

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19239 of 2017

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Urmila Devi, Wife of Late Lambodar Mandal, Resident of Village- Bagicha, P.S.-
Bounsi, District- Banka, at present residing at New Colony, Baidyanathpur, P.S.-
Baidyanathpur, District- Deoghar, Jharkhand.

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Banka.
2. The District Magistrate, Banka.
3. The Deputy Development Commissioner, Banka.
4. The District Panchayati Raj Officer, Banka.
5. The Establishment Deputy Collector, Banka.
6. The Block Development Officer, Barahat, Banka.
7. The Block Development Officer, Katoria, Banka.
8. The Block Development Officer, Candan, Banka.
9. The Accountant General, Bihar, Birchand Patel Path, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Mishra

For the Respondent/s : Mr. PUSHKAR NARAYAN SHAHI- AAG6

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 14-05-2018

The petitioner, by way of the present writ petition, has challenged the order dated 16.10.2017, contained in Memo No. 1387, passed by the District Magistrate, Banka to the extent the District Magistrate, Banka has found that a sum of Rs.16,25,946/-, upon adjustment of the amount of work done, is recoverable from the deceased husband of the petitioner, who had taken advance money for the purposes of execution of various projects. By the aforesaid order dated 16.10.2017, under challenge before this Court, it has been further directed that out of the aforesaid recoverable amount of Rs.16,25,946/-, a sum of Rs. 10,52,998/-, payable to the petitioner herein on the head of death-cum-retiral dues and other benefits be adjusted and for the balance amount of Rs. 5,72,948/- appropriate



proceeding be initiated for the purposes of recovering the said amount in accordance with law.

2. The brief facts of the case are that the deceased husband of the petitioner herein was appointed as Panchayat Sewak at Amarpur Prakhand in the district of Banka on 11.7.1995, whereafter he discharged his duty to the full satisfaction of his superior. The deceased husband of the petitioner died on 19.2.2013 in harness, whereafter the petitioner filed a writ petition bearing CWJC No. 9781 of 2016 before this Court for payment of retiral benefits, however, the same was disposed of with a direction to the respondent authorities to dispose of the representation of the petitioner, upon filing of the same by the petitioner. Thereafter, the petitioner had filed a representation dated 18.10.2016 before the District Magistrate-cum- Collector, Banka for redressal of her grievances and thereafter, the impugned order dated 16.10.2017 has been passed and the petitioner has only been paid part of the GPF amount and the rest of the death-cum-retiral benefits has been withheld.

3. The short issue raised by the petitioner is that the aforesaid order dated 16.10.2017 has been passed ex parte and without granting any opportunity of hearing or even otherwise without giving any opportunity to the late husband of the petitioner herein, to file his show cause reply so that he could have explained the actual position which was prevailing.

4. The respondent no.9 has filed a counter affidavit,



however, rest of the respondents have not filed any counter-affidavit, but nonetheless the learned counsel appearing for the respondents has submitted that the impugned order dated 16.10.2017 is itself self-speaking and reasoned order which apparently shows that late husband of the petitioner had taken advance money for execution of various projects but the work could not be completed whereafter, a exercise was undertaken and after adjusting the amount equivalent to the work done, a sum of Rs. 16,25,946/- approximately has been found to be recoverable from the petitioner herein. It has been further submitted that after adjusting the amount of death-cum-retiral dues and other dues payable to the petitioner herein, still a sum of Rs.5,72,948/- approximately remains to be recovered for which a direction has been given to take appropriate action for recovery of the same. However, the learned counsel for the respondents has failed to show that the aforesaid order dated 16.10.2017 is not an ex parte order.

5. It is a well settled law that no order can be passed without granting any opportunity of hearing to the delinquent and an ex parte order is a nullity in the eyes of law. Admittedly, in the present case neither deceased husband of the petitioner has been given any show cause notice so as to grant him any opportunity to explain his side of the case nor any proceeding much less a departmental proceeding was ever initiated against the petitioner herein, as is apparent from the categorical statement made by the petitioner herein



in paragraph no. 3 and 12 of the writ petition, as well as from the factum of death of the husband of the petitioner who had died as long back as on 19.2.2013, hence obviously the respondents had admittedly not complied with the principles of natural justice before passing of the impugned order dated 16.10.2017. In such view of the matter, the impugned order dated 16.10.2017 passed by the District Magistrate, Banka cannot be sustained, hence the same is quashed to the extent, it has been held that a sum of Rs. 16,25,946/- is recoverable from the petitioner herein, to the extent it has been directed to adjust a sum of Rs. 10,52,998/- from the death-cum-retiral dues and as far as it has been directed to initiate appropriate proceeding to recover a sum of Rs. 5,72,948/- from the late husband of the petitioner herein.

6. The writ petition is allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.06.2018
Transmission Date	

