

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7642 of 2016

Most Kalawati Devi, Wife of late Sahdeo Rai, Resident of Village- Hiramani,
P.S. Shara, District- East Champaran, Motihari.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner , Tirhut Division Muzaffarpur.
3. The Collector East Champaran Motihari.
4. S.D.O. Pakridayal Motihari.
5. District Panchayat Raj Officer, East Champaran Motihari.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Uma Shanker Verma, Advocate Mr. Binod Kumar Mishra, Advocate Ms. Kumari Anjali, Advocate
For the Respondent/s	:	Mr. Mujtabaul Haque, GP-12

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 26-09-2024

Heard Mr. Uma Shanker Verma, learned counsel
along with Mr. Binod Kumar Mishra and Ms. Kumari Anjali,
learned counsel appearing on behalf of the petitioner and Mr.
Mujtabaul Haque, learned GP-12.

2. The petitioner in paragraph no. 1 of the present
writ petition has sought *inter alia* following relief(s), which is
reproduced hereinafter:

*"(i) To quashed the order dated 03.11.2015
passed by the Commissioner, Tirhut Range, Muzaffarpur
(Appellate Court) in Appeal No. 396/2014 by which the Learned
Commissioner affirmed the order of Collector dated 23.12.2010
communicated by District Panchayat Officer, East Champaran,
Motihari dated 28/12/2010 by which the petitioner has been
punished on two fold, firstly deduction of 5% of non equability
pension for a period of one year; secondly during period of
suspension only substantial allowances will be paid which is not
permissible in the eye of law, illegal and without jurisdiction*



because the petitioner has not found guilty for defalcation of money during inquiry in the department proceeding conducted by S.D.O. Pakridayal, East Champaran.

(ii) To restrain the respondents not to act on the award of punishment passed by the District Magistrate communicated by District Panchayat Officer by which the petitioner's suspension has been revoked on conditional punishment. And it is further directed to pay full suspension allowances including the salary and other benefits with interest including the deduction 5% of non-equability pension amount for period of 1 year.

(iii) To any other relief / reliefs the petitioner is entitled to."

3. The petitioner is aggrieved by the order contained in Memo No. 75 dated 28.12.2010, by which the original petitioner (deceased employee) was inflicted punishment of reduction of five percent pension with cumulative effect for a period of one year and during the period of suspension, he was only entitled for subsistence allowance. Thereafter, the original petitioner had preferred appeal before the Commissioner, Tirhut Range, Muzaffarpur being Appeal No. 396 of 2014, which was rejected vide order dated 03.11.2015 affirming the order of the Disciplinary Authority (Collector).

4. Learned counsel appearing on behalf of the petitioner submitted that from the very charges alleged against the original petitioner as would appear from the enquiry report the charges have not found to be proved against the original petitioner, the same would not amount that the deceased employee had committed any lapses, rather, the original



petitioner can be only held to have committed certain negligence in depositing certain amount in respect of Financial Year 2004-2005 allocated as advance for execution of work of soling and filling of soil along with construction of flanks. The Enquiry Officer had recommended that since the advance money was immediately given to the contractor, the case of the original petitioner may be considered in a sympathetic manner. Learned counsel further submitted that charges no. 1 and 2, relating to lapses alleged against and misappropriation having found to be not proved, the petitioner has been inflicted punishment on no material. Even considering the charge no. 7, in respect of certain allegation made against the petitioner that he had favoured one beneficiary, namely, Girija Devi and her husband against the guidelines, who have not shown to be two different person in B.P.L. list, the petitioner was not provided any opportunity to cross examine the said two beneficiaries, which vitiates the finding of the Enquiry Officer.

5. Learned counsel further submitted that in spite of the fact that no conclusive conclusion has been derived by the Enquiry Officer that any of the charge levelled against the petitioner has been proved on the basis of evidence, merely holding the petitioner to have committed misconduct is not in



accordance with law, and, as such, the Disciplinary Authority having not followed the prescribed procedure laid down in Rules 19 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and the order of punishment contained in Memo No. 75 dated 28.12.2010 inflicted against the original petitioner is fit to be set aside and quashed. Accordingly, the consequential order of appeal dated 03.11.2015 passed in Appeal No. 396 of 2014 is also not sustainable in the eye of law.

6. *Per contra*, learned counsel appearing on behalf of the respondents submitted that no procedural lapse has been found in conducting of proceeding. Original petitioner was given due opportunity of hearing in course of enquiry and on the basis of conclusion drawn by the Enquiry Officer, the Disciplinary Authority had imposed minor punishment have not committed any procedural lapses and the same doesn't call for interference by this Court.

7. Heard the parties.

8. Having considered the rival submission made on behalf of the parties, as well as, the fact that no conclusive finding has been recorded by the Enquiry Officer in respect of charges no. 2 and 7 that the same has been proved on the basis



of evidence, rather, the Enquiry Officer has suggested that sympathetic approach may be taken in the case of the original petitioner. In respect of charge no. 7 also, the Enquiry Officer has not given any finding, as to whether, the beneficiary in respect of allotment of "*Indra Awas Yojana*" has been found to be different person. It is known that the list of beneficiary is submitted by the '*Aam Sabha*' of the *Gram Panchayat* and the same is executed by the officer in accordance with the Scheme. However, in spite of the said fact, the original petitioner was not given any opportunity to cross examine the two beneficiaries to whom allegation against him is that he has favoured. The action of the original petitioner cannot be held to be, in any manner, contrary to the guidelines and rules giving allotment of "*Indra Awas*".

9. I find that the decision of the Disciplinary Authority drawn on the basis of the conclusion drawn by the Enquiry Officer cannot be said to be in accordance with law. Since the charges levelled against the original petitioner to have not been conclusively proved, the order of penalty dated 28.12.2010 contained in Memo No. 75 and consequential order of appeal dated 03.11.2015 passed in Appeal No. 396 of 2014 are hereby set aside and quashed.



10. As I have already quashed the order of penalty, the petitioner, who is the wife of the original petitioner, who is entitled for family pension and other retiral benefits which are not paid to the original petitioner, must be calculated and paid to the petitioner on the basis of last pay drawn by the deceased employee.

11. The petitioner, if so desire, may also file a detailed representation along with a copy of this order before the appropriate authority, who is directed to dispose of the same in accordance with law within a considerable time.

12. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	30.09.2024
Transmission Date	N/A

