resources (Irrigation) Department, Government of Bihar, Sinchai Bhawan, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kishore Kumar Thakur

For the Respondent/s : Mr. SC 21

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 21-05-2015

Original petitioner is dead. The widow has been substituted, who is carrying on the litigation against the order of dismissal passed against the husband of the petitioner. The impugned order is 2.5.2000 and contained in Annexure- 1. The reason for dismissal is said to be non-accounting and disappearance of a substantive amount of Cement, which was procured in the year 1983-84 from Dalmia Nagar Cement Factory, which was supposed to be utilized for different government projects. The final accounting did not tally with the supply vis- a- vis the use.

Learned counsel representing the petitioner submits that



the enquiry conducted against the original petitioner was a kind of hatchet job and in complete violation of the principles of natural justice. He has demonstrated from the record as to how evidence and findings against the petitioner was recorded in his absence and he was not even given an opportunity to cross-examine or provided copy of what was recorded in the said findings against the petitioner. To make things worse, those findings became crucial for holding the petitioner guilty and punishing him with the extreme penalty of dismissal from service. Petitioner has also pointed out similar infirmities from the enquiry report as well as non- consideration of the explanation offered by him to the set of charges but on some kind of preconceived notion, husband of the petitioner, who was a Junior Engineer and the lowest in the hierarchy, was punished. No other person was held guilty in this regard when the accepted position is that no stocks could be received or transferred without due approval of the superior authorities. The petitioner's husband had no authority to deal with stocks independently.

Husband of the petitioner was appointed as Junior Engineer on 10.2.1977. The matter and the dispute related to incidence of 1983-84. The enquiry was initiated after a long protracted delay which created its own prejudice in effective defence of the petitioner.



The final submission of counsel for the petitioner is that the order of dismissal taking into consideration the long period of service may have been too harsh and disproportionate especially when the finding of guilt has been arrived in due violation of the set principles and procedure not only laid down under the CCA Rules but even the rules of natural justice.

The erstwhile petitioner is no more. The widow is here before the Court. The matter has remained pending before the High Court for consideration for a number of years. Looking on the totality of the material, the Court opines that the punishment of dismissal in the very first place was excessive and harsh especially against a person, who had put in more than two and half decades of service. Some other punishment was required to be given especially when the finding of guilt is suspect. In totality therefore, but not exonerating the conduct of the erstwhile employee because there is adequate circumstance, which shows that even if the highest punishment of dismissal was not called for, he still had to account for the position and power which he was supposed to use. In the opinion of the Court, therefore, the order of punishment of dismissal should be modified to the punishment of compulsory retirement. The respondents will pass an appropriate order in this regard. Whatever benefit the widow can derive by virtue of the above order will accrue

to her now.

The impugned order contained in Annexure- 1, dated 2.5.2000 is hereby quashed.

Writ application is allowed in terms of the above.

(Ajay Kumar Tripathi, J)

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