IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14636 of 2018

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Sunil Kumar Sinha son of Late Ram Chandra Prasad, earlier residing at 40, Matri Smriti, Congress Maidan, Near Shiv Mandir, Kadam Kuan, Patna-800003, Presently residing at Madhuri Gopi Krishna Residency, Flat No. 202, Club Road, Congress Maidan, Kadam Kuan, Patna- 800003, P.S.- Kadam Kuan, District- Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Cooperative, Government of Bihar, Patna.
2. The Principal Secretary, Department of Cooperative, Government of Bihar, Patna.
3. The Bihar State Warehousing Corporation, B/2, 1st Floor, Mauryalok Complex, Patna through its Managing Director, Bihar State Warehousing Corporation, B/2, 1st Floor, Mauryalok Complex, Patna.
4. The Managing Director, Bihar State Warehousing Corporation, B/2, 1st Floor, Mauryalok Complex, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ashish Kumar Lal, Adv.
For the Respondent/s	:	Mr.Uday Shankar Sharan Singh- Gp19
for the Corporation	:	Mr. Mithilesh Kumar Rai, Adv.

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
CAV JUDGMENT
Date : 08-05-2019

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel appearing on behalf of the Bihar State Warehousing Corporation (hereinafter referred to as the 'Corporation').

2. Petitioner retired as Technical Assistant on 31.01.2018 from the Bihar State Warehousing Corporation, Patna. The present application has been preferred for quashing (i) part of the order contained in Memo No. 919 dated 08.05.2018 as contained in Annexure-4 issued by the Managing Director of the Bihar State

Warehousing Corporation whereby the gratuity, group insurance and leave encashment has been calculated at Rs. 16,32,756/- but on account of pecuniary loss of food-grains in Ara Warehouse a sum of Rs. 7,51,546/- has been directed to be deducted from the pensionary benefits of the petitioner; (ii) quashing of File No. 709 dated 14.06.2018 issued under the signature of the Managing Director, Bihar State Warehousing Corporation, Patna as contained in Annexure-6 whereby and whereunder the petitioner has been informed that an amount of Rs. 7,51,546/- has been withheld on account of criminal proceeding being Ara P.S. Case No. 164 of 2008 on account of the stock of wheat of 1439.36.106 quintals have been found to be less in the Ara Godown which was in the charge of late U.P. Verma and the petitioner. Hence, a loss of Rs. 15,03,091/- has been caused to the Corporation half of which is to be recovered from the petitioner; (iii) arrears of salary for the period spent on casual leave i.e. for the period 30.05.2008 to 31.05.2008, 02.06.2008 to 03.06.2008 and also earned leave for the period 04.06.2008 to 23.06.2008, 26.06.2008 to 15.07.2008, 16.07.2008 to 15.08.2008, 16.08.2008 to 20.09.2008 and arrears of salary for which he has also submitted medical certificates as well as arrears of salary for the period April, 2008 to May, 2008.

3. The facts of the case is that in the year 2008 on 19.08.2008, the petitioner was put under suspension and a departmental proceeding was initiated under Bihar State Warehousing Corporation Staff Regulations, 1958 (hereinafter referred to as the 'Staff Regulation') under clause 21 (2) (iv). Three charges were framed against the petitioner. The main charge being that the petitioner did not hand over the charge of Godown no. 7 of the Ara Godown while being posted there and on the basis of inspection done it has been found that 1439.36.106 quintals of wheat was found to be less in the stocks, the cost of which was Rs. 21,80,630/- for which on account of pecuniary loss the petitioner was departmentally proceeded (Annexure-9 to the writ application). The inquiry officer conducted a detailed inquiry and after hearing the petitioner found that the charge with regard to Godown No. 7 and godown no. 1D had already been handed over to the new incumbent Sri U.P. Verma. The keys of the two locks of the godown no. 7 was found to be handed over to the new incumbent Sri U.P. Verma and godown incharge Braj Nandan Ram on 03.01.2008 itself. The stocks as per godown register tallied with physical verification and thereafter charge was taken over by the new incumbent Sri U.P. Verma. It was also found in the departmental proceeding that the physical verification done on

10.03.2008 by Sri P.C. Ojha, Divisional Manager the stocks of paddy, wheat and urea were tallied with the stock register which was found in order. Hence, the petitioner was exonerated from all the charges and departmental proceeding was dropped which is Annexure-10. Petitioner has also annexed charge report as contained in Annexure-12 the charge of the keys dated 29.02.2008 to the new incumbent Sri U.P. Verma and the physical verification of the stocks on 10.03.2008 by the Divisional Manager wherein no discrepancy has been found which are contained in Annexures-12, 13 and 14 of the writ application.

