

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.8400 of 2013

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Harendra Prasad Rai S/O Late Ramraj Rai Retired Sergeant Major From Katihar  
Rail Police, R/O Village- Khurhuria, P.S. And P.O.- Kateya, District- Gopalganj

.... .... **Petitioner**

#### **Versus**

1. The State Of Bihar, Through The Chief Secretary Govt. Of Bihar, Patna
2. The Director General Of Police, Bihar, Patna
3. The Home Commissioner, Govt. Of Bihar, Patna
4. The Deputy Inspector General Of Police, Koshi Range, Saharsa At Saharsa
5. The Deputy Inspector General Of Police, (Human Rights) Bihar, Patna
6. The Superintendent Of Police Saharsa At Saharsa
7. The Special Secretary (Home) Govt. Of Bihar, Patna

.... .... **Respondents**

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#### **Appearance :**

For the Petitioner : Mr. Shekhar Singh, Advocate,  
Mr. Satyendra Rai, Advocate and  
Mr. Sunil Kumar, Advocate  
For the State : Mr. Bijay Kumar Sinha, AC to AAG V

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**

**ORAL JUDGMENT**

**Date: 30-08-2018**

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

2. Order dated 27.7.2011 directing recovery of  
Rs.50,000/- in 10 instalments from the pension of the petitioner has  
been challenged in the instant proceedings. A brief background of  
the case is that while the petitioner was posed as Sergeant Major in  
the district of Saharsa it is alleged that a request was made for some  
Force being made available to escort one inmate/under trial  
prisoner Kamlesh Yadav from 24.10.2005 to 3.11.2005 as he  
required medical care outside the jail. For some reason or the other,



Force was not made available. It is alleged that when the said inmate was finally taken for medical care he succumbed to the illness on 8.11.2005.

3. The issue was raised before the State Human Rights Commission (hereinafter referred to as 'the Commission') which was of the opinion that there appears to have been some dereliction of duty of staff of the jail and police administration as well as the medical negligence. Same was required to be ascertained as to who was responsible for dereliction and thereafter proceedings were to be conducted in the matter.

4. The proceedings thereafter have been conducted only against the petitioner. The petitioner in the meanwhile had retired on 30.4.2009. When the proceedings against the petitioner were initiated under Rule 43B of the Bihar Pension Rules in purported compliance of the Commission's opinion, the petitioner raised an objection that since the alleged offence/dereliction/misconduct related to that period which is much prior to four years from the date of superannuation, therefore, proceedings under the Bihar Pension Rules is barred by the effect of the time limit provided in proviso to Rule 43B of the Bihar Pension Rules. Submission of the petitioner to this extent has been considered by the respondent authorities in the order dated



27.7.2011 which is impugned in the instant writ proceedings. After acknowledging the fact that no proceeding under Rule 43B of the Bihar Pension Rules for recovery could be conducted against the petitioner, respondent Superintendent of Police, Saharsa, in purported compliance of the Commission's opinion has proceeded to direct recovery of Rs.50,000/- in 10 instalments from the pensionary benefits of the petitioner.

5. Action of the Superintendent of Police, Saharsa has given rise to a situation where without conducting any proceedings against the petitioner under Rule 43B or any other proceedings and without complying with the principles of Natural Justice the civil consequences of recovery from his pensionary dues have been directed. The purported reason assigned for directing recovery is the order of the Commission. This reason is nonest, inasmuch as no such direction was given by the Commission. The direction of the Commission which is incorporated in the communication dated 21.4.2006 from the Commission to the Director General, Prisons, Bihar is as follows:-

*“As per the PMR death in this case was due to cardio-respiratory failure preceded by anaemia. The MER indicates that even as early as 12.10.2005 the prisoner was sought to be referred to Sadar Hospital for specialized treatment. Ultimately, permission of the Court could be obtained only on 22.10.2005. Till 3.11.2005, police escort could not be made available. After treatment on 3.11.2005 the deceased was sent*



*back to the Jail. Again on 6.11.05, he felt seriously ill and was taken to Sadar Hospital. Blood transfusion was required and the same could not be arranged till 7.11.2005. Ultimately, the patient died on 8.11.2005. Thus, there appears to have been dereliction of duty on the part of Jail staff/police administration and medical negligence by the Civil Hospital. Perhaps a detailed probe would be required by the DG (Prisons). ”*

6. There is no occasion for any recovery from the petitioner without identifying the person responsible in compliance with the direction of the Commission regarding conducting a probe/investigation of the staff/officials responsible for dereliction. Order dated 27.7.2011 is therefore also not in compliance with the direction of the Commission in communication dated 21.4.2006.

7. Direction for recovery from the pensionary dues of the petitioner under order dated 27.7.2011 are also in violation of the principles of Natural Justice, as noted above and therefore clearly unsustainable inasmuch as there is no basis of such recovery from the pensionary dues of the petitioner.

8. Order dated 27.7.2011 bearing Saharsa Force order no. 1193/11 issued by the office of the Superintendent of Police, Saharsa as well as consequential direction issued to the Treasury on 8.2.2013 by the office of the Superintendent of Police, Saharsa under Letter no.100, are quashed.

9. As a result of quashing of the impugned orders, the



petitioner would be entitled to all consequential benefits.

**10.** The writ petition is allowed.

**(Madhuresh Prasad, J)**

Shashi.

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