

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1277 of 2019

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Vishekha Devi @ Beshekha Devi W/o Late Ugra Narayan Pathak Resident of
Village P.O.-Aurahi,P.S. Barhara Kothi,Dist.-Purnea

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary,Department of General Administration,Govt. of Bihar,Patna
2. The Principal Secretary, Department of Finance,Govt. of Bihar,Patna
3. The Commissioner,Purnea Division,Purnea
4. The District Magistrate-cum-District Officer,Kishanganj
5. The Deputy Collector, District Establishment,Collectorate, Kishanganj
6. The District Treasury Officer, Kihanganj
7. The Block Development Officer, Block Bahadurganj,Dist.-Kishanganj
8. The Block Development Officer, Block-Kochadhaman,Dist.-Kishangaj
9. The Accountant Gernal (A E), Birchand Patel Marg,Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pramod Mishra, Adv.
For the Respondent/s : Mr.Sheo Shankar Prasad (SC-8)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 16-09-2020 The petitioner is the widow of late Ugra Narayan Pathak, who was posted as Jan Sewak under Kochadhaman Block of Kishanganj District. He was put under suspension on 19.09.1991 by an order issued by the District Magistrate, Kishanganj and a departmental proceeding was initiated against him on 26.07.1994. An inquiry report was submmitted by the Inquiring Officer on 21.09.1995. It appears that there was allegation against him of embezzlement of a sum of Rs. 1,18,120/-, which was found proved in the report of the



Inquiring Officer. It further appears that a criminal case was also lodged against him. The order of suspension was subsequently vacated on 05.02.2003 with the condition that a decision on payment of salary for the period during which he had remained under suspension shall be taken after conclusion of the trial arising out of the criminal case, which was then pending. It was also decided that if he was found guilty in the criminal case, the department proceeding against him would continue.

2. Apparently, thus, after submission of the report of the Inquiring Officer dated 21.09.1995, no decision was taken on the said report till the order revoking suspension was passed. The petitioner's husband retired on 30.06.2009 on attaining the age of superannuation and died on 12.12.2014. In the meanwhile, he was acquitted in criminal case on 19.06.2012.

3. It is the petitioner's case that her husband was acquitted in the criminal case, which fact has not been disputed. The deceased employee had earlier approached this Court by filing a writ application which had given rise to CWJC No. 7692 of 2014, which was dismissed on 27.01.2015 as having abated, consequent upon his death in 2014. Liberty was, however, granted to the legal representatives of the deceased



employee to make representation.

4. The petitioner has brought on record by way of Annexure-4, the final order passed nearly three years after the death of her husband dated 04.10.2017 by the District Magistrate, Kishanganj in the departmental proceeding, which was initiated in 1991 and in which the inquiry report was submitted in 1995. Based on the findings recorded by the Inquiring Officer, relating to misappropriation of a sum of Rs. 1,18,120/- the District Magistrate has directed recovery of the said amount and further amount of Rs. 2,20,923/-(Total Rs. 3,39,043/-). He has further recorded in his order that the deceased employee shall not be entitled to any amount over and above the subsistence allowance for the period during which he had remained under suspension. The explanation why Rs. 2,20,923/- has been directed to be recovered, lies in a communication dated 08.09.2017, issued by the Block Development Officer, Bahadurganj wherein it has been mentioned that the deceased employee had withdrawn certain amount from his provident fund account which was beyond the amount to his credit in his account. The amount withdrawn by him with interest calculated thereon comes to Rs. 2,20,923/- as mentioned in the said communication dated 08.09.2017.



5. In the backdrop of facts noted above, the petitioner has sought for quashing of letter dated 08.09.2017(Annexure-3) issued by the Block Development Officer, Bahadurganj whereby the petitioner has been asked to deposit excess withdrawal amount to the tune of Rs. Rs. 2,20,923/-. She has also put to challenge the aforementioned order dated 04.10.2017, passed by the District Magistrate, Kishanganj whereby he has directed for payment of death-cum-post retiral benefits to the petitioner after adjusting total amount of Rs. 3,39,043/-, which includes a sum of Rs. Rs. 2,20,923/- against excess withdrawal from the provident fund account, with interest.