4. However, a preliminary objection has been raised by the learned counsel for the Corporation, stating therein, that against the said orders as contained in Annexures-4 and 6 as per clause 25 (2) of the Staff Regulation, there is a provision of appeal provided before the Chairman of the Corporation against the order passed by the Managing Director of the Corporation. Instead of availing alternative remedy of appeal, the petitioner has invoked the extra ordinary jurisdiction under Article 226 of the Constitution of India which is not permissible.

5. Considering the aforesaid objection the preliminary issue is being first decided.

6. Learned counsel for the petitioner submits that the writ petition is maintainable as when the error, irregularity or illegality clinching to the root cause of jurisdiction and when the Staff Regulation does not have an effective provision permitting the Corporation to proceed against a superannuated employee invoking the provisions of appeal would be an empty formality. He relies on the Apex Court judgment in the case of **The State of Uttar Pradesh Vs. Mohammad Nooh since reported in A.I.R. 1958 SC 86** para 15 of which is quoted as follows:

> *"15. On the Authorities referred to above it appears to us that there may conceivably be cases-and the instant case is in point-where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision.*
>
> *If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play the superior court*

may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned.

This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice.

The superior court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that."

7. He also relies on a judgment of this Court in the case of **Awdhesh Singh Vs. The State of Bihar & Ors. passed in C.W.J.C. No. 11254 of 2017** dated 15.01.2018 wherein although the petitioner in that case was directed to exhaust the alternative remedy of appeal who was also a retired employee of the said Corporation the learned Single Judge had this to observe:-

" The only issue which falls for consideration is, whether the 'Corporation' could have proceeded against the petitioner under the 'Staff Regulation'. A copy of the 'Staff Regulation' has been produced by Mr. Rai, learned counsel appearing for the 'Corporation' and which does not conceive of drawing any proceeding post-superannuation of an employee of the 'Corporation'. The 'Staff Regulation' also does not adopt the provisions of the Bihar Pension Rules for proceeding against its superannuated employee in case of any financial irregularity or grave misconduct. Mr. Rai, learned counsel appearing for the 'Corporation' admits that the Bihar Pension Rules are not applicable to the employees of the 'Corporation'.

In other words, whereas the 'Staff Regulation' does not contain any provision which enables the Disciplinary Authority to proceed against a superannuated employee, the 'Corporation' has done nothing either to amend its Regulation or to adopt the Bihar Pension Rules so as to proceed against its superannuated employee in cases of such kind where they are charged with gross financial irregularities.

The issue in hand is squarely converted by the observation of the Full bench in the case *of Shambhu Saran Vs. The State of Bihar reported in 2000 (1) PLJR 665 and for the sake of convenience I deem it necessary to reproduce the relevant extract at paragraph 5 of the judgment in this context:*

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Law is well settled and the position clarified by the Full Bench in the case of Shambhu Saran (supra) removes all confusions that an employee can only be proceeded for disciplinary action while in service and on his superannuation he moves out of the disciplinary control of the employer inasmuch the master and servant relationship comes to an end on such superannuation. As held by the Full Bench it is to fill up this lacuna and to enable the Disciplinary Authority not to let off a Government servant in default of misconduct either on indiscipline or financial irregularities that the provisions of the Bihar Pension Rules were framed and are being followed in so far as the Government servant are concerned which statute has been adopted in a number of public-sector corporations. Unfortunately the respondent-Corporation has not been wise enough either for adopting the same or to frame its own regulation in this regard.

In my opinion, in absence of effective provisions in the 'Staff Regulation' permitting the 'Corporation' to proceed against a superannuated employee certainly the proceedings so drawn are void ab initio and the orders passed thereon are an illegal exercise carried out without jurisdiction.

