

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12424 of 2014

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Sushil Kumar Singh, Son of Late Ayodhi Prasad, Resident of Village + Post Office
Sadhua, P.S. Rangra Chowk, District Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home Affairs, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Special Secretary, Home (Special) Department, Government of Bihar, Patna.
4. The Director General of Police, Government of Bihar, Old Secretariat Building, Patna.
5. The Deputy Inspector General of Police, (Human Rights), Government of Bihar, Old Secretariat Building, Patna.
6. The Superintendent of Police, Samastipur.
7. The Railways Superintendent of Police, Jamalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ambuj Nayan Chaubey, Sr. Advocate Mr. Vikas Kumar and Mr. Amit Kumar, Advocates
For the State	:	Mr. Kameshwar Kumar, G.P. 17 Mr. Amit Bhushan, A.C. to G.P. 17

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 06-02-2017

Heard learned counsel for the parties.

The petitioner, who is an Inspector of Police, has moved this Court for quashing of the order of the State Government by which a sum of Rs. 1,50,000/- is sought to be recovered from him to be paid to the widow of late Suresh Manjhi in terms of the order of the National Human Rights Commission.

Learned counsel for the petitioner submitted that in the incident the victim was alleged to have been beaten to death by



one Subodh Singh and when the petitioner went to the place of occurrence on being informed by the local Chowkidar, the body had already been cremated and further he was informed by the kin of the deceased that the death had occurred due to snake bite and, thus, no further action was undertaken. He submitted that despite such fact, he was proceeded against departmentally and ultimately the same resulted in punishment order dated 17.09.2011 by which his increment for six months was seized, being equivalent to one black mark. Learned counsel submitted that once he has been punished for the said occurrence, he cannot be panelized any further and that too without any proceeding or show cause. Learned counsel submitted that he was not communicated with the order of the National Human Rights Commission and also no show cause was ever given to him with regard to such recovery from him.

Learned counsel for the State, on the basis of the counter affidavit filed on behalf of respondents no. 1 and 2, submitted that the allegation against the petitioner is that upon being informed, when he had gone to the place of occurrence, he had allowed the accused to persuade the kin not to lodge F.I.R. and had also not taken possession of the body for conducting postmortem and had not registered an F.I.R., which was done only later on the statement of the Chowkidar. He further submitted that the National Human Rights



Commission in its order dated 16.03.2011 has given a finding against the petitioner about his collusion with the accused persons and disappearance of evidence and finally had ordered the State to pay compensation of Rs. 1,50,000/- in view of negligence and dereliction of duty on the part of the petitioner which led to denial of justice of the victim and the next of kin. It was submitted that in the said background liability to pay compensation has been fastened on the State and thus it is but natural that the State is entitled to recover the same from the petitioner as he has caused the State such monetary loss.

However, with regard to there being no notice given to the petitioner prior to such order for recovery, learned counsel fairly submitted that neither such stand has been taken in the counter affidavit nor any instructions to this effect has been sent.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the opinion of the Court, the State may have a claim against the petitioner for recovery based on the findings of the National Human Rights Commission as well as that in the departmental proceeding and on the principle that the loss suffered to the State exchequer due to the acts of omission and commission of the petitioner, have to be made good by the petitioner, but in the present case, the minimum requirement



was that the petitioner had to be given a notice to explain as to why such proposed recovery from him be not made. This is the basic requirement of the principles of natural justice which are not mere formalities since an opportunity has to be given to any person charged of any misconduct to explain and show cause as to why he should not be punished in a particular manner. This not having been done in the present case, the Court has no option but to set aside the recovery sought from the petitioner of Rs. 1,50,000/- in terms of the order of the National Human Rights Commission which has been done without resorting to a formal proceeding in the matter as was also directed in the order of the State Government contained in File No. 14960 dated 12.12.2012 by which a direction was given to recover the amount after initiating a formal proceeding against the petitioner.

Accordingly, recovery of Rs. 1,50,000/-, which has already been made, shall be subject to the final order which may be passed against the petitioner in terms of the order of the State contained in File No. 14960 dated 12.12.2012 requiring a proceeding against the petitioner for such recovery. The matter is remanded to the respondent no. 4 to take appropriate steps with regard to a proceeding being drawn up against the petitioner for such recovery.

The same shall be concluded expeditiously and in



any case by 31st July, 2017. The petitioner shall cooperate in the proceeding.

Learned counsel for the State shall communicate the order to the respondent no. 4 for compliance.

The writ application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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