IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8881 of 2010

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Ramjas Devi, W/o late Sita Ram Mahto, Permanent R/O Vill.- Madhopur, P.O. Banauli, P.S. Singhwara, Distt.- Darbhanga, Presently Residing At Mohalla- Madarpur, P.O. Lalbag, P.S. Laheria Sarai, Distt.- Darbhanga

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Road Construction Department, Govt. Of Bihar, Patna
3. The Engineer In Chief Cum Additional Commissioner Cum Special Secretary Road Construction Department, Govt. Of Bihar, Patna
4. The Chief Engineer (Mechanical) Road Construction Department, Visheshwaraiya Bhawan, Patna
5. The Executive Engineer, Mechanical Division National Highway, Muzaffarpur
6. The Accountant General, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarendr Narayan
For the Respondent/s : Mr. P.K. Verma, (AAG11)
Mr. J.P. Karn

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 07-05-2015

Heard learned counsel for the parties.

2. The widow of late Sita Ram Mahto, who had originally filed this writ application, has now come out to say that the amount of Rs. 1,76,202/- from the gratuity payable to her husband has been wrongly deducted on the ground that certain advances were extended against him. Learned counsel for the petitioner explains that as a matter of fact, the husband of the petitioner, being a Junior Engineer, had already got the work completed against the advance given to him and, therefore, it was the job and the duty of the Executive Engineer

to ensure that the amount, advanced to the petitioner, was duly adjusted. Counsel in that regard had also relied on a communication contained in Annexure A & B of the counter affidavit as also Annexure-2 of the writ application.

3. Mr. P.K. Verma, learned A.A.G., appearing on behalf of the respondents, having filed supplementary counter affidavit, has submitted that the unadjusted temporary advance of Rs. 1,40,384/- and non-deposit of agreed amount of Rs. 35,818/- of the husband of the petitioner was never adjusted. In this regard, he has invited attention of this Court to paragraph nos. 8 to 14 of the supplementary counter affidavit, which reads as follows:-

"8. That it may be relevant to submit that the no dues certificates issued vide letter No. 124 dated 08.05.2006 as enclosed by the petitioner in his reply to the counter affidavit as Annexure-5 had been issued much after the outstanding dues appertaining to unadjusted temporary advances of Rs. 1,40,384 and non-deposit of auction amount of Rs. 35,818 total 1,76,202 was adjusted and recovered from the gratuity of the petitioner vide authority letter dated 10.10.2005 as contained in writ application to Annexure-1.

9. That the said no dues certificate was required he had not submitted his charge before retirement on 31.01.2004 to his successor while posted under NH (Mechanical) Division, Muzaffarpur and where at the Harpur Nag site at NH-28 several tools and part of plant were found missing during inspection of the *technical committee on 21.10.2013. On the basis of the committee report the Superintending Engineer (Mechanical) of Ministry of Road Transport and Highways, Government of India vide his letter dated 24.10.2003 required the Executive Engineer, NH (Mechanical) Division, R.C.D., Muzaffarpur to take necessary action for making the items available. In view of the said letter an explanation was sought by the Executive Engineer, NH (Mechanical), R.C.D. from the petitioners husband late Sita Ram Mahto vide his letter No. 762 dated 02.12.2003 which is available as Annexure-A to the counter affidavit filed on behalf of the respondent State. It was in view of the said letter that all the other amounts found to be payable to the petitioner had been stopped. After the petitioner submitted his formal charge on 06.05.2006 and his explanation before the Executive Engineer, (Mechanical) Division, NH, the said no dues certificate was issued on 08.05.2006 and the remaining dues was released. Thus, the issuance of the said no dues certificate evidently has no connection with the deductions which had already been made from the gratuity which appertained to advance taken way back during 1996-98 by the petitioner and had no deposited the amount received after auction of Government property the details whereof would be evident from Annexure-A & B enclosed with the counter affidavit filed on behalf of the State Respondents.*

