

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 13000 of 2014

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Geeta Devi, W/o Late Keshari Das, Constable No 145, Resident of Village Bedoul, Wediya Tola, P.S. Puri Via, Jnampur Road, District - Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Commander, BMP (Bihar Military Police), 6, Muzaffarpur.
3. The District Magistrate, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Pawan Kumar, Advocate
For the Respondent/s : Mr Gyan Prakash Ojha, GA VII with
Mr Abhishek Singh, AC to GA VII

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 06-05-2019

Heard Mr Pawan Kumar, learned counsel for the petitioner and Mr Gyan Prakash Ojha, learned counsel for the State.

2 Writ petition has been filed for quashing order dated 18.02.2013 whereby and where under the petitioner's husband has been dismissed from service with retrospective effect from 20.12.2011.

3 Brief facts, shorn of unnecessary details, are that charge memo was issued on the petitioner's husband on 18.02.2011 containing an allegation that he had gained employment by producing a fake caste certificate showing him to



be scheduled tribe. In respect of the same allegation, one police case bearing Mithanpura Police Station Case No 78 of 2011 was lodged for the offences punishable under Sections 471 and 420 of Indian Penal Code. Petitioner's husband responded to the charge memo whereupon the proceedings were stayed pending the criminal trial. The petitioner's husband, in the meantime, passed away on 20.12.2011.

4 The facts, as they are, situation is clear that beyond submission of reply by the petitioner's husband, nothing had been done in the proceedings pursuant to charge memo dated 18.02.2011.

5 Nearly two years after the death of the petitioner's husband, the Disciplinary Authority has issued an order dated 18.12.2013 whereby the petitioner's husband has been dismissed from service with effect from date of his death that is on 20.12.2011. The Disciplinary Authority has further directed that the petitioner's husband would not be entitled to any further payments other than what has been paid to him for the period of service. The said order is impugned in the instant writ proceedings.

6 Learned counsel for the petitioner submits that the Enquiry Officer has not conducted any enquiry into the matter.



The proceedings remain stayed right from the time the petitioner's husband had filed his written statement to the charge memo. Death of the petitioner's husband, in the meantime, is also a factor which would go against the exercise of power by the Disciplinary Authority to issue an order of punishment against the petitioner's husband, having regard to the fact that upon death of the petitioner's husband, there was no subsisting relationship of Master and Servant between the Department and the petitioner's husband. The proceedings, therefore, had abated and no order of punishment could be passed against the petitioner's husband (deceased).

7 Learned counsel for the State, on the other hand, submits that reply of petitioner's husband was before the Disciplinary Authority. The order is taking effect from the date on which the petitioner's husband has died and, therefore, there is no infirmity in the order passed by the Disciplinary Authority. He also submits that in view of the nature of allegation against the petitioner's husband, no leniency can be shown to the petitioner's husband.

8 The issue that arises is purely an issue of law. Whether an order of dismissal can be passed against a person after his death, more so in view of the facts in the instant case, no



proceeding had been conducted by the Enquiry Officer during lifetime of the petitioner.

9 The order of dismissal dated 18.12.2013 is fit to be set aside only for the fact that it has been issued against a dead person after the proceedings have already abated. In this connection, reliance has rightly been placed by the petitioner's counsel on a recent judgment of this Court in the case of *Rima Devi -Versus- State of Bihar & Others, 2018 (3) PLJR 755*.

10 The impugned order dated 18.12.2013 issued by the Commandant, Bihar Military Police 6, Muzaffarpur is unsustainable in the eyes of law and is hereby quashed.

11 It is made clear that as a result of quashing of punishment order, petitioner would be treated as having died in harness and entitled to all consequential benefits.

12 Writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
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