6. A counter affidavit has been filed on behalf of the Respondents-State of Bihar

7. The facts are not at all in dispute. There is no explanation on record to justify why the departmental proceeding was allowed to remain pending after submission of the inquiry report in 1995 till the petitioner's husband superannuated on 30.06.2009. He was acquitted in the criminal case on 19.06.2012. It was open for the respondents to have passed appropriate order in the departmental proceeding by converting the said proceeding into a proceeding under Section



43(b) of the Bihar Pension Rules. No such order was passed till the petitioner's husband died on 12.12.2014. On careful perusal of the impugned order dated 04.10.2017, it appears that the District Magistrate has directed for recovery of a sum of Rs. 2,20,923/- from the death-cum-retiral dues of the deceased employee while passing final orders in the departmental proceeding. The said amount of Rs. 2,20,923/- was not and could not have been subject-matter of the departmental proceeding which was initiated against the petitioner's husband. It does not appear from the impugned order whether the deceased employee was given any opportunity to submit his response to the inquiry report submitted in the disciplinary proceeding. It is not known whether any notice was issued to the deceased employee for recovery of a sum of Rs. 2,20,923/- on the ground of excess withdrawal from the provident fund account. There has been inordinate delay on the part of the respondents in taking action in the departmental inquiry. Under which jurisdiction the District Magistrate has passed the impugned order, cannot be deciphered from the reading of the order. In any event, the impugned order palpably suffers from the vice of violation of principles of natural justice. In the given situation, the matter cannot be remanded back for the



Respondents to pass an order afresh after complying with the principles of natural justice since the person who could have been given such opportunity is no more. In any event, I do not find any reason why the Court should now direct the respondents to pass any order in the departmental inquiry in which the inquiry report was submitted in 1995 and the respondents failed miserably to take any decision till the petitioner's husband died in 2014. The judgment in the criminal case acquitting the petitioner's husband was admittedly delivered on 19.06.2012.

8. In such view of the matter, the impugned orders passed at such belated stage cannot be sustained. The impugned orders are accordingly set aside.

9. The petitioner has prayed for directing the respondents to allow service benefits to the petitioner's husband and consequential benefits to her.

10. Considering the facts noted above, this application is allowed. Consequently, it is directed that let entitlements of the deceased husband of the petitioner be computed treating as if there was no punishment ever imposed on him. I hold the petitioner's deceased husband to be entitled to full salary for the period during which he was under



suspension as the departmental proceeding against him remained inconclusive in the eye of law and the criminal proceeding resulted in his acquittal. The respondents have dragged the matter to this stage where it cannot be even remanded back to them for fresh decision after the death of the deceased employee.

11. The respondents are directed to consider the claim of grant of time bound promotion/ACP in relation to the petitioner's deceased husband, fix his salary and compute his entitlements accordingly against pension and gratuity etc. The petitioner's family pension shall also be determined accordingly.

12. The Court directs the District Magistrate, Kishanganj to ensure that entire exercise is undertaken and all benefits in terms of arrears of salary, pension, family pension, other admitted dues and monthly family pension are paid to the petitioner within a period of six months from the date of receipt/production of a copy of this order. The District Magistrate shall be obliged to supply to the petitioner the details of calculations of the entitlement against various heads. The petitioner shall be at liberty to raise her objection before appropriate forum if according to her the payments made pursuant to this order are



less than her actual entitlements.

13. The court was contemplating imposition of cost to be recovered from the person responsible for delayed decision in the departmental proceeding. However, the Court has restrained from passing such order in the present situation.

(Chakradhari Sharan Singh, J)

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