

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20295 of 2013

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Mandvi Devi W/O Late Suresh Jha Resident Of Village - Pokhar Bhinda, P.O.
- Telhar, P.S. - Mahisi, District - Saharsa

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Finance Commissioner, Pension Cell, Bihar, Patna
3. Accountant General, Bihar, Patna
4. Collector, Saharsa
5. Sub-Divisional Officer, Saharsa Sadar
6. District Provident Fund Officer, Saharsa

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mallika Mazumdar, Advocate
For the Respondent/s	:	Mr. S.S. Shabbar Hussain
For the State	:	Mr. Yatindra Narayan, AC to GP-16
For the Principal Account General (A & E), Bihar	:	Mr. Binod Kumar Labh, Standing Counsel

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

2 23-01-2023 The petitioner has preferred this writ petition praying for quashing of order dated 17.05.2013 whereby the petitioner late husband was dismissed from service.

Learned counsel for the petitioner submits that the order of dismissal has been passed in contravention of principle of natural justice and in violation of Article 311 of the Constitution of India. Before taking any action, no opportunity of hearing was given to the petitioner's husband nor he was provided with any enquiry report. On account of passing of the order dated 17.05.2013, dismissing him from service of Class-IV, he suffered shock and expired on



23.05.2013.

The petitioner has asserted that her husband had been appointed on 24.04.2007 as a Class-IV employee. After orders passed by this Court in a writ petition bearing CWJC No.4021 of 2000 and orders passed in MJC No.1001 of 2006 decided on 07.03.2007, the educational certificates of the petitioner's husband was doubted by the then District Education Officer, Saharsa, who conducted an enquiry at his level. The transfer certificate was not verified and on the said basis, the petitioner's documents were treated as forged and he was dismissed from service, whereas the Principal of the School, where the petitioner had studied, clearly stated that the petitioner had passed his qualification from the said School. It has also been pointed out that in the impugned order itself it is mentioned that the documents could not be verified on account of documents having been lost.

Learned counsel submits that the petitioner's husband ought to have been served in the chargesheet and as he was already working on the post since 2007 and he should have been given a fair opportunity to defend himself and to prove his document but no such approach was adopted and the Collector has passed an arbitrary order on 17.03.2013 dismissing him from service.

A counter affidavit has been filed and the respondents have stated that they had conducted an enquiry with regard to the educational qualifications of the deceased and the concerned



Principle had not cooperated in the enquiry and, therefore, there was a doubt with regard to his educational qualification. The enquiry report dated 11.08.2012 has been placed on record which has been made the basis for dismissing the petitioner's husband from service. It is not denied that enquiry was not conducted.

After a long litigation, it appears that this Court passed an order in the contempt proceeding whereafter petitioner was appointed in 2007. Thereafter, the respondents appeared to have again embarked upon an enquiry to verify the documents of the petitioner's husband and although, it has come on record that the original document had been lost in floods, still on the basis of doubt, the services of the petitioner's husband was dispensed with and he was held to have been appointed on the basis of forged documents and was dismissed vide order dated 17.08.2013. No opportunity of hearing was given to him and no notice was served upon him and the enquiry report dated 11.12.2008 was also not made available to him.

From perusal of the counter affidavit, it is noticed that the controversy and suspicion arose on account of generating two reports of the E.O., Saharsa and others of the Headmaster of the School and therefore the matter was sent for further enquiry by the Establishment. The Deputy Collector, Saharsa submitted his report on 11.08.2012 which was made a basis of holding the petitioner's appointment by fraudulent means and petitioner's husband was dismissed from service.



A look at the report dated 11.08.2012 submitted by the Deputy Collector, Saharsa (Annexure-B to the counter affidavit) reflects that the Deputy Collector did not give a final findings of the documents being forged, he has only opined that there may be a doubt relating to the educational qualifications. Even in the order impugned, the Collector does not state with conformity that documents are forged but states that there is a doubt relating to the educational qualification and he therefore proceeded to dismiss the concerned person. The order resulted in a shock and death of the concerned person. This Court finds that the action of the respondents is clearly arbitrary and illegal. Rule of law cannot be converted to rule of thumb. Merely on the basis suspicion. No person can be punished. That apart, principles of natural justice are inherent in any proceedings which may result in taking away vested rights of an individual. The Principal has also been reflected in the principles of Article 311 of the Constitution of India.

Keeping in view above, this Court is satisfied that the order of dismissal has been passed illegally and in contravention of the provisions of law. Order dated 17.05.2013 is accordingly, quashed and set aside. The petitioner who is wife of the deceased would be entitled to all consequential benefits including benefit of compensation as well as family pension and benefit of death-cum-retirement benefit of the deceased employee.

This Court finds that the action being arbitrary costs needs



to be imposed on the concerned which may be made recoverable from the concerned officers.

Accordingly, cost of Rs.50,000/- would be paid to the petitioner.

The exercise shall be completed within three months.

(Sanjeev Prakash Sharma, J)

Brajesh Kumar/-

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