It is rather peculiar that even though this issue was raised by the petitioner before the Appellate Authority as manifest from the appellate order and even though he has partially accepted the position that no proceeding under rule 43 (b) of the Bihar Pension Rules was initiated against the petitioner but it is on a complete misconception of the provisions underlying Regulation 21 (2) (iv) that he has proceeded to uphold the order when in fact the said provisions also does not confer any jurisdiction on the Disciplinary Authority to proceed against a superannuated employee rather it merely draws the procedure to proceed against a 'Corporation' employee which status has come to an end on the superannuation of the petitioner."

8. Even otherwise, learned counsel for the petitioner submits that no departmental proceeding is pending as in the departmental proceeding the petitioner has been exonerated and it is only because of pendency of criminal proceeding and that too of

the year 2008 that a sum of Rs. 7,51,546/- has been withheld from the pensionary benefits for the so called loss in Ara godown.

9. I am in complete agreement with the contention of the petitioner and while rejecting the preliminary objection of the Corporation the matter is then examined on merits. Rule 21 of the Staff Regulation of the Corporation prescribes as follows:

> *"21. Imposition of penalties:-*
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> *(I) Any employee committing a breach of the regulations of the Corporation or being guilty of negligence, inefficiency or indolence in performance of this duties or knowingly doing anything detrimental to the interests of the Corporation or in conflict with its instructions or of the committing a breach of discipline being guilty of any other act of misconduct, misdemeanour of is convicted of a criminal offence shall be liable to the following penalties:-*
>
> *(a) Fine*
>
> *(b) Censure,*
>
> *(c) Delay or stoppage of increments or promotion,*
>
> *(d) Reduction to a lower post in his permanent class or to lower stage in his incremental scale.*

(e) Recovery from pay of the whole or part of the pecuniary loss caused to the Corporation by the employee,
(f) Removal,
(g) Dismissal,
Provided that the penalty of fine shall be imposed on employees of class III only."

10. Till the petitioner is convicted of a criminal offence in the criminal proceedings which is not the case herein as the criminal case is still pending, no recovery as per Rule 21 (1) (e) of the Staff Regulation is permissible and that too against the superannuated employee as the Corporation has not adopted Bihar Pension Rules. Even the departmental proceeding as conducted against the petitioner has exonerated him of same and similar charges of pecuniary loss on account of loss of food-grains stored in Ara Warehouse. The charges were dropped against the petitioner on a clear finding that no discrepancy was found by the new incumbent on 03.01.2008 itself. The keys were also found to be handed over to the new incumbent Sri. U.P. Verma on 29.02.2018 and subsequently on 10.03.2008 on an inspection of stocks by Sri P.C. Ojha, Divisional Manager, there was no discrepancy found after having tallied with the stock register. In a so called criminal proceeding which is pending since the year 2008, the pecuniary

loss has been sought to be recovered from the petitioner, who is a superannuated employee, under Rule 21 (1) (e) of the Staff Regulation of the Corporation which does not permit the Corporation to proceed against a superannuated employee, more so when no departmental proceeding is pending against the petitioner, the said Rule only postulates that penalties under Rule 21 of the Staff Regulation could be imposed if an employee is convicted of a criminal offence. No conviction order has been passed as yet against the petitioner and in view of the decision in the case of Awdhesh Singh (supra) the Staff Regulation only draws a procedure to proceed against a Corporation employee which status has come to an end on the superannuation of the petitioner. Considering the same, the recovery orders as contained in Annexure-4 dated 08.05.2018, order dated 14.06.2018 as contained in Annexure -6 are without jurisdiction, void ab initio, illegal exercise carried out without jurisdiction and are set aside. The respondent no. 4, the Managing Director, Bihar State Warehousing Corporation, Patna is directed to release the withheld amount of Rs. 7,51,546/- from the post retiral dues of the petitioner within a period of three months from the date of receipt/production of the copy of this order.

11. So far as arrears of salary for the period as prayed for in item no. (iii) of the prayer of the petitioner, the petitioner is directed to file a detailed representation before the respondent no. 4, the Managing Director, Bihar State Warehousing Corporation, Patna which will be disposed of within a period of three months from the date of filing of such representation and admissible amount be released in favour of the petitioner within the said period. If certain amounts are inadmissible, the same shall be communicated by a speaking order by the respondent no. 4 through registered post.

12. Writ application is disposed off with the above observation.

(Nilu Agrawal, J)

devendra/-

AFR/NAFR	AFR
CAV DATE	07.01.2019
Uploading Date	08.05.2019
Transmission Date	