IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2726 of 2008

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1. Smt. Meena Sinha W/o Late Lala Ajay Kumar Sinha
2. Kumari Prabha Sinha
3. Archana both daughters of Late Lala Ajay Kumar Sinha

Resident of Village- Jaipur Dhanuki, Kumahrar, P.S.- Agamkuan, Near Panchsheel Vidyalaya, District- Patna

.... Petitioners

Versus

1. The State of Bihar through the Inspector General of Police Crime Investigation Department, having his office in Old Secretariat, P.S.- Sachivalaya, District- Patna
2. The Superintendent of Police (C) Crime Investigation Department, having his office in Old Secretariat, P.S.- Sachivalaya, District- Patna
3. The Superintendent of Police (D), Crime Investigation Department, having his office in Old Secretariat, P.S.- Sachivalaya, District- Patna
4. The Deputy Superintendent of Police (Accounts), Crime Investigation Department, having his office in Old Secretariat, P.S. - Sachivalaya, District- Patna
5. The Accountant General, Bihar, Birchand Patel Marg, Patna

.... Respondents

With

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Civil Writ Jurisdiction Case No. 9043 of 2004

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1. Smt. Meena Sinha W/o Late Lala Ajay Kumar Sinha
2. Kumari Prabha Sinha
3. Archana both daughters of Late Lala Ajay Kumar Sinha

Resident of Village- Jaipur Dhanuki, Kumahrar, P.S.- Agamkuan, Near Panchsheel Vidyalaya, District- Patna

.... Petitioners

Versus

1. The State of Bihar through the Inspector General of Police Crime Investigation Department, having his office in Old Secretariat, Police Station - Sachivalaya, District- Patna
2. The Superintendent of Police, Crime Investigation Department, having his office in Old Secretariat, Police Station - Sachivalaya, District- Patna
3. The Deputy Superintendent of Police (Accounts), Crime Investigation Department, having his office in Old Secretariat, Police Station - Sachivalaya, District- Patna
4. The Director Provident Fund, having his office in Pant Bhawan, Bailey Road, Police Station Shastrinagar, District Patna
5. The Accountant General, (Accounts and Entitlement) having his office in Birchand Patel Path, Police Station Kotwali, District Patna

.... Respondents

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Appearance :

(In CWJC No.2726 of 2008)
For the Petitioners :Mr. Mukeshwar Dayal,
Mr. Daya Shankar Prasad Sinha,
Mr. Vikas Mohan, Advocates
For the Respondents : Mr. Chittranjan Sinha, Pr. AAG 2
For Accountant General : Mr. L.P.K. Rajgrihar, Advocate

(In CWJC No.9043 of 2004)
For the Petitioners :Mr. Mukeshwar Dayal,
Mr. Daya Shankar Prasad Sinha,
Mr. Vikas Mohan, Advocates
For the Respondents : Mr. Chittranjan Sinha, Pr. AAG 2
For Accountant General : Mr. L.P.K. Rajgrihar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 28-08-2017

<u>I.A. No. 293 of 2016 in CWJC No. 9043 of 2004</u>

This interlocutory application has been filed for substitution of the sole petitioner, who died on 02.05.2013 during the pendency of the writ petition.

2. Learned counsel for the respondents appears and has no objection to such prayer.

3. Having regard to the nature of the prayer, let the name of the petitioner be substituted with the name of his legal heirs, namely, Smt. Meena Sinha, Kumari Prabha Sinha and Archana as described in paragraph 3 of the interlocutory application. Learned counsel for the petitioner is permitted to make necessary corrections in the array of the parties in course of the day.

4. I.A. No. 293 of 2016 stands disposed of.

<u>CWJC No. 2726 of 2008 & CWJC No. 9043 of 2004</u>

5. These writ petitions have been filed for quashing the Office Order No. 65 of 2007 vide Memo No. 1121 dated 05.12.2007 issued under the signature of Superintendent of Police (C) Crime Investigation Department, Bihar, Patna by which post retrial dues has been withheld under Rule 43(b) of the Bihar Pension Rules and also for quashing of the charge sheet of the Departmental Proceeding No. 9/2003 communicated to the original petitioner through M.J.C. No. 2624 of 2006 (Modification) dated 30.08.2007; and for making payment of leave encashment amount, group insurance and the amount of general provident fund.

