

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 21720 of 2012

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1. Praveen Narayan Singh
 2. Purendu Narayan Singh both sons of late Krishnadeo Narayan Singh
 3. Ankita Singh D/o late Krishnadeo Narayan Singh
All resident of Singh Colony, Pakri Chowk, Ara PS Ara Nawada
Dist. Bhojpur
 4. Punam Devi D/o late Krishnadeo Narayan Singh W/o Mukesh Kumar
Singh C/o Amrendra Kumar Agrawal, Road no. 11, Rajendra Nagar,
Police Station Kadam Kuan, Dist. Patna
... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Under Secretary Establishment to the Government, Water Resources Department, Sinchai Bhawan, Pa
3. The Deputy Secretary to the Government, Water Resources Department, Government of Bihar Sinchai Bha
4. The Engineer-in-Chief, Water Resources Department, Government of Bihar Sinchai Bhawan, Patna.
5. The Chief Engineer, Water Resources Department, Aurangabad.
6. The Chief Engineer, Irrigation Department, Samastipur.
7. The Executive Engineer, North Koel Canal Division No.1, Aurangabad, District Aurangabad,.
8. The Superintending Engineer, North Koel Canal Circle, Aurangabad.
9. The Executive Engineer, Rural Development, Special Division No. 2, Garhwa, District - Garhwa, Jhark
10. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Janardan Singh
For the State of Jharkhand : Mr. Satyabrata Verma
For the State of Bihar : None

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 19-07-2019

Heard counsel for the petitioner and counsel for the
State of Jharkhand. None appears on behalf of the State of Bihar.

Two issues have been raised in the writ petition. One is
for grant of earned leave from 01.04.1992 to 31.10.1992 i.e. period



when the petitioner was posted as Junior engineer in North Koel Canal Division no.1, Aurangabad. Other relief is in respect of amount of Rs 5,88,241/- sought to be deducted from the petitioner's dues on account of shortage of stone chips during the tenure of his posting at the above noted place.

Counsel for the petitioner submits that during the period 01.04.1992 to 31.10.1992, he was engaged in the treatment of his wife. He draws attention of this court towards applications dated 31.03.1992 and 04.04.1992 (Annexure 2 series). Referring to the said documents, he submits that he had duly intimated the authorities of emergent circumstance compelling him to stay away from duty and requested for grant of earned leave.

In respect of amount of Rs 5,88,241/-, he submits that recovery is under communication of the Executive Engineer, North Koel Canal Division no.1, Aurangabad dated 26.07.2008 (Annexure R/D of the counter affidavit) filed by respondent no.9. The said decision has been assailed by filing I.A. no. 7897/2018. Copy of the I.A was served on the respondent-authorities in October, 2018 itself.

Bare perusal of decision of the Executive Engineer dated 26.07.2008 goes to show that same has been done so as to recover amount Rs 5,88,241/- on account of shortage of stone chips.



In respect of said shortage, counsel for the petitioner submits that at the relevant time during his posting at North Koel Canal Division no.1, Aurangabad, petitioner had been requesting the authorities to make arrangement for arrears of rent to owner of the premises where chips were kept. He also submits that he had been requesting the authorities for making payment of wages so that materials could be transported to the proper place. He also requested for payment of wages so as to ensure security by engaging person to look after stone chips. The said submissions have been made to show that shortage of chips has occurred on account of inaction of other authorities.

Submissions advanced by counsel for the petitioner have to be looked into by the authorities. Whether shortage of stone chips could be attributed to the petitioner or any other authority could only have been decided by the authority in a duly constituted proceedings by serving charge memo.

Pleadings on record do not suggest that any such enquiry was done. Decision to recover the amount of Rs 588241/-. From the order dated 26.07.2008 also, it appears that decision to recover the said amount is not preceded by any enquiry. The order dated 26.07.2008 has visited the petitioner with severe civil consequences on account of recovery of a substantial amount. The



same could not have been done without complying with the principle of natural justice. Authorities, on the basis of the pleadings on record, have admittedly not complied with procedural requirement for natural justice prior to the order of recovery.

Since order is visiting with severe civil consequence having regard to the manner in which decision has been taken, order dated 26.07.2008 is unsustainable in law. The same is hereby quashed.

In so far as claim of the petitioner for earned leave for the period 01.04.1992 to 31.10.1992, petitioner has not placed on record any document in support of his claim for leave based on illness of his wife on record. Period has thus been treated as break in service and on that account he has been denied earned leave by the authorities in Jharkhand also. Same is evident from Annexure R/A of the counter affidavit filed by the State of Jharkhand containing the decision dated 04.09.2012 of the Chief Engineer, Rural Development, Special Zone, Ranchi.

Counsel for State of Jharkhand submits that relief sought for by petitioner cannot be allowed. No benefit for the period 01.04.1992 to 31.10.1992 can be allowed until and unless the State authorities in Bihar would sanction the said period as earned leave or regularize the said period of absence by granting leave.



Counsel for the petitioner submits that in respect of his claim for the said period he may be permitted to approach/ supplement his applications filed before respondent no.4 for regularization of the said period and/ or grant of appropriate leave to the petitioner so as to cover his period of break in service.

Liberty to this extent is granted to the substituted petitioners.

Writ petition stands allowed in the aforesaid terms.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.8.2019
Transmission Date	NA

