

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.276 of 2009

Lakshman Ram, son of late Ramdeni Ram, resident of Village-Sarsauli, Police Station-Obra, District-Aurangabad at present Senior Assistant Accounts Officer, Bihar State Food and Civil Supplies Corporation, 5th Floor, Sone Bhawan, Patna.

.... Petitioner/s

Versus

1. The Bihar State Food and Civil Supplies Corporation through its Managing Director, 5th Floor, Sone Bhawan, Birchand Patel Path, Patna.
2. The Chief of Claims, Bihar State Food and Civil Supplies Corporation, 5th Floor, Sone Bhawan, Birchand Patel Path, Patna.
3. The Chief of Finance, Bihar State Food and Civil Supplies Corporation, 5th Floor, Sone Bhawan, Birchand Patel, Patna, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Sudarshan Kumar,
Mr. A.C.Nirankar,
Mr. Madhu Prasun, Advocates.
For the Respondent/s : Mr. R.S. Pradhan, Sr. Advocate.
Mr. Amrendra Narayan Rai, Advocate.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 24-12-2014

Heard the parties.

In the present writ petition petitioner is challenging memo no.6-04-156-1-04-4763 dated 5.6.2008 by which direction has been given to realize Rs.1,75,250.84 from his salary i.e. 50% from the petitioner's monthly salary which the petitioner would be entitled and further to realize interest at Bank Lending rate for the year 2007-2008. Further prayer has been made for setting aside the memo no. 7055 dated 31.8.2005 (Annexure-3) and also for quashing the memo no., 7861 dated 23.9.2005 (Annexure-5).



The petitioner was an employee of the Bihar State Food and Civil Supplies Corporation (hereinafter referred to as “the Corporation”). He joined the service on 31.6.1975 as Senior Auditor at the head office of the Corporation and subsequently promoted to the Assistant Accounts Officer. He was posted as District Manager In-charge in between 1993 to 2005 and served the Corporation at different places.

One Hari Ram Paswan was posted as Assistant Manager at Nawada, during the period from 6.3.2002 to 15.3.2005 and during that period there was a defalcation of Rs. 38,51,188.93. Petitioner was also posted at Nawada from 24.6.2003 to 15.3.2005 as In-charge District Manager and during that period said Paswan had defalcated Rs.8,45,050.70. Petitioner enquired into the matter, on the order of the District authority, instituted an FIR against Sri Paswan. So much so petitioner has also submitted detailed report to the Chairman-cum-Managing Director vide his letter dated 4.7.2005 (Annexure-2 to the writ petition). On the basis of preliminary enquiry as well as on institution of the criminal case, a departmental proceeding was initiated against him and there finding was recorded about his defalcation of Rs. 8,45,050.70 during the tenure of petitioner. As the petitioner and two others were posted during that period on the basis of two



circulars vide memo no. 2862 dated 24.4.2004 and memo no.542 dated 22.1.2005, the petitioner and others were issued show-cause notice for realization of defalcated amount of money. On the basis of the circular, major portion of defalcated amount was order to be realized from Sri Paswan and rest amounts were equally divided against rest persons who were posted there and directed for realization of amount including the interest part. It also appears Managing Director vide memo no. 5421 dated 1.7.2008 (Annexure-7) directed for realization of all amounts of Rs. 38,81,188.93 from Sri Paswan. From the record it does not appear that any proceeding was initiated against the petitioner, only show cause notice was issued. Petitioner filed his explanation, considering his explanation, on the basis of the circular, vide memo no.7055 dated 31.8.2005 direction was given to realize the amount of Rs.1,45,031.83 from petitioner.

Learned counsel for the petitioner submits that there is no allegation against the petitioner for defalcation of the said amount rather in a departmental proceeding, the Corporation arrived to a finding that it is Sri Paswan who has defalcated the entire amount of Rs.38,81,188.93. Merely because the petitioner was posted there, the responsibility cannot be attached upon him in view of findings recorded in a properly constituted Enquiry Committee



that petitioner was not party to the defalcation. He further submits in such view of the matter awarding punishment to an innocent person is an act of arbitrariness on the part of the Corporation which is “State” within the meaning of Article 12 of the Constitution of India. He has further submitted in an identical situation one Awadh Kishore Pandey has challenged the order of realisation of the amount vide C.W.J.C. No.9683 of 2008 and this Court vide order dated 5.8.2013 has granted relief to him. He has further submitted that case of the petitioner is identical to the case of Awadh Kishore Pandey.

Learned counter for the respondent has tried to justify the action of the Corporation on the basis of the circular as aforesaid and submitted that as the petitioner was posted there he was equally liable for the return of defalcated amount in equal proportion. He further submits that petitioner was given notice and after his explanation he was directed to return the amount as aforesaid.

Having considered the rival contentions of parties petitioner was posted during the period 24.6.2003 to 15.3.2005 as In-charge District Manager. Mere posting of a person, having not involved in the defalcation, cannot be liable for the defalcated

amount. In fact, no departmental proceeding was initiated against him and there is no finding against him that petitioner was also involved or party to the defalcation. So much so the circular cannot be made applicable against the petitioner as the circular will be made applicable in a situation when petitioner would have been involved in the defalcation of money of the Corporation. So much so the case of the petitioner is identical to the case of Awadh Kishore Pandey.

In this view of the matter, this writ petition deserves to be allowed and accordingly the impugned orders contained in memo no.7055 dated 31.8.2005 (Annexure-3) and memo no.7861 dated 23.9.2005 (Annexure-5) are hereby quashed. If any amount has already been realized from the petitioner, the Corporation is directed to refund the amount along with statutory interest to the petitioner.

In the result, this writ petition is allowed.

Vinay/-

(Shivaji Pandey, J)

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