10. That the statement made in paragraph No.5 of reply to the counter affidavit is absolutely false in view of the fact that the Vouchers submitted by the husband of petitioner was not in accordance with Rule 20(Kh) of Bihar Financial Rules as information relating to *name of work or its heading or sub-heading, Accounts Head under which the voucher is to be adjusted was not furnished by the husband of the petitioner Relevant extract of Rule 20 (Kh) of Bihar Financial Rules is enclosed.*

11. That it is further stated that the vouchers submitted by the husband of petitioner were without pass order, without signature of Executive Engineer. The name of work is necessary to ascertain the "Head of Allotment". Further "Head of Allotment" is necessary to adjust the amount so expend on the work. Therefore from the vouchers it is not clear that under which work Head the expenses are alleged to have been made by the husband of petitioner or will be adjusted.

12. That it is further important to mention here that the matter is very old as such it is not possible as on date to ascertain the work Head or the actual work alleged to have been done by the husband of petitioner against the advances taken by him.

13. That it is further important to mention here that the husband of petitioner had knowledge about how to submit vouchers as on different occasion he had submitted vouchers carrying proper endorsement and information on the vouchers.

14. That it is further important to mention here that the same Executive Engineer had passed various other vouchers submitted by the husband of the petitioner in the year 2000 but he did not pass the alleged vouchers said to have been submitted by the petitioner in the year 2003 concerning 1996-98 which creates serious doubt on the authenticity of those vouchers submitted by the husband of the petitioner."

4. In view of the aforesaid pleadings and the stand of the

parties, a question would arise as to what would be the fate and future of advance given to an employee for completion of the work. The answer again lies in the Bihar Public Accounts Code. The person who takes an advance has to get it adjusted and unless an order is passed with regard to adjustment of such advance, that remains outstanding against the person who had received the advance. The records, which has been placed before this Court, in no uncertain terms, goes to show that the husband of the petitioner had initially refused to handover the charge of his post and later on, when he did so, he got all the credit notes with regard to adjustment of the advance.

5. Be that as it may, in the life time of the husband of the petitioner, such advance, standing in his name, was never adjusted. The submission of the learned counsel for the petitioner that it was the duty of the Executive Engineer to adjust such advance has to be only noted for its being rejected. The Executive Engineer was not an angel that he could have done so. The rules require adjustment of advance on production of an evidence of utilization of fund as is prescribed in Bihar Public Accounts Code. The reliance placed on Annexure 2, a communication of the office of the Executive Engineer without bearing even letter number and date to show as to whether this was an official communication can never be an evidence of the adjustment of advance taken by the petitioner. That letter even if accepted on its face

value would amount to a recommendation by the Executive Engineer to the Superintending Engineer for adjustment of the advance. What order was passed ultimately by the Superintending Engineer is not known to this Court.

6. Yet again, the documents contained in Annexure A & B will also not be of any help and assistance to the petitioner. Annexure-A is a communication dated 16.8.2003 wherein the husband of the petitioner was asked to get the adjustment of the advance taken by him at an early date failing which the temporary advance standing against him would create a problem for him (husband of the petitioner) at the time of his retirement. Annexure-B again is a letter dated 21.10.2003 in which the husband of the petitioner was advised by the Executive Engineer to take steps at his level for getting the advance outstanding against him to be adjusted. These letters will be of no help and assistance at least for coming to the conclusion that whatever advance was given to the husband of the petitioner was duly adjusted.

7. The overemphasized reliance placed on N.O.C. as contained in Annexure-5 and 6 will also not go to show that any authorized person of the Department had issued the N.O.C. stating that no amount was recoverable from the husband of the petitioner. In that view of the matter, this Court cannot issue a direction for

payment of amount of advance which has been recovered from the gratuity payable to the husband of the petitioner. At the end of the day, when a public fund, which was allocated to the husband of the petitioner, remains unaccounted for, the authorities had all the reasons to adjust that amount and that has been done in this case.

8. In that view of the matter, this writ application fails and is dismissed.

(Mihir Kumar Jha, J)

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