

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.969 of 2015
In
Civil Writ Jurisdiction Case No.3994 of 1997
WITH
Civil Writ Jurisdiction Case No. 3994 of 1997

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1. Smt. Prabhabati Devi wife of Late Basisht Prasad Sinha.
 2. Surendra Singh son of Late Basisht Prasad Sinha.
 3. Rabindra Kumar Singh son of Late Basisht Prasad Sinha.
 4. Devendra Kumar Singh son of Late Basisht Prasad Sinha.
- All resident of village- Pyarepur, P.S- Sarmerra, Distt- Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Under Secretary Co-operative Department, State of Bihar.
3. The Registrar Co-operative Societies, Bihar, Patna.
4. The Additional Registrar Co-operative Societies, Chhotanagpur Division, Ranchi.
5. The Joint Registrar Co-operative Societies, Darbhanga Division Darbhanga.
6. The District Co-operative Officer, Chaibasa.
7. The Assistant Registrar Co-operative Societies, Chaibasa

... .. Respondent/s

Appearance :

For the Petitioners	:	Ms. Mahasweta Chatterjee Mr. Ram Niabsh Prasad Mr. Samir Kumar Sinha Ms.I Shamistha Chatterjee
For the Respondent/s	:	Mr. S. Raza Ahmad, AAG 5 Mr. Alok Ranjan

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 23-08-2017 Heard learned Counsel for the petitioners and learned Counsel for the State of Bihar.

CWJC No. 3994 of 1997 stood dismissed for default by an order, dated 06.04.2014. MJC No. 969 of 2015 has been filed for restoration of CWJC No. 3994 of 1997 to its original file on the grounds mentioned therein.



From the restoration application, I find that after the writ application was filed in the year 1997, the petitioner died on 12.05.1999. In the mean while, in view of the re-organization of the State of Bihar, the case stood transferred to the Jharkhand High Court. It also transpires that the Jharkhand High Court, subsequently, transferred it back to this Court for adjudication in the year 2006. It also appears that out of some communication gap, the writ petition could not be attended to by learned Counsel engaged on behalf of the petitioners. It is also to be taken note of that present petitioners have been substituted in place of original petitioner. The petitioner no. 1 is the wife and petitioner nos. 2 to 4 are sons of the deceased petitioner.

Considering the aforesaid facts and other averments made in the application for restoration, same is allowed. CWJC No. 3994 of 1997, thus, stands restored to its original file.

Since, said CWJC No. 3994 of 1997 is pending for more than 20 years, with the consent of the parties, the same is being disposed of by the present order.

Heard the parties.

Aggrieved by an order, dated 15.03.1995, passed by the Registrar, Co-operative Societies, Bihar, Patna, for recovery



of a sum of Rs. 1,06,263.85/- from the original petitioner and order, dated 31.07.1993, whereby the period, during which he had remained under suspension, has been decided to be treated as absent, without any benefit, are under challenge.

From the impugned order, dated 15.03.1995, I notice that the calculation of a sum of Rs. 1,06,263.85/-, sought to be recovered is based on excess payment made against leave encashment (Rs. 1368/-), provisional gratuity (Rs. 10,025/-), provisional pension (Rs.3309/-), amount of salary taken in excess (Rs. 35,819/-) and another sum of Rs. 55,742/-.

By the impugned order, dated 31.07.1993, a decision has been taken that the deceased petitioner shall not be entitle for any amount over and above the subsistence allowance for the period 08.01.1978 to 21.05.1986, during which he had remained under suspension. The order, further, contemplates that the said period shall not be treated to have been spent, on duty for any purpose in relation to the service.

