

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11013 of 2012

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1. Yogendra Singh son of Late Mukund Lal
 2. Shashank Singh son of Late Mukund Lal
 3. Anjali Singh, daughter of Late Mukund Lal,
All resident of 422 D/1, Kachcu Phulwaria Road, Bakshi Khurd, P.O. and P.S.
Daraganj, District- Allahabad (U.P.)

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Public Health Engineering Department, Government
Of Bihar, Patna
3. The Executive Engineer, Public Health Division, Katihar, District - Katihar
4. The Executive Engineer, Public Health Division, Araria, District - Araria
5. The Sub-Divisional Officer, Public Health Division, Barsoi, District - Katihar
6. The Sub-Divisional Officer, Public Health Sub-Division, Araria East, District -
Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh, Adv.
Mr. Pankaj Kr. Singh, Adv.

For the Respondent/s : Mr. Lalan Kumar, AC to GP-9

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 06-12-2017

Heard learned counsel for the parties.

A limited question has been raised in the present case that the order dated 19.9.2011 (Annexure-6) for recovery of Rs. 3,61,083/- from the salary of the father of the petitioners has been made in the Service Book by the respondent on account of shortage found with the material in the store.

The father of the petitioners was appointed as a Junior Engineer in the Public Health Division, Bettiah in the year 1979, was posted at Public health Sub-Station, Barsoi, Katihar where he, vide



Memo No. 13 dated 28.1.2010, was directed to handover the scrap materials to M/s S.K. Steel, Patliputra, Patna vide Memo No. 13 dated 28.1.2010. Accordingly, the father of the petitioners handed over the scrap materials to M/s S.K. Steel, Patliputra, Patna but, after obtaining the signature on different receipts on different dates. Accordingly, the scraps were handed over. The original petitioner was transferred from Barsoi, P.H.D. to Public Health Sub-Division, Sikti, Araria vide letter no. 104-09-271 dated 30.6.2010. Accordingly, the original petitioner was relieved and he joined the new place of posting but, the handing over and taking over charge could not take place finally to the successor though he made frantic effort for handing over the charge but, finally, could succeed in handing over the charge on 1.7.2011 and was found shortage of materials worth Rs. 3,53,507/- which has been directed to recover from the salary of the father of the petitioners.

In the present case, the only question has been raised that the order has been passed without giving notice which is completely illegal, when the authority wants to deduct the said amount, it was minimal requirement to serve a show-cause and, after receipt of the explanation, considering the same, could have passed the order for recovery of the said amount but, it has not been done in the present case.

Learned counsel for the State has pointed out that



altogether 1,08,000/- has already been recovered and rest Rs. 2,53,93/- is in contemplation of recovery from the deceased.

During pendency of this writ application, the original petitioner has died having been substituted by his heir and successor, questioning the manner the order has been passed in the present case and that the order is per se illegal on account of the fact that no minimum requirement of natural justice has been followed.

Learned counsel for the State is not in a position to defend about the non-service of notice to the original petitioner before passing the impugned order. When an order creates civil consequences, in such circumstances, it is the duty of the authority concerned even in the administrative matter should have given the notice and only then after hearing the parties could pass an order for recovery of the amount. This principle has stipulated in the case of *State of Orissa Vs. Dr. (Miss) Binapani Dei & Ors.* reported in *AIR 1967 SC 1269*, there also, similar question was raised and that has also been followed in the case of *A.K. Kraipak & Ors. Vs. Union of India (UOI) & Ors.* reported in *AIR 1970 SC 150*. There also the question was raised about following of principle of natural justice in administrative matter and it has been held that minimal requirement of following the principle of natural justice is must before passing any order having civil consequences.



In that view of the matter, the entry made in the Service Book dated 19.9.2011 is set aside with a liberty to the State if so advised they can proceed further but, after giving a notice to the heirs and successors who are the present petitioners and, after hearing the parties, will pass an order in accordance with law. It is made clear that if the petitioners succeed in the proceeding, the amount, which has been recovered, will be returned but, if the petitioners fail to succeed, in such circumstances, liberty will be given to the State to take action in accordance with law.

With the aforementioned observation and direction, this application is disposed of.

Let, the photocopy of the letter of the Executive Engineer dated 30.11.2017 be kept on record for future reference.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.12.2017
Transmission Date	NA

