

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1247 of 2012

IN

Civil Writ Jurisdiction Case No 5726 of 2007

- =====
1. The State Of Bihar through the Secretary, Gram Panchayat, Bihar, Patna
 2. The District Officer-Cum-District Magistrate Banka
 3. The Deputy Collector, Establishment, Banka
 4. The District Panchayati Raj Officer, Banka

.... Appellant/s

Versus

Malti Devi W/O Late Ram Kishun Prasad R/O Vill-Goderia Bigha, P.S.-Islampur,
Distt-Nalanda

.... Respondent/s

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 22-04-2015

Heard learned counsel for the State and learned counsel for the contesting private respondent and with their consent, this appeal has been heard for final disposal at this stage itself.

2 Earlier, by order dated 26.02.2015 after hearing the learned counsel for the State who are the appellants, we had issued only a limited rule in the matter. The rule was issued only with regard to payment of interest, as ordered by the learned Single Judge. We were otherwise not inclined to interfere with the order of the learned Single Judge.

3 Having considered the matter, we must first observe

that the learned Single Judge, inter alia, ordered thus:

“... .. The amount of subsistence allowance and other dues paid during the pendency of the writ case or to be paid in compliance of this order except the amount of salary beyond substance allowance shall be payable with interest @ 18% per annum from the date the payment became due and was paid alongwith interest @ 18% per annum. The interest paid to the petitioner shall be recovered from the District Magistrate and Panchayat Raj Officer, Banka, who are responsible for delay in payment of the arrears of subsistence allowance including provisional/final pension.”

4 In our view, the direction to pay interest as well as the direction to recover it from the District Magistrate and the Panchayat Raj Officer is wholly uncalled for in the facts and circumstances. The writ petitioner was the widow of late Ramkishun Prasad who was a Panchayat Sevak in Dhoraiya Block within Banka District. There were serious charges of misappropriation of funds against him and for substantial periods, he had been in judicial custody in criminal cases. It is as a consequence thereof, he was put under suspension and before proceedings could be taken up, disciplinary and other, he died. The orders for recovery were passed much after his death and were ex parte orders. It is for these reasons we were not inclined to interfere with that part of the order of the learned Single Judge.

5 However, when it comes to payment of interest, the

matter has to be looked into in a different perspective. The situation was created by the Panchayat Sevak himself. Criminal cases had been instituted against him in respect of serious charges of embezzlement. He had taken advances but allegedly not executed the work and because of his death, accounts were not produced. Therefore, money, payable to him, was withheld though, legally as a consequence of his death, wrongly withheld.

6 In such circumstances, to say that there had been a deliberate delay entitling his heir, his widow, the writ petitioner to interest would be unjust.

7 Therefore, to the extent that the learned Single Judge had directed for payment of interest of 18%, as noted above and to be recovered from the District Magistrate and the Panchayat Raj Officer, Banka, we set aside only that part of the judgment of the learned Single Judge in view of the limited rule issued in this matter.

8 With our modification in the judgment of the learned Single Judge, this appeal otherwise stands dismissed.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

M.E.H./-

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