

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4364 of 1999

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Karuna Devi, Wife of Late Jagdish Jha, resident of Mohalla
Suratganj, Madhubani Town, Police Station & District Madhubani
..... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
 2. The Secretary, Personnel & Administrative Reforms Department, Government of Bihar, Patna
 3. The Additional Secretary of the Government, Personnel & Administrative Reforms Department, Government of Bihar, Patna
 4. The Departmental Enquiry Commissioner, Government of Bihar, Patna
 5. The Deputy Development Commissioner, Darbhanga
- Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Alok Ranjan, Advocate

For the Respondent/s : Mr. Deepak Sahay Jamuar, AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 22-05-2015

1. This is an application under Article 226 of the Constitution of India, seeking quashing of the resolution of Government of Bihar as contained in Memo no. 3757 dated 07.04.1998, whereby, a decision has been communicated to the petitioner for reducing the amount of pension payable to him by 25% and recovery of a sum of Rs. 96,074.50/- from his gratuity and unutilized earned leave. It has also been mentioned in the said impugned order that if the said amount

was not capable of being recovered from the amount payable to the petitioner, the same shall be recovered from movable and immovable properties of the original petitioner, who has died during the pendency of the present application.

2. The writ application was filed by Jagdish Jha, who was a Member of Bihar Administrative Service and died during the pendency of the writ application. His name has been substituted by his wife Smt. Karuna Devi, to pursue this case.

3. For the benefit of clarity, however, the name of the original petitioner is being mentioned in the present judgment.

4. Before I come to the facts of the case, I must indicate that by an order dated 22.4.2015, the Respondents were directed to produce the original records of the concerned departmental proceeding. The records could not, however, be produced which had compelled this Court to pass an order for personal appearance of the Principal Secretary, Personnel and Administrative Reforms Department, Government of Bihar. Pursuant to the said order, the Principal Secretary, Personnel & Administrative Reforms Department, Government of Bihar made himself present on 20.5.2015 and expressed his inability to produce the original records of the disciplinary proceeding as

the records could not be traced.

5. It appears from the pleadings of the petitioner that a departmental proceeding was initiated against him for the irregularities which he had allegedly committed while posted as Deputy Development Commissioner, Darbhanga . An Inquiry Officer was appointed who submitted his report. Report of the Inquiry Officer was initially not supplied to him. A decision was taken by the State Government to impose upon him punishment of withholding 25% pension and to recover a sum of Rs. 96,074.50/- from his gratuity and unutilized leave salary. The said Jagdish Jha had approached this court against the said order by filing CWJC No. 12158 of 1995. This Court by an order dated 15.4.1997 quashed the letter dated 07.09.1993, whereby, the said punishment was imposed upon him on the ground that copy of the enquiry report was not supplied to him. This Court gave liberty to the respondents to pass an order afresh in accordance with law, making it clear that before passing any order, the report of the Inquiry Officer must be supplied to the petitioner. In compliance of the said order, through letter dated 19.8.1997, copy of the enquiry report was supplied to the petitioner. In the forwarding letter dated 19.8.1997, it was mentioned that all the charges levelled



against him were found to be proved by the Inquiry Officer. It also contained the decision of the State Government to withhold 25% of admissible pension and recovery of a sum of Rs. 96,074.50/- from the amount of gratuity and leave encashment which he was entitled to receive. At the same time, through the said letter dated 19.8.1997, he was asked to offer his comments on the report of the Inquiry Officer. He thereafter, submitted his comments on the report of the Inquiry Officer through letter dated 24.9.1997, which has been brought on record by way of Annexure-10 to the writ application. Thereafter, the impugned order dated 07.04.1998 came to be passed, imposing the punishment as indicated above.

6. There is no denial of the averments made in paragraph 13 to 16 of the writ application, wherein the petitioner has made specific averments that not even a single document was exhibited in course of departmental enquiry nor even the two listed documents were ever made available to the petitioner despite his repeated demands. It has also been asserted that departmental enquiry was conducted in the form of interrogation, not keeping the procedure prescribed under Rule 55 of the Central Civil Services (Classification, Control & Appeal) Rules. It has also been stated in paragraph 14 that



neither the maker of the report on the basis of which the departmental proceeding was initiated against the petitioner nor the Deputy Collector of Accounts, the maker of the Audit Report, was examined in course of the departmental proceeding, to substantiate their reports and the contents thereof. It is, therefore, specific plea that he did not have the opportunity to cross-examine the witnesses.

7. In order to verify these aspects, this Court had directed the respondents to produce original records of the departmental proceeding which could not be produced despite repeated orders of this Court.

8. Learned counsel appearing on behalf of the petitioner, assailing the impugned action of the State Respondents, has submitted that the enquiry report was supplied to said Jadish Jha through letter dated 19.8.1997, with pre-determined mind that the punishment which was earlier imposed upon him would be again imposed upon him. He has further submitted, referring the said letter dated 19.8.1997, that the Government wrongly came to the conclusion that all the charges levelled against the petitioner were found to be proved by the Inquiry Officer, though it is evident from the report of the Inquiry Officer that most of the

charges levelled against the petitioner were not found to be proved. In this regard, the contention of the petitioner that if the respondents intended to differ with the findings of the Inquiry Officer, the disciplinary authority ought to have given the deceased employee an opportunity to deal with the notes of disagreement which ought to have been recorded by the disciplinary authority.

9. In support of his submission, he has relied upon following judgments of the Supreme Court:-

1. (2009) 2 SCC 570 (*Roop Singh Negi Vs. Punjab National Bank*)
2. (2010) 2 SCC 772 (*State of U.P. Vs. Saroj Kr. Sinha*)
3. (2010) 13 SCC 427 (*Oryx Fisheries Ltd. Vs. Union of India & ors*).

10. He has relied upon a Supreme Court judgment in case of *State of Uttranchal Vs. Kharak Singh reported in (2008) 8 SCC 236* in order to submit that there was complete lack of fairness, while holding the departmental enquiry.

11. Learned counsel appearing on behalf of the Respondents State of Bihar, has on the other hand, opposed the relief sought for, in the writ application as according to him

the enquiry was conducted in proper and fair manner in accordance with the procedure prescribed under the Rule.

12. I find substance in submission made on behalf of the petitioner. Admittedly, no witnesses were examined nor the documents were proved before the Inquiry Officer. In such circumstance, finding of petitioner's guilt by the Inquiry Officer cannot be sustained, being perverse.

13. I also find substance in the submission made on behalf of the petitioner that the respondents had already made up their mind even before supplying the copy of the Inquiry report to the petitioner seeking his comments on enquiry report, to impose punishment of withholding of pension and recovery of amount from gratuity. As a matter of fact, it was post decisional hearing given to the deceased employee, while seeking his comments on the report of the enquiry Officer, when the State Government had already made up its mind to punish him. Such procedure is an anathema to a fair procedure and is in breach of principles of natural justice. The order/decision based on such procedure cannot be sustained.

14. In view of the submission as above, the impugned order dated 07.04.1998 (Annexure-12) is quashed. The consequence will follow.

15. This application is allowed.
16. However, there shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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