IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22278 of 2011

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Shail Devi W/o Late Surendra Singh (Store Keeper in the office of Deputy Director, Agriculture {Information}, Bihar, Patna At Present Resident of Village - Chakdaria P.S.- Vaishali District - Vaishali (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary
2. The Commissioner , Department of Agriculture, Bihar, Patna
3. The Director, Department of Agriculture, Bihar, Patna
4. The Deputy Director, Department of Agriculture (Information), Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subhash Kumar Mishra, Advocate
For the Respondent/s : Mr. Anjani Kumar, AAG-6

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 01-07-2016

Heard learned counsel for the parties.

The grievance of the petitioner is that an amount of Rs. 41,819/- has been directed to be recovered from the death-cum-retiral benefit of her late husband namely, Surendra Singh.

The recovery is sought to be made on the basis of a report indicating that there was shortage of items handed over by the late husband of the petitioner, who was a Storekeeper, to his successor was to the tune of Rs. 38,605.44/- and further, the audit team has also verified that there was shortage of two steel almirahs, five chairs made of iron worth Rs. 2,313.60/- and, thus, the total shortage of items was worth Rs. 40,919.04/-. Accordingly, the husband of the petitioner was directed to either deposit the articles or to show cause as to why it may not be recovered from his salary in monthly installments. By letter dated 20.09.1999, the late husband of the petitioner denied the charge and asked the matter to be verified. 0n 29.04.2003, the husband of the petitioner died in harness whereafter the petitioner applied for payment of death-cum-retiral benefits. Thereafter, by order dated 14.08.2004, the authorities have directed recovery of Rs. 41,819.04/- from his Gratuity.

Learned counsel for the petitioner submits that neither the verification of the store articles nor the audit team disclosed that the same was in the presence of the late husband of the petitioner and thus the recovery is bad.

The Court had earlier directed the learned State counsel to get the records for its verification. Learned counsel for the State, upon verification from the records is not in a position to controvert the fact that neither on the verification report with regard to the items in the store nor the audit report discloses the participation of the late husband of the petitioner. However, it is submitted that the late husband of the petitioner, during the life time, had given consent for recovery to be made from his monthly salary.

Having considered the rival contentions, the Court does not find any justification in the action of the respondents. The mere fact that the late husband of the petitioner had agreed to get the amount of loss caused to be recovered from his salary, but the same had to be quantified after adopting the due procedure prescribed in law and most importantly after following the principles of natural justice. From what has been verified by learned State counsel, from the records neither from the verification report with regard to the items in the store nor the audit team report, there is any indication to show that the late husband of the petitioner was either noticed or heard or was present during such inspection. Further, the fact that the order of recovery has been passed after the death of the late husband of the petitioner, the Court has no hesitation to hold that such action is impermissible in law.

Accordingly, the writ petition is disposed off with a direction to the concerned respondents to refund a sum of Rs. 41,819/- to the petitioner which has been deducted from her late husband's Gratuity. Let the same be done within a period of two months from the date of production of a copy of this order before the respondents no. 3 and 4.

(Ahsanuddin Amanullah, J)

P. Kumar

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