IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1777 of 2016
IN
Civil Writ Jurisdiction Case No. 20355 of 2013
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Sudha Devi, W/o Late Vinayak Kumar, R/o Village- Shyampur, P.O.- Fulwar, P.S.- Sugauli, District- East Champaran.

.... Appellant/s

Versus

1. The State of Bihar, through its Chief Secretary, Old Secretariat Building Patna.
2. Asstt. Accountant General , Sr. Accounts Officer, Bihar Patna.
3. The District Magistrate, East Champaran.
4. The Treasury Officer, East Champaran
5. Assistant Commissioner, Provident Fund, Employment Provident Officer, East Champaran.
6. The Deputy Development Commissioner, East Champaran.
7. The Block Development Officer, Adapur, East Champaran.
8. The Circle Officer, Piprakothi, East Champaran.
9. Panchayat Piprakothi, through its Panchayat Secretary, Pipra, Kothi, East Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Janardhan Prasad Singh, Sr. Adv Mr. Arbind Kumar Singh, Adv Mr. Manaur Alam, Adv
For the State	:	Mr. Alok Kumar Rahi, AC to GP-21

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 18-07-2017

Seeking exemption to an order dated 13.07.2016, this petition has been filed by the appellant, a widow and wife of Late Vinayak Kumar.

The facts in brief go to show that Late Vinayak Kumar was working as a Panchayat Secretary in panchayat Piprakothi, East Champaran and died on 26.09.2011. The writ petition was filed by the present appellant for settlement of her claim after the Accountant General, Bihar had granted her gratuity and pension. It was the case of the appellant before the writ Court that after grant of the aforesaid benefits by the Accountant General, as it has not been released and its payment has been stopped, the writ petition was filed.

On notice being issued, the State Government filed a counter affidavit and indicated that a sum of rupees 42 lacs is outstanding with regard to for various advances taken by the employee while in service, and it seems that learned Writ Court carried away by this statement directed an enquiry into this aspect of the matter by the Divisional Commissioner and based on the findings recorded by the Divisional Commissioner, it was found that a sum of Rs. 20,77,595/- is outstanding against the deceased employee, and, therefore the petition was dismissed on account of the aforesaid findings recorded by the Divisional Commissioner on a detailed enquiry with regard to the amount outstanding.

Learned senior counsel representing the

appellant raised a singular point before us to say that in the matter of advances taken while in service by the deceased employee, an enquiry into the matter after his death could not be ordered and the appellant, a widow who was helpless and could not defend herself, cannot be now punished by depriving her the pensionery benefits on account of report of the Divisional Commissioner. The submission of the learned senior counsel is that learned Writ Court has committed patent illegality in directing for enquiry ignoring this aspect that the employee was already dead and against a dead person no enquiry can be conducted and that the petitioner widow was unable to defend.

Even though learned counsel for the State Government, by referring to the documents and materials available, tried to indicate that on an enquiry conducted, the amount of Rs. 20,77,595/- was found to be outstanding, we are of the considered view that once the employee concerned had died, an enquiry into the matter with regard to alleged acts committed by him while in service, could not be ordered after his death as the employee or legal heirs were unable to defend themselves in the enquiry and this is in violation to principles of natural justice, behind their back, no enquiry could be conducted. That apart, on a perusal of the enquiry report submitted by the Divisional

Commissioner, we find that the amount in question were advances drawn by the employee concerned in the year 2009-10 and the allegation was that he has not accounted for the advances, but in that enquiry report, it is also stated that document or vouchers are not available. The nature of enquiry conducted itself seems to be doubtful, however the facts remains that appellant, a widow lady has been deprived of the pensionery benefits accruing to her after death of her husband based on an enquiry conducted in the manner which is not permissible in law. The Department should have conducted the enquiry and take action during the life time of the employee concerned, after his death, any action taken for conducting the enquiry with regard to the act of omission and commission committed by the employee which ultimately is detrimental to the interest of deceased widow was not permissible. An enquiry against a dead person is not permissible under law. The learned Writ Court committed error in directing for enquiry by the Divisional Commissioner in the facts of the present case.

The learned Writ Court, while doing so also lost sight of the fact that the report of the Divisional Commissioner indicates that the amount was earmarked for various works and implementation of the scheme and this could not be done by the Secretary of the panchayat all alone. For doing all the work, various other officers of the panchayat like engineers and other officers were also involved and their role is not enquired into or the responsibility for execution of the work or scheme fixed. By imposing the entire liability on the Panchayat Secretary and now consequently on the widow, other officers who are also responsible for accounting for the amount are left scot free the responsibility and liability. We cannot close our eye to this vital aspect of the matter and permit perpetuation of the illegality. The liability should have been imposed on all the officers or employees concerned who were responsible for execution of the work or schemes in question. Merely by singling out the widow lady and imposing liability on her husband after his death, in the facts and circumstances of the case, cannot be approved by this Court and as the learned Writ Court has failed to take note of all the vital aspects of the matter, the order passed by the Writ Court cannot be sustained on this ground also.

In our view, once the aforesaid act of the learned Writ Court is found to be unsustainable, all consequential actions taken based on the enquiry are also unsustainable and there is no reason for not allowing the appeal. Accordingly, we allow the appeal, quash the order passed by the learned Writ Court and direct the respondents to settle the pensionery claims of the appellant, in accordance with law. The findings of the enquiry report cannot be used against the appellant for withholding her pensionery benefits. The pensionery benefits should be settled now within a period of six months from the date of receipt of the certified copy of this order.

With the aforesaid, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Shageer/-

AFR/NAFR	NAFR
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