

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13995 of 2006

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Sayra Khatoon Wife of late Yahiya Ansri, Resident of Latif Market, Chaukhandi Market, Sasaram, P.S. Sasaram, District- Rohtas.

.... Petitioner

Versus

1. The State of Bihar through Commissioner-cum-Secretary, Road Construction Department, Govt. of Bihar, Nirman Bhawan, Patna.
2. The Superintending Engineer, Saharsa Circle, Road Construction Dept. Sahara, District- Saharsa.
3. The Executive Engineer, Road Division, Road Construction Deptt. Madhepura, P.S. Madhepura, District- Madhepura.
4. The Deputy Secretary to the Govt., Road Construction Deptt. Govt. of Bihar.

.... Respondents

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Appearance:

For the Petitioner : Mr. Surendra Kumar Singh, Advocate
Mrs. Tulika Singh, Advocate,
Mrs. Sudha Chandra, Adv.
For the State : Mr. Deepak Sahay Jamuar, A.C. to A.A.G.-4

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 30-11-2017

Heard learned counsel for the petitioner and learned counsel for the State.

2. In this case, the petitioner is challenging the order containing memo no.108 dated 14.07.2005, whereby and where-under direction has been given for recovery of Rs.4,42,743/- from the petitioner as also reduction of pension by 10%.



3. In this case, the husband of the petitioner was served the charge-sheet on 26.07.2003, making allegation that while discharging the duty he has committed illegality. For that, a proceeding was initiated against the husband of the petitioner. The husband of the petitioner had participated in the inquiry and after full discussion the Inquiry Officer has submitted his report in favour of the husband of the petitioner, having found the charge has not been proved, whereafter, vide letter dated 21.03.2005 the Engineer-in-Chief disagreed with the finding of the Inquiry Officer and proposed the punishment for recovery of Rs.4,42,743/-. In the said letter, there was no statement with regard to reduction of pension, but in the final order dated 14.07.2005 punishment of recovery of Rs.4,42,743/- as well as reduction of pension by 10% has been imposed upon the husband of the petitioner.

4. A short and important question has been raised by the learned counsel for the petitioner that while differing with the finding of the Inquiry Officer, the Engineer-in-Chief was required to give his own finding of disagreement separately, should have served the show-cause upon the husband of the petitioner and only after receipt of the explanation and after considering the same the punishment order should have been passed.



5. In support of his submission, learned counsel for the petitioner has placed reliance on the decision of ***Punjab National Bank and Ors. vs. Kunj Bihari Mishra,*** reported in ***1998(7) S.C.C. 84***, where the Court has dealt with the situation when there is finding in favour of the employee and if the employer intends to disagree with the finding he is required to record his own separate finding of disagreement, call for explanation from the employee and after considering the same, the employer should have passed the order.

6. Admittedly, in the present case, the aforesaid procedure has not been followed by the authority while passing the order of punishment, rather without discussing the fact in what manner the finding of the inquiry Officer is incorrect, recorded his own finding and passed the order of punishment, which is not permissible in law.

7. In such view of the matter, the order of punishment containing memo no.108 dated 14.07.2005 and the letter of disagreement dated 21.03.2005 are quashed. The matter is remanded back to the authority concerned, if they so liked, may take action against the husband of the petitioner after following the procedure as has been delineated in the case of *Kunj Bihari Mishra (Supra)*.



8. With the aforesaid observations and directions, this writ application is allowed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	14.12.2017
Transmission Date	N/A.

