

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11743 of 2016

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Ajit Kumar Pandey S/o Late Pandey Shrikant Sharma, resident of Mohalla-Montessori, Lane Boring Road, P.S.-S.K. Puri District-Patna

... Petitioner

Versus

1. The Bihar State Ware Housing Corporation B-2, 1st Floor, Mauryalok Complex, Patna (Bihar) through its Managing Director.
 2. The Chairman, Bihar State Ware Housing Corporation B-2, 1st Floor, Mauryalok Complex, Patna-1 (Bihar).
 3. The Managing Director, Bihar State Ware Housing Corporation B-2, 1st Floor, Mauryalok Complex, Patna-1 (Bihar) ... Respondents
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Appearance :

For the Petitioner : Mr. Raghib Ahsan, Sr. Adv. with Mr. Ravindra Kumar Shukla, Adv.

For the Respondents : Mr. Mithilesh Kumar Rai & Bindhyachal Rai, Advs.

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL ORDER

12 04-07-2018

Heard learned counsel for the petitioner and Bihar State Warehousing Corporation (hereinafter referred to as the “Corporation”).

2. The petitioner has moved the Court for the following reliefs :

(i) For issuance of a writ in the nature of certiorari to quash the part of the order contained in Memo No. 179 dated 18.03.2016 issued under the signature of Managing Director, Bihar State Ware Housing Corporation (hereinafter called as the Corporation for brevity) whereby and where under a sum of



Rs.24,78,052 + Rs.2125 = 24,80,177/- the amount of total pensionary benefits has been ordered to be adjusted from the total loss sustained by the Corporation as alleged during the period 2002 when the petitioner was posted as incharge Lohardaga Centre of the Corporation and in the stock of what of Food Corporation of India there has been a deterioration found in quality of what and in terms of money it was assessed to the tune of Rs.24,78,052/- + a sum of Rs.2,125/- was also found due towards taken advance amount for Motor Cycle.

(ii) For issuance of a writ in the nature of mandamus directing/commanding the concerned Respondents to release the entire pensionary amount already sanctioned by the Corporation to the tune of Rs.24,80,177/- which has been arbitrarily and illegally withheld on the alleged stale charge of 2002 for which no proceeding what so ever was initiated against the petitioner



till the date of his retirement or even after his retirement.

(iii) This Hon'ble Court is further prayed to adjudicate and hold that petitioner is quite innocent and cannot be held guilty in view of the documents available on record particularly the minutes of the meeting held dated 19.02.2005 in which authorities of both the Corporations had participated and it was amicably agreed by both Food Corporation of India (F.C.I.) and State Warehousing Corporation (S.W.C.) that since both organizations are in default in maintaining the condition of grain and thus should bear equal responsibility i.e., C.I.P. of the wheat stock in question minus sale proceed of down graded stock, and remaining amount should be apportioned equally and accordingly claim and counter claim should be reconciled and outstanding bills of SWC will be released by F.C.I. subject to withdrawal of individual case and legal Notice given by S.W.C. (State



Warehousing Corporation).

(iv) For issuance of an appropriate writ in the nature of mandamus directing/commanding the concerned Respondents to pay interest over the pensionary amount which has been arbitrarily and illegally withheld at the rate of current Bank interest and further to pay adequate compensation to the petitioner for being unnecessarily harassed & tortured for his no fault.

(v) Any other appropriate writ/writs be issued, direction/directions be given order/orders be passed in the given facts and circumstances for which the petitioner may be found entitled.

3. Without going into the final intricacies of the matter, learned counsel for the petitioner raised a very short legal point for consideration of the Court. It was submitted that the order impugned has been passed by which out of the admitted dues payable to the petitioner of Rs.25,83,039/-, the Corporation has directed for adjustment/recovery of Rs.24,80,177/-. It was submitted



that prior to passing of the order, a notice was issued to the petitioner dated 30.07.2015, to show cause with regard to such charge. Learned counsel submitted that the petitioner submitted his show cause on 18.08.2015 but the impugned order having been passed after almost seven months from submission of the show cause does not even whisper with regard to the said show cause, much less dealing with any of the aspects explained by the petitioner in his show cause.

4. At this juncture, the Court made a specific and direct query to learned counsel for the Corporation as to whether there is any denial with regard to the show cause submitted by the petitioner on 18.08.2015. The answer is in the negative. On a further query of the Court as to whether any other order, except for the one impugned dated 18.03.2016 has been passed against the petitioner to show that the defence taken by him in his reply have been considered by the competent authority, again the answer is in the negative.

5. In view of the admitted position, and the impugned order dated 18.03.2016 only mentioning in the first paragraph with regard to the amount of Rs.25,83,039/-



being admissible and approval given for such payment and thereafter in the second paragraph only in six lines it has been held that Rs.24,78,052/- is required to be adjusted from the aforesaid amount and, thus, order has been passed for payment of only Rs.1,02,862/- to him.

6. Having regard to the aforesaid, the Court has no hesitation to hold that such order is clearly unsustainable in the eyes of law. Such a major penal action against a person cannot be taken without adherence to the due procedure of law and in the present case when specific notice was issued calling upon the petitioner to show cause and the petitioner having submitted his detailed explanation to such charges, which have not even been referred to and, thus, have remained unconsidered, the order, impugned, cannot be sustained.

7. Accordingly, on the short point of the order being totally without fulfilling the mandatory requirement of law, having been passed in utter disregard of the show cause submitted by the petitioner, the same stands set aside. However, this would not lead to payment being made of the entire dues to the petitioner. The respondents are required



to pass a fresh order in terms of the notice issued to the petitioner dated 30.07.2015 and reply submitted by the petitioner on 18.05.2015, copies of which are Annexures 5 and 6 to the writ application. Having said this, the Court would only indicate that the matter is remanded for the process to begin from the stage of consideration of the show cause of the petitioner and the remaining stages, as required in law, shall be complied with and followed by the respondents before passing of a final order. Depending on the same, the parties shall be at liberty to pursue the matter before the appropriate forum, in accordance with law. As the petitioner has superannuated on 28.02.2015 the Court deems it appropriate that the matter be taken to its logical consideration expeditiously and latest within a period of four months from today.

8. The petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

Shamshad/-

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