

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2483 of 2019

1. Satyendra Prasad, Son of Late Brijnandan Prasad, resident of Meghi Nagma, P.S. Deep Nagar, District- Nalanda, at Present working as Steno Typist Minor Irrigation Division (Gandhi Ashram) Hazipur- 844101.
2. Umesh Kumar Singh, Son of Late Asheshwar Singh, resident of Dariyapur, P.O. and P.S.- Sibaipatti, District- Muzaffarpur at present working as Correspondent Clerk Minor Irrigation Division, Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Irrigation Department, Govt. of Bihar, Patna.
3. The Chief Engineer, North Minor Water Resources Department, Muzaffarpur.
4. The Superintending Engineer, Minor Irrigation, Circle, Muzaffarpur.
5. The Executive Engineer, Minor Irrigation Division, Muzaffarpur.
6. The Deputy Secretary, Minor Water Resources Department, Government of Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bidhanesh Misra, Advocate
For the Respondent/s	:	Mr. Ajeet Kumar, GA-9
		Mrs. Tanuja Kumari Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

3 12-11-2024 Heard Mr. Bidhanesh Mishra, learned Advocate for the petitioner and Mr. Ajeet Kumar, learned Government Advocate No. 9.

2. Two petitioners before this Court are seeking quashing of the letter no. 3338 dated 06.08.2018 issued by the Deputy Secretary, Minor Water Resources Department, Government of Bihar whereby the Chief Engineer, Muzaffarpur has been directed to deduct 40% of Rs. 3,49,433/- from the petitioners alongwith others as they were held responsible for



delay in making payment of retiral dues in favour of one Pramod Kumar Sinha, the retired Junior Engineer of the Minor Irrigation Department, Government of Bihar.

3. The short facts, which led to the filing of the writ petition are that while the petitioners have been working as Steno Typist and Correspondence Clerk respectively in the Minor Irrigation Division, Muzaffarpur, one Pramod Kumar Sinha, retired Junior Engineer approached this Court for grant of his retiral benefits and other dues in C.W.J.C. No. 5903 of 2013.

4. The matter finally came up before the learned Division Bench of this Court in L.P.A. No. 901 of 2013. The learned Division Bench while allowing the Letters Patent Appeal has been pleased to direct the department to hold an enquiry fixing responsibility on the concerned after due opportunity and having paid the interest to the appellant (Pramod Kumar Sinha), has directed recovery from the salary of the concerned and deposit it in the Government coffer.

5. In compliance with the order afore-noted passed by the learned Division Bench, the department enquired the matter and found that the persons who were posted there in the office, at the relevant point of time, were responsible for delay in payment of the retiral benefits/arrears to the Junior Engineer, Pramod Kumar Sinha. In terms of the letter no. 1044 dated



18.08.2015, the copy of which is marked as Annexure 4 to the writ petition, the respondent no. 6 directed the respondent no. 3 to recover 40% of the sum of Rs. 3,49,433/- from the petitioners and others in five installments vide letter no. 3338 dated 06.08.2018, which letter is put to challenge in the present writ petition.

6. Learned Advocate for the petitioner while assailing the impugned order has contended that despite the specific direction of this Court to hold an enquiry and fix responsibility on the concerned after due opportunity, the petitioners have neither been given any opportunity of being heard, nor any cause to be shown by issuance of show cause notice upon them.

7. The learned Advocate for the petitioners further drew the attention of this Court to the letter no. 341 dated 05.02.2019 and vigorously contended that the afore-noted letter clearly suggests that none of the persons, including, the petitioners have been found responsible for any delay in extending the benefit of retiral dues; Nonetheless, the State respondent authorities have proceeded and recovered the proportionate amount from the salary of the petitioners.

8. It is also contended that before passing the order of recovery, the Executive Engineer, Minor Irrigation Division, Muzaffarpur also wrote letter to the Superintendent Engineer,



Minor Irrigation Division, Muzaffarpur to get a legal opinion on the matter that has also not been acceded to.

9. Adverting to the aforesaid facts, learned Advocate for the petitioner thus contended that the impugned order, apart from violative of the principle of natural justice, is in the teeth of the order/judgment passed by the learned Division Bench of this Court, as the petitioners have never been given any opportunity to be heard before fixing the responsibility of causing delay in ensuring the payment to a retired Junior Engineer, Mr. Pramod Kumar Sinha.

10. Learned Advocate for the State has taken this Court through the averments made in the counter affidavit and the annexures appended thereto and submitted that it is the admitted fact that the petitioners have been discharging the duty in the concerned office, at the relevant point of time and their culpability in causing delay in ensuring the retiral dues and other benefits, cannot be denied. However, he did not confront the position and fairly contended that *prima facie* from the order impugned and the materials available on record it does not show that at any point of time any show cause notice have been issued to the petitioner or opportunity of hearing have been afforded to them.

11. Having considered the rival submissions on behalf



of learned Advocate for the respective parties and taking note of the fact that before passing the impugned order of recovery, invading over the right of the petitioners, neither any cause shown to them nor they have been allowed any opportunity to place their explanation and, as such, the impugned action of the respondent is in complete violation of the principle of natural justice.

12. Well settled it is, that no person shall be condemned unheard. The principle of *audi alteram partem* is based upon the idea that a fair decision can only be taken, when all relevant information is considered. If a fair hearing is not provided, the decision may be declared null and void. In the case in hand the materials clearly reveal that the petitioners have never been put to any notice before passing the impugned order or recovery. The deduction/recovery of the amount from the salary of the petitioners is in the opinion of this Court is a minor penalty, which cannot be inflicted without adopting the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005.

13. On all the counts this Court finds substance in the submission of learned Advocate for the petitioner. Accordingly the writ petition stands allowed. The impugned orders of recovery as contained in annexure 1 and 2, so far it relate to the



petitioners, stand quashed. The respondents are directed to restore the amount recovered from the salary of the petitioner, forthwith.

14. Suffice it to observe that the respondent authorities are at liberty to take appropriate legal recourse in terms of the order passed by the learned Division Bench of this Court in L.P.A. No. 901 of 2013.

(Harish Kumar, J)

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