

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3942 of 2016

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Most. Renu Singh W/o late Anil Kumar Resident of Village- Hajipur
Bilour P.s Barh District Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary , Urban Development Department Bihar, Patna.
3. The Joint Secretary, Urban Development Department Bihar, Patna.
4. The Under Secretary, Urban Development Department Bihar, Patna.
5. The Commissioner, Patna Division Patna.
6. The Secretary to the Commissioner Patna Division Patna.
7. The Chief Executive Officer, Nagar Panchayat Rajgir Nalanda District Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chandra Shekhar Singh
For the State/Respondent no.6 : Mr. Manoj Kumar, AC to GP-4
For respondent no.7 : Mr. Kamlesh Kishore

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY
ORAL ORDER

6 11-10-2017 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the respondents.

Petitioner is aggrieved by the order contained in Annexured-6 dated 13.09.2014 issued by the respondent no.7. The petitioner is widow of late Anil Kumar who was employee in the Town Planning Authority, Rajgir. The husband of the petitioner has filed C.W.J.C. No. 549 of 2005 for payment of his due salary from November 1995 on wards. The writ application was allowed vide order dated 21.10.2011. The relevant part of the order dated 21.10.2011 passed in C.W.J.C. No. 549 of 2005 is reproduced



hereinbelow:-

“This writ petition is allowed with a clear direction upon respondent no.7 that they have to work out the liabilities of payment of salary of the petitioner on the post of clerk based on the appointment letter issued in annexure-1 and his regularization letter contained in annexure-2 on the pay scale given to him at the relevant time. He may also be entitled to further revisions which may have been made in this regard from time to time based on the recommendations of pay revision committees. The obligation would be upon respondent no.7 to work out the outstanding dues for payment of salary from November, 1995 till date and whatever is required to be done will have to be done within a reasonable time frame.

This writ petition is allowed with the above direction”.

The husband of the petitioner filed MJC No. 3702 of 2012 for initiating contempt proceedings against the respondents for non-compliance of the direction passed in C.W.J.C. No. 549 of 2005 dated 21.10.2011.

During the pendency of the MJC No. 3702 of 2012 the respondents have carried out the direction passed in C.W.J.C. No. 549 of 2005 dated 21.10.2011 and as such MJC No. 3702 of 2012 was disposed of vide order dated 10.7.2013 and after



disposal of the aforesaid MJC No. 3702 of 2012, the respondent no.7 vide impugned letter dated 13.09.2014 wrote a letter to Secretary to the Commissioner, Patna Division, Patna in connection with recovery of alleged excess amount received by husband of the petitioner late Anil Kumar. Accordingly, the present writ application has been filed.

Counsel for the petitioner submits that whatever salary was paid to the husband of the petitioner was in fact paid in pursuance of the order passed in C.W.J.C. No. 549 of 2005 and in MJC No. 3702 of 2012 and after the death of her husband, the purported action of the respondents for recovery of alleged excess amount paid to the husband of the petitioner is unsustainable in the eye of law.

Counsel for the respondents submits that respondents have not passed any order for recovery. It is only communication to Secretary to the Commissioner which cannot be construed as a decision. However, he submits that whatever amount was paid to the husband of the petitioner was paid on the order of the court and after death of the husband of the petitioner, the respondents have absolutely no jurisdiction to take any decision for recovery of the alleged excess amount paid to the late husband of the petitioner.



Having regard to the submission of counsel and on consideration of the peculiar facts and circumstances, I am constrained to hold that the alleged excess amount paid to the husband of the petitioner vide order of the writ court cannot be recovered from the widow as no action is permissible against the dead person and any contemplated action against the dead person is nullity in the eye of law. In addition thereto, the judgment of the Apex Court in the case of Rafiq Masih also does not permit the respondents to take any steps for recovery after superannuation.

In view of the above, the court is of the view that the proposed action of the respondents to recover the alleged excess amount paid to the late husband of the petitioner is without jurisdiction and impermissible in law.

Accordingly, Annexure-6 is held to be without jurisdiction and respondents are restrained from proceeding ahead on the basis of Annexure-6.

As a consequence of declaration that Annexure-6 is without jurisdiction, the respondents are under obligation to pay all admissible dues to the widow forthwith, if the petitioner approached the authorities along with a copy of this order within a period of one month, the respondents are obliged to clear all



dues within a further period of two months otherwise the respondents shall be obliged to make payment with 9 per cent interest from the date of entitlement to the date of actual payment and the same shall be paid from the erring Officers from their own pockets.

With the aforesaid, the application stands allowed.

(Anil Kumar Upadhyay, J)

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