

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12334 of 2011

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Lallan Prasad, son of Late Kadu Ram, retired Secretary (Technical) from Water Resources Department Govt. of Bihar. At present at Rajeev Nagar, Road No. 16, P.O. Keshsri Nagar, Patna-24

.... Petitioner

Versus

1. The State of Bihar
2. The Commissioner-cum-Secretary, Water Resources Department Govt. of Bihar Patna
3. The Engineer-in-Chief, Water Resources Department Govt. of Bihar Patna
4. The District Officer/District Magistrate, Gopalganj At, P.O.+Distt.-Gopalganj
5. The Chief Engineer, Water Resources, Aurangabad At, P.O.+Distt.-Aurangabad
6. The Executive Engineer, Rural Works Division-2, Distt.-Gopalganj
7. The Executive Engineer, Rural Development Spl. Division Gopalganj Camp at Mirganj At + P.O.-Mirganj, Distt.-Gopalganj

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Abdul Hakim

For the Respondent/s : AC to Addl. Advocate General 6

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 05-04-2016

Heard Mr. Abdul Hakim, learned counsel for the petitioner and learned A.C. to Addl. Advocate General – 6.

2. The petitioner, who superannuated as Technical Secretary, Water Resources Department, Aurangabad w.e.f. 31-07-2010, has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, with a prayer to quash certain portions of the order, contained in letter no. 2618 dated 02-12-2010 issued by the District Magistrate, Gopalganj (**Annexure – 5** to the writ petition), quashing of letter no. 1332 dated 04-12-2010 issued by



the Executive Engineer, Rural Works Deptt., Work Division-2, Gopalganj (**Annexure – 6** to the writ petition) as well as letter no. 1324 dated 06-07-2011 issued by the District Magistrate, Gopalganj, as contained in **Annexure – 8** to the writ petition. By the aforesaid orders, direction was issued to the petitioner to deposit an amount of **Rs. 8,38,425/-** (Eight lacs thirty eight thousand four hundred & twenty five) on the basis of a report of an enquiry team, whereby, it was held that government money was incorrectly spent over the construction of bridge.

3. It is case of the petitioner that his parent department was Water Resources Department, Govt. of Bihar, however; for the period in between 10-08-2004 and 10-05-2008, the petitioner was sent on deputation in the Rural Development Special Division, Gopalganj camp at Mirganj. Thereafter, he was transferred to Rural Works Department, Work Division-2, Gopalganj Camp at Mirganj and finally, he superannuated from his parent department on 31-07-2010. It is a case that while he was working as an Executive Engineer, Rural Development Special Division, Gopalganj at Camp Mirganj, he had prepared Design Sketch Map and Plan estimate of as many as 16 Schemes relating to construction of bridges under “Chief Minister Bridge Construction Scheme”.

4. It has been pleaded that in such capacity, the petitioner



had prepared the estimate and also while execution work was being done, he had made payment of Rs. 8,38,425/- to the concerned contractor. According to learned counsel for the petitioner, everything was done after approval of the competent authority. However, after end of the deputation period, he was transferred to his parent department and he retired from the parent department in the month of July, 2010. The petitioner was surprised to know that after his superannuation, the concerned District Magistrate has come out with **Annexure – 5** to the writ petition, wherein a direction was issued for realization of the said amount i.e. Rs. 8,38,425/- from the then Executive Engineer (the petitioner). The communication i.e. Annexure – 5 was only made to the Executive Engineer by the District Magistrate, however; subsequently the petitioner received a communication dated 04-12-2010 from the Executive Engineer, Rural Works Department, Work Division-2, Gopalganj, whereby, the petitioner was asked to deposit the said amount. After receipt of the letter dated 04-12-2010 (Annexure – 6 to the writ petition), the petitioner, who had already retired, filed a detailed representation before the District Magistrate, Gopalganj, however; the District Magistrate again, vide Annexure – 8 i.e. communication dated 06-07-2011, directed the petitioner to deposit the said amount in the government treasury. Aggrieved with aforesaid communications, the

petitioner has approached this Court by filing the present writ petition.

5. Learned counsel for the petitioner submits that ofcourse the petitioner while discharging his duty in accordance with law had directed for payment of the said amount to the contractor with the approval of the competent authority, without any notice to the petitioner, unilaterally, a decision was taken by the District Magistrate through a so called enquiry report, wherein, it was held that the petitioner was responsible for wastage of the government money. He submits that neither at the time of enquiry by such committee the petitioner was informed nor before passing order whereby direction was issued to deposit the money, the petitioner was given any opportunity of hearing.

6. In the writ petition, there is specific stand that without following any procedure and contrary to the principle of natural justice, action has been taken by the respondent authority directing the petitioner to deposit the said amount after retirement of the petitioner.

7. It has been argued that once action has been taken against the petitioner, in normal course, opportunity of providing hearing was necessary. Since the order was passed behind back of the petitioner, without any enquiry providing opportunity of participation of the petitioner, the entire action of the respondents authority is illegal and liable to be set aside.

8. Learned counsel for the petitioner accepts that in view of interim order passed by this Court, no recovery has been effected till date.

9. Learned State counsel has vehemently opposed the prayer of the petitioner and by way of referring to certain paragraphs of the counter affidavit, he submits that the petitioner had made payment of Rs. 8,38,425/- to the concerned contractor, which was simply wastage of the government money. He submits that allegation against the petitioner is serious and as such, this writ court may refrain from interfering with the impugned communications.

10. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that all the actions in respect of recovery was initiated after superannuation of the petitioner. It is also not in dispute that before passing such order, any opportunity of hearing was provided to the petitioner. Once the department was proposing to proceed against the petitioner, even for realization of such amount, the minimum requirement was to provide opportunity of hearing. It is settled that any action against a person is to be taken only after following the principle of natural justice. If such action is not in accordance with the principle of natural justice, such actions are required to be interfered with.

11. Accordingly, in view of facts and circumstances,

particularly the non-denial regarding the allegation of non-providing any opportunity to the petitioner, orders impugned are required to be set aside.

12. Accordingly, orders/communications contained in Annexure 5, 6 and 8 are hereby set-aside.

13. The writ petition stands allowed.

(Rakesh Kumar, J.)

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