6. By order dated 11.05.2011, this Court in MJC No. 2624 of 2006 (*The State of Bihar & ors. Vs. Lala Ajay Kumar Sinha & Anr.*), took note that CWJC No. 9043 of 2004 was disposed of on 09.08.2004 but the said order was recalled subsequently, having been passed without affording any opportunity to the State of Bihar for filing its counter affidavit and hence, the fact of a departmental proceeding and 6 criminal cases pending against the petitioner could not be brought to the notice of this Court.

7. The short facts of the case, according to the original petitioner, are that he retired from the post of Accountant on 31.08.2002. It appears that subsequently, departmental proceeding no. 9/2003 was initiated against the original petitioner in which a so-called enquiry report dated 09.04.2007 (Annexure-I to the counter

affidavit) was submitted with regard to withdrawals of Rs. 10,545/- and Rs. 6,182/- made through forged bills during the financial year 1999-2000 and 2000-2001 and for which the petitioner along with other persons were found guilty. The impugned order of punishment dated 05.12.2007(Annexure-1) has been passed against the petitioner in connection with misappropriation of about Rupees Four Crores during the period 1990 to 31.08.2001 and in respect of which it is stated that 6 criminal cases as well as a departmental proceeding no. 09/2003 were instituted. Reference has also been made to another departmental proceeding in which enquiry report has not been submitted but there was likelihood of the petitioner's involvement in misappropriation of crores of rupees of Government fund which would require recovery and hence, pensionary benefits of the original petitioner were directed to be withheld by resort to the provisions of Rule 43(b) of the Bihar Pension Rules.

8. Learned counsel for the petitioner submits that the impugned action of the respondents is wholly arbitrary and illegal as the so-called charge sheet (Annexure-2) does not amount to a charge sheet, considering that the same does not specifically state the articles of charge against the petitioner and is superficial and vague even without mentioning proper date. In any event, such charge sheet with reference to the allegations of misappropriation of Rs. 10,545/- and Rs. 6,182/ and so also the enquiry report dated 09.04.2007 (Annexure-I to

the counter affidavit) are not relatable to the impugned order dated 05.12.2007 passed in connection with the alleged misappropriation of Rupees Four Crores of Government fund. The impugned order on the face of it has been passed only on the likelihood of a finding of guilt in another departmental proceeding which has yet to be concluded. Moreover, it is evident from the charge sheet (Annexure-2) as well as the enquiry report dated 09.04.2007 (Annexure-I to the counter affidavit) that no pecuniary loss was incurred due to the action of the petitioner and hence question of recovery could not arise.

9. Learned counsel for the State appears and has been heard.

10. Learned counsel for the Accountant General fairly states that in view of the State Government's decision in F.D. Memo No. PC-11-1-13-/75/11166, dated 06.09.1975, the amount under the family pension scheme is payable in case of death of a Government employee pending departmental proceedings or criminal cases, but payment of death-cum-retirement gratuity would depend upon the outcome of the departmental proceeding. It is further submitted that the amount by way of leave encashment may be released after conclusion of the pending departmental proceeding, though general provident fund and group insurance cannot be withheld.

11. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court

finds that the impugned order dated 05.012.2007 (Annexure-1) has been passed without valid basis. The relevant charge sheet and the enquiry report are with reference to two amounts said to have been attempted to be misappropriated, namely, Rs. 10,545/- and Rs. 6,182/- whereas the impugned order has been passed with reference to misappropriation of the amount of about Rupees Four Crores. The impugned order also takes note of another departmental proceeding in which the enquiry report has yet to be submitted and only on the likelihood that crores of rupees may be found recoverable, the retiral benefits have been withheld by resort to the provisions of Rule 43(b) of the Bihar Pension Rules. This Court is of the view that the actions of the respondents are wholly unsustainable in law. The impugned order dated 05.12.2007 (Annexure-1) is set aside except to the extent that payment of gratuity and leave encashment have been withheld, and the respondents are directed to release the remaining retiral dues to the petitioner by way of family pension, general provident fund and group insurance, expeditiously and in any event within a period of three months from the date of receipt/production of a copy of this judgment. It is made clear that the respondents shall be free to take appropriate steps in case any punishment order is passed pursuant to the other departmental proceeding which is said to be pending. Release of the death-cum-retirement gratuity as well as leave encashment shall abide by the final outcome of such proceeding, which must be brought to a finality without undue delay if not already concluded.

12. Both these writ petitions accordingly stand disposed of.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01.09.2017
Transmission Date	N.A.