Ms. Mahasweta Chatterjee, learned Counsel appearing on behalf of the petitioners, has submitted that the impugned order, dated 31.07.1993, is *ex-facie* illegal inasmuch as a departmental enquiry was held against the deceased petitioner, wherein the Enquiry Officer found no charge levelled



against the deceased petitioner to be proved. She has submitted that based on the said enquiry report and evidence collected in course of departmental enquiry, the Disciplinary Authority, i.e. the Registrar, Co-operative Societies, Bihar, Patna, by the impugned order, dated 31.07.1993, held the deceased petitioner guilty of some of the charges without recording his own finding and discussing the evidence on the basis of which it could be said that the charges against the deceased petition stood proved. She has submitted that the impugned order, dated 31.07.1993, is against all canons of principle of nature justice and, therefore, deserves to be set aside with all consequential benefits to the legal representatives/heirs of the deceased petitioner. She has also submitted, relying on a Supreme Court's decision, in the case of **State of Punjab and Others v. Rafiq Nasih**, reported in **2015 (1) PLJR (SC) 261**, that the deceased petitioner was a Class-III employee and, therefore, no order for recovery ought to have been made after his retirement as such action would have put him and his family members to great hardship.

Learned Counsel appearing on behalf of the State of Bihar, referring to the impugned order, dated 31.07.1993, has, on the other hand, submitted that after receipt of the report of the Enquiry Officer, the deceased petitioner was given a show



cause notice with a report of the Enquiry Officer to explain as to why he should not be held guilty of the charges levelled against him. He contends that it is evident from the impugned order that the deceased petitioner did not respond to the said notice issued by the Disciplinary Authority and accordingly the Disciplinary Authority was left with no other option, but to pass the impugned order.

Upon perusal of the impugned order, dated 31.07.1993 and the report of the Enquiry Officer, dated 24.04.1986, I find that there is no gainsaying that in the departmental enquiry, the Enquiry Officer did not find any charge levelled against the deceased petitioner to be established. In such circumstances, it was upon to the Disciplinary Authority to supply to the deceased petitioner notice of disagreement with the findings of the Enquiry Officer. If it is the case of the State that notes of disagreement was supplied to the deceased petitioner along with the show cause notice, which the petitioner did not respond to, the finding that the deceased petitioner was guilty of the charges ought to have been recorded by the Disciplinary Authority in the order itself, discussing the evidence and materials on record of the disciplinary proceeding.

In the impugned order, dated 31.07.1993, I do not find



any discussion recorded by the Disciplinary authority as to what was the basis for differing with the findings of the Enquiry Officer and what were the evidence on which the Disciplinary Authority could record that the deceased petitioner was guilty of the charges.

In such circumstance, the decision of the Disciplinary Authority to hold the petitioner guilty of the charge cannot be sustained.

The impugned order, dated 31.07.1993, is set aside. Consequence of setting aside of the said order shall follow. The petitioners shall accordingly be entitled for all benefits in terms of salary and increments etc. for the period 08.01.1978 to 21.05.1986, which the deceased employee would have been entitled to.

It is ordered accordingly.

The Registrar, Co-operative Societies, Bihar, Patna, is directed to calculate the entitlement, consequent upon quashing of the impugned order, dated 31.07.1993.

I may, now, come to Annexure-1, dated 15.03.1995, whereby the Department has decided to recover a sum of Rs. 1,06,263.85/-. A sum of Rs. 55,742/- has been indicated to be recovered in relation to 'Jagannath Lamps'. I do not find any



reason to interfere with the said decision of the Department in the absence of any concrete material to assail the same.

From the impugned order, I find that the decision to recover rest of the amount is based on the decision of the Disciplinary Authority to treat the period under suspension as absent from duty.

Since the said order, date 31.07.1993, has been set aside, the order, dated 15.03.1995, stands set aside to the extent the recovery is sought to be made on the basis of the order, dated 31.07.1993, which has already been set aside.

The fact that the deceased petitioner had preferred service appeal, which came to be dismissed on the ground of delay has not escaped my mind. That is, in my view, of no consequence for exercise of power under Article 226 of the Constitution of India, dealing with an order, which has been found to be illegal.

This application is accordingly allowed to the extent, as indicated above.

There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

Prabhakar Anand/-

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