IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1925 of 2000

==

Sachchidanand Shahi, son of late Bankey Prasad Shahi Sir Ganesh Dutta Nagar, Bhagwanpur at and PO Bhagwanpur District Muzaffarpur at present dismissed Cashier Muzaffarpur Regional Development Authority, Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar through the Commissioner cum Secretary, Department of Urban Development, Vikas Bhawan, Patna
2. Muzaffarpur Regional Development Authority through its Vice Chairman, Company Bagh Muzaffarpur
3. The Secretary, Muzaffarpur Regional Development Authority, Muzaffarpur

.... Respondents

==

Appearance :

For the Petitioner/s : None

For the Respondent/s : Mr. Manoj Kumar Jha, AC to GP26

==

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL ORDER

4 01-04-2015 No one appears for the petitioner. Learned counsel for the respondents are present.

The petitioner in this writ application has assailed an order of punishment by way of dismissal from the service dated 16.12.1999. From perusal of the writ application it would transpire that the petitioner while working as a Clerk in the office of the then Improvement Trust, Muzaffarpur was subjected to a departmental proceeding for defalcation of causing loss to the tune of Rs.1,15,388/-. The petitioner for the charges of such defalcation was subjected to a departmental proceeding and also a criminal case was lodged against him. In the departmental proceeding out of three charges, two of them have been found to have been proved and one which really went to the root of the matter was proven misconduct of the petitioner of misappropriation of a sum of Rs.28,000/- as has been not only explained in the enquiry report but also in paragraph no.23 of the counter affidavit, the relevant portion whereof reads as follows:

> "23. That with regard to the statements made in paragraph 16 of the writ application under reply, it is stated that the assertion of the petitioner is misconceived. The charges leveled against the petitioner were with respect to misappropriation and defalcation of money of the authority. It is further stated that after service of charge memo through letter no. 1123 dated 21.9.96, in course of verification of the accounts it transpired that over and above, the amount defalcated by the petitioner and duly shown in the charge memo a further sum of Rs.28,000/- had also been defalcated by the writ petitioner. Since the said further defalcation of Rs.28,000/- came to the notice of the authority subsequent to service of the charge memo, the said amount of Rs.28,000/- could not be mentioned and referred to in the charge memo. It is further stated that while audit of the accounts for the years 1995-96 and 1996-97 by the Auditor of the Accountant General, it transpired that the petitioner had mentioned a sum of Rs.103767 and 20 paise towards receipt head on 26.6.1996. Against that amount, he has also shown in the cash book that he had deposited Rs.53,000/- in the

> account of the authority with the state Bank of India, Red Cross Branch and the last balance of that date was shown to be Rs.50767.20 paise whereas on perusal of the Bank statement, it transpired that on that date, in fact, a sum of Rs.25,000/- had been deposited and not 53,000/- as shown by the petitioner in the cash book and as such, the last closing balance of that date ought to have been 78767.20 paise and not 50767.20. Thus the petitioner defalcated the aforesaid Rs.28,000/-. What the petitioner had done in order to defalcate the aforesaid amount that a bankers cheque for Rs.18,000/-, a bank draft of Rs.10,000/- total 28,000/- was shown by the petitioner as cash receipt."

The petitioner has sought to deny the charge both in course of departmental proceeding as also before this Court but then paragraph no.23 of the counter affidavit has bee sought to be replied by the petitioner by taking an evasive stand as would be apparent from paragraph no.14 of reply to the counter affidavit which reads as follows:

> "14. That with regard to the statement made in paragraph 23 of the counter affidavit it is stated that Rs,28,000/- said to have been defalcated is in the shape of Bank draft and Bankers cheque which are duly credited to the account of the MRDA. It cannot be defalcated as to it has already been credited to its accounts."

It would, thus, become clear that the matter relating to accounting having been pointed out by the Auditor of the

Accountant General when the petitioner was subjected to a departmental proceeding he could not satisfactory explain the amount of misappropriation and in fact came out with a lame plea that he was not disclosed his defence because the criminal case was pending against the petitioner.

Pendency of a criminal proceeding can never be a ground to avoid a departmental proceeding and in case the petitioner was having any such prejudice he ought to have made a prayer for stay of the departmental proceeding before the appropriate court if such relief was refused by the enquiry officer/ disciplinary authority. The petitioner, however, having participated in the departmental enquiry could not have made pendency of criminal case a plank to continue in service.

Be that as it may, this Court on perusal of the materials on record does not find any procedural error in the departmental proceeding conducted against the petitioner.

That being so, this application must fail and is hereby dismissed.

(Mihir Kumar Jha, J)

surendra/-

U			