

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.150 of 2011

=====

Akhouri Bhupendra Sahay son of Late Bharat Sahay Resident Of Pusp Bharti Apartment, Sardar Patel Path, P.S.- S.K. Puri, District Patna, Presently Posted As Inspector, Special Branch, Bihar, Patna. Petitioner/s

Versus

1. The State Of Bihar
 2. The Chief Secretary, Govt. Of Bihar, Patna.
 3. The Director General Of Police, Govt. Of Bihar, Patna.
 4. The Under Secretary, Home (Special), Govt. Of Bihar, Patna.
 5. The Deputy Inspector General Of Police (Human Right), Govt. Of Bihar, Patna.
 6. The Superintendent Of Police (A), Special Branch, Govt. Of Bihar, Patna.
 7. The National Human Right Commission Faridkote House, Kopernikus Marg New Delhi 110001
 8. Smt. Geeta Devi w/o Devandra Rai, village Badki Sarimpur P.S. Industrial Area District Buxar Respondent/s
- =====

Appearance :

For the Petitioner/s : Sri Rajeshwar Prasad,
Mr. Ranjan Kumar Srivastava
For the Respondent/s : AC to AAG 6

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 30-10-2015

Heard Sri Rajeshwar Prasad, learned counsel who was assisted by Sri Ranjan Kumar Srivastava, learned counsel for the petitioner and learned AC to AAG No. 6.

The petitioner invoking writ jurisdiction of this court under Article 226 of the Constitution of India has prayed for quashing of an order contained in Memo No. 753 dated 21.1.2010 issued by respondent no. 3 i.e. Director General of Police, Bihar and letter no. 2119/2010 dated 12.10.2010 issued by respondent no. 6/ Superintendent of Police (A) Special Branch, Government of Bihar. By the said order i.e. order dated 12.10.2010 direction was

issued to deduct Rs. 25000/- in five installment from petitioner's salary. The petitioner has also prayed for quashing of memo no. 4923 dated 12.10.2010.

Short fact of the case is that a complaint was made before the National Human Rights Commission by the wife of one Devendra Rai on an allegation that in police lock up he was illegally assaulted by the S.H.O. of the concerned police station. Despite repeated show cause notice issued to the Government of Bihar, no response was shown by the State Government. Accordingly, the Chief Secretary, Government of Bihar was directed by the National Human Rights Commission to pay compensation of Rs. 25000/-. The National Human Rights Commission on the basis of the materials available on record was prima facie satisfied that Sri Devendra Rai was physically assaulted on 2.9.2004 by the police. Vide Annexure - 5 i.e. a communication dated 18.3.2009, the Assistant Registrar (Law), National Human Rights Commission directed the Chief Secretary, Govt. of Bihar, Patna regarding submission of compliance report in respect of payment of compensation of Rs. 25000/-.

Learned counsel for the petitioner submits that pursuant to the communication of the National Human Rights Commission, vide Annexure - 1 a decision was taken to realize the compensation



amount from the erring official as per recommendation of the National Human Rights Commission and vide communication contained in memo no. 4936 dated 12.10.2010 and memo no. 4923 dated 12.10.2010 the petitioner was directed for depositing the compensation amount of Rs. 25000/- in five installment. Learned counsel for the petitioner asserts that the National Human Rights Commission vide Annexure - 5 had not issued specific direction to realize the compensation amount from the erring officer, rather due to non -submission of response to the show cause notices issued by the National Human Rights Commission, Rs. 25000/- amount compensation was awarded against the Government of Bihar. Instead of depositing the said amount, the State Government preferred to realize the said amount from the petitioner which was not the tenor of the communication made by the National Human Rights Commission. Second limb of argument of learned counsel for the petitioner is that the action of recovery has been taken against the petitioner without following the principle of natural justice. The petitioner was never issued show cause notice regarding deposit of the said Rs. 25000/- compensation amount. One fine morning in view of purported recommendation of the National Human Rights Commission a decision was taken to deduct the said amount from the petitioner which is liable to be set aside.



Learned State Counsel opposing the prayer of the petitioner submits that at the relevant time the petitioner was S.H.O. of the concerned Police Station and petitioner was responsible for illegal assault on the husband of the complainant which was noticed by the National Human Rights Commission. He also submits that the petitioner was given show cause notice. However, there is nothing on record to show that petitioner was ever noticed before the order was passed for depositing the compensation amount.

On perusal of Annexure – 5 to the writ petition i.e. communication from the National Human Rights Commission, it is difficult to come to the conclusion that the National Human Rights Commission had specifically directed to recover the compensation amount from the petitioner. Even if in view of communication of the National Human Rights Commission the respondents were intending to recover the said amount from the petitioner, it was minimum requirement for the respondents to afford opportunity to the petitioner to give explanation as to whether he was actually responsible for the said act or not. In view of the fact that in the communication of the National Human Rights Commission there was no specific direction for recovery of the compensation amount from the petitioner as well as the fact that no proper opportunity was given before issuance of the order impugned to the petitioner, the court is of the opinion that

the order impugned particularly the order contained in memo no. 4936 dated 12.10.2010 and 4923 dated 12.10.2010 issued by the Superintendent of Police (A) Special Branch, Bihar, Patna are liable to be set aside. Accordingly both the communications are hereby set aside.

Liberty is granted to the respondents authority to take appropriate action, if they propose to recover the said amount from the petitioner, after affording opportunity to the petitioner or the respondents would be at liberty to take appropriate action against the petitioner if it is considered necessary.

The writ petition with above observation stands allowed.

(Rakesh Kumar, J)

Praful/-

U			
---	--	--	--