

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Civil Writ Jurisdiction Case No.9674 of 2018**

1. Asha Devi, wife of Late Alok Kumar Singh
2. Amit Kumar Singh, son of Late Alok Kumar Singh
3. Manish Kumar, son of Late Alok Kumar Singh
4. Vineet Kumar, son of Late Alok Kumar Singh
5. Sumit Kumar Singh, son of Late Alok Kumar Singh
All are resident of Mohalla-J-35, P.C. Colony, Police Station - Kankarbagh,
District-Patna.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary of the General Administration Department, Government of Bihar, Patna.
3. The Under Secretary to the Government, General Administration Department, Government of Bihar, Patna.
4. The Special Secretary to the Government, General Administration Department, Government of Bihar, Patna.
5. The Secretary, Minor Water Resource Department, Government of Bihar, Patna.
6. The Joint Secretary-II, Minor Water Resources Department Government of Bihar, Patna.
7. The Chief Engineer, Minor Water Resource Department, Sheikhpura, Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Singh, Advocate
For the Respondent/s : Mr.Sheo Shankar Prasad -Sc8

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

5 08-06-2020 I. A. No. 01 of 2019 has been filed for expunging the name of the original petitioner namely Alik Kumar Singh (since deceased) from the records and to substitute his legal heirs and representatives as petitioners in the present case. The original petitioner is said to have died on 06.02.2019.

The respondent State has no objection to the same.



Let the I. A. No. 01 of 2019 be allowed. The legal heirs of the original petitioner whose name appears in paragraph '2' of the interlocutory application be substituted in place of the petitioner and they will be treated as petitioner nos. 1 to 5 respectively.

Heard learned counsel for the petitioner and learned SC 8 on behalf of the State of Bihar.

The original petitioner in the present case challenged the order as contained in Memo No. 11820 dated 30.09.2017 (Annexure '6') passed and issued by the Under Secretary of the Government in General & Administration Department, Government of Bihar (respondent no. 3).

By the impugned order the order dated 25.07.2016 passed by the appellate authority i.e. the Board of Revenue has been cancelled and the order of withholding of 100 % of the pension of the petitioner which had been passed earlier vide order no. 4851 dated 09.04.2014 by respondent no. 4 has been reinstated and enforced.

Learned counsel for the petitioners submits that this writ application has to be allowed without going into the merit of the contentions at this stage on the solitary ground that the impugned order is in teeth of the principles of natural justice. It



is submitted that the original petitioner was subjected to a departmental proceeding under Rule 43(B) read with Rule 139 of the Bihar Pension Rules. There were allegations against him of taking a bribe of Rs. 3000/- while working as an Assistant in Minor Water Resources Department, Patna. While the criminal case was still pending, the Special Secretary of General Administration Department vide order as contained in Memo No. 4851 dated 09.04.2014 stopped 100% pension of the petitioner.

Being aggrieved by the order passed by the Special Secretary, General Administration Department, the original petitioner preferred an appeal before the Board of Revenue, the same was registered as Service Appeal No. 41 of 2014 and after hearing learned counsel for the original petitioner who was appellant before the Board of Revenue as also the departmental representative the Chairman-cum- Member Board of Revenue held that the impugned order as contained in Memo No. 4851 dated 09.08.2014 was passed by the Disciplinary Authority in violation of Rule 17 and Rule 18 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 as also the order was in violation of principles of natural justice. The impugned order was thus, set-aside by the appellate



authority with an observation that the said order shall not affect the criminal proceeding against the appellant and that would proceed in accordance with law.

Learned counsel for the petitioners submits that the review preferred by the State of Bihar before the Board of Revenue being case No. 7/16 was also dismissed vide order dated 25.07.2016 but thereafter, the General Administration Department proceeded to impose the punishment as contained in Memo No. 4851 dated 09.08.2014 by holding that the order passed by the appellate authority as contained in Anneuxre '15' to the writ application was not in accordance with law.

There are two fold submissions of learned counsel for the petitioners. The first contention is that the Department of General Administration , Govt. of Bihar had no authority of law or jurisdiction to set aside the order passed by the appellate authority. In this regard, it is submitted that the impugned order as contained in Annexure '16' nowhere talks of any statutory provisions under Rules of 2005 within which the State of Bihar could have exercised any such power suo-moto. The second submission of learned counsel for the petitioner is that in any case before passing the impugned order, the petitioner was required to be heard but in this case no opportunity of hearing



was given to the petitioner, thus, the impugned order suffers from violation of principle of 'audi altrem partem' and is fit to be set aside on this ground alone. In this regard statements made in paragraph '27' of the writ application have been referred to which specifically states that before passing of the impugned order no show cause notice or opportunity of hearing has been given to the petitioners.

A counter affidavit has been filed on behalf of the State respondents no. 2 to 4. In paragraph '34' of the counter affidavit, averments made in paragraph '27' of the writ application has been answered. According to the State respondents the appellate authority had set-aside the order of punishment but by the impugned order the Government has decided to reinstate the order of punishment, therefore, there was no need to ask any show cause from the delinquent petitioner Paragraph 34 of the counter affidavit is, thus, an admission of the respondents that prior to passing of the impugned order no opportunity to show cause was given to the petitioner.

Having heard learned counsel for the petitioners and learned SC 8 on behalf of the State as also on going through the materials available on the record, this Court is of the considered



opinion that at this stage this writ application has to be allowed on the solitary ground of violation of principles of natural justice by the State respondents while passing the impugned order.

This Court is unable to appreciate the contention of respondent nos. 2 to 4 that because they were reinstating the order of punishment, therefore, no opportunity to show cause was required to be given. Such contention being devoid of merit is to be thrown out at the threshold. It is well settled in law that the principles of natural justice is like a brooding omnipresence which prevails everywhere. In the present case, the appellate authority had set aside the order of punishment, therefore, the original petitioner had acquired a beneficial right by virtue of the order passed by the appellate authority.

If at all the State Government wanted to get rid of the appellate authority and to impose the punishment once again by reiterating the same, and even if such power vested with the government before doing that it was incumbent upon the State Government to give an opportunity to show cause/hearing to petitioner in accordance with law.

One of the contentions of learned counsel for the petitioners is that the State Government had no authority of law



to set at naught the appellate order and the impugned order nowhere refers the provisions from which the State Government could have derived that power.

In the opinion of this Court, for the present, the Court would set-aside the impugned order on the ground of violation of principles of natural justice as no opportunity of hearing was given to the original petitioner before passing the impugned order. Once the impugned order is set-aside and the matter is remitted to the State respondents to give a fresh consideration after giving an opportunity of hearing to the present petitioners (substituted legal heirs of the original petitioner) it will be open for the petitioners to raise all such issues including the one which has been raised hereinabove, before the respondent authorities.

This Writ Application is, thus, allowed. The impugned order is hereby set-aside and the matter is remitted to the Principal Secretary, General Administration Department, Government of Bihar (Respondent No. 2) to consider the matter afresh after giving appropriate opportunity to show cause and hearing to the petitioners. All contentions are left open. Since the matter relates to the payment of pensionary benefits and now the widow and the other legal heirs of the original petitioners



are looking for justice, it is all the more necessary that respondent no. 2 must dispose of the matter within a period of four months from the date of receipt/production of a copy of this order.

In case, the petitioners succeed before respondent no. 2, respondent no. 2 shall pass necessary consequential orders.

The Writ Application stands allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

