

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1023 of 2011

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Manti Devi wife of late Brahmdeo Prasad, resident of village-Gopalpur, P.S. Shahpur, District-Bhojpur(Arrah)

.... Petitioner/s

Versus

1. The State of Bihar through Home Secretary, Government of Bihar, Patna
2. The Director of Prison, Bihar, Patna
3. The Inspector General of Prison, Bihar, Patna
4. The Superintendent of Police Sub-Jail Katihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Bhagat, Adv.

For the Respondent/s : Mr. Sushil Kumar, GP22

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-09-2016

None appears on behalf of the petitioner. Mr. Sushil Kumar learned G.P.22 for the State is present and has been heard.

Perused the records.

The petitioner is aggrieved by the order dated 11.6.2009 passed by the Inspector General of Prisons whereby the salary of the deceased husband of the petitioner for the period 24.11.2007 to 14.12.2007 has been forfeited. The order has been affirmed by the Home Secretary in his order bearing Memo No. 2725 dated 29.6.2010. Copies of the order passed by the Inspector General of Prisons and the Home Secretary are impugned at Annexures- 6 and 8 to the writ petition.

Facts of the case are very brief. The deceased husband of the



petitioner who held the post of a Senior Warden proceeded on sanctioned leave with effect from 14.11.2007 to 23.11.2007. Owing to an accident in the family where his daughter- in- law suffered burn injuries and later deceased that the petitioner had to extend his leave and for which he filed his application for extension of the leave on 22.11.2007 itself i.e. prior to the expiry of the leave period and joined duty on 14.12.2007. In between the Superintendent of Divisional Jail Katihar vide his letter dated 10.12.2007 sought necessary guidelines from the Inspector General of Prisons, Bihar, Patna on the unauthorized absence of the Jail Wardens which included the petitioner also whose name appears at Serial No.6. It was reported that the deceased husband of the petitioner was on leave from 14.11.2007 to 23.11.22007 but he had yet not joined duty until 10.12.2007.

The Inspector General of Prisons vide his letter dated 28.12.2007 directed the Superintendent of Central Jail, Bhagalpur to initiate proceedings against the five Jail Wardens and for the period of unauthorized absence, the Inspector General of Prisons opined they should not be paid any salary and the period would be treated as a service break.

This single aspect of the matter sufficiently explains the absurdity in the advisory for even before an enquiry is held, a penalty is already thought about.



The Superintendent of Central Jail, Bhagalpur submitted his report on 24.3.2009 to the Director (Administration), a copy of which is present at Annexure-5 and the case of the deceased husband of the petitioner is discussed on the last page of the report. The Superintendent of Central Jail, Bhagalpur has mentioned in his report that although the deceased petitioner had gone on leave from 14.11.2007 to 23.11.2007 but an accident took place in his family where his daughter- in- law suffered burn injuries and died and for which he prayed for extension of leave and had submitted an extension of leave application by speed post on 22.11.2007. The Superintendent of Central Jail thus admits that the deceased petitioner had filed an application for extension of leave and that the situation arose due to unforeseen circumstances. No show cause was asked from the husband of the petitioner rather the Inspector General of Prisons, Patna on a review of the report of the Superintendent of Central Jail Division, Bhagalpur as contained in Annexure-5 has held that the leave period of the deceased husband of the petitioner from 24.11.2007 to 14.12.2007 would be treated as unauthorized absence because the Jail Warden had given no substantive reasons for the absence. The Inspector General of Prisons vide his order bearing Memo No. 1986 dated 11.6.2009 has thus while rejecting the explanation given by the Jail Wardens has upheld the punishment

stipulated in the order bearing No. 7763 dated 28.12.2007 (wrongly mentioned as 28.10.2007). Meaning thereby, the period w.e.f. 24.11.2007 to 14.12.2007 was treated as a service break for the deceased husband of the petitioner and for which the salary had been forfeited.

Mr. Sushil Kumar learned State counsel though submits that since there is no representation on behalf of the petitioner the writ petition requires no indulgence but considering the issue raised, this Court is not persuaded to dismiss the writ petition on default. Mr. Sushil Kumar learned G.P.22 while supporting the impugned order of punishment has submitted that since the explanation given by the deceased Jail Warden was not to the satisfaction of the authority hence the impugned order.

Having heard Mr. Sushil Kumar S.C.22 for the State and having perused the records in my opinion, the order passed by the Inspector General of Prisons bearing 1986 dated 11.6.2009 as affirmed by the Home Secretary in his order bearing No. 2725 dated 29.6.2010 are not worthy to be upheld and the reasons are not too many. The order of penalty not only suffers from non- application of mind rather it is also a post decisional order. The premeditated approach is apparent from the fact that on the guidelines being asked by the Superintendent of Central Jail present at Annexure-3, the advisory issued by the



Inspector General of Prison vide his memo No.7763 dated 28.12.2007 present at Annexure-4 even while asking the Superintendent of Central Jail to initiate disciplinary proceedings, already conceives of a punishment. The non application of mind by the Inspector General of Prisons is again demonstrated from the fact that even when the Superintendent of Central Jail, Bhagalpur in his report enclosed at Annexure-5 has clearly mentioned the reasons for which the deceased husband of the petitioner had prayed for extension of leave from 24.11.2007 and which leave application dated 22.11.2007 was sent by speed post as accepted by the Superintendent of Central Jail, yet this relevant aspect of the matter has been given a go-bye by the Inspector General of Prisons to uphold the punishment on ground that no substantive reasons were given by the deceased Jail warden for his unauthorized absence. This single aspect of the matter shows that the Inspector General of Prisons has not even bothered to go through the report of the Superintendent of Central Jail. The same also goes for the opinion given by the Home Secretary who has mechanically proceeded to endorse the order passed by the Inspector General.

For the reasons aforementioned, the order of service break and forfeiture of salary passed by the Inspector General of Prisons bearing Memo No. 1986 dated 11.6.2009 impugned at Annexure-6 together with the order of the Home Secretary bearing Memo No. 2785 dated

29.6.2010 cannot be upheld and are quashed and set aside. The petitioner would be entitled to the consequential reliefs in the form of payment of salary as found admissible to her deceased husband for the period in question as well as to the relief towards the pensionary benefits as found admissible upon counting of period as service period and which should be provided to her expeditiously.

The writ petition is allowed.

Since none has chosen to appear on behalf of the petitioner, let a copy of this judgment be transmitted to the petitioner by post at the cost of the State.

(Jyoti Saran, J)

Bibhash/-

AFR	
CAV DATE	
Uploading Date	17.10.16
Transmission Date	