

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 578 of 2008**

Naresh Chandra Verma S/o Shri Sonchand Verma R/o Bramhapuri
Mahamaya Ward, Near Naru Grossory Store Raipur C.G.

---- Petitioner**Versus**

1. The State Of Chhattisgarh And Ors. Employment And Training, Girls Polytechnic Premises, Byron Bazar, Raipur C.G.
2. Additional Director Employment And Training, Girls Polytechnic Premises, Byron Bazar, Raipur C.G.
3. The Superintendent Industrial Training Institute Centre, Baloda Bazar, Raipur C.G.

---- Respondents

For Petitioner	:	Mr. Abhishek Suryavanshi, on behalf of Mr. S.C. Verma, Advocates
For State	:	Mr. Chandresh Shrivastava, Dy. AG

Hon'ble Shri Justice P. Sam Koshy**Order on Board****12/07/2019**

1. The challenge in the present writ petition is to the order dated 27.12.2006 whereby the respondents have issued an order of recovery of Rs. 63,588/- against the petitioner.
2. The facts in brief is that the petitioner in the instant case is working as a Training Officer at the Industrial Training Institute. At that relevant point of time i.e. August, 2006, the petitioner was posted at the ITI Centre, Baloda Bazar as an In-charge Superintendent. The petitioner also had drawing disbursement power. It is said that on the intervening night of 30/31.08.2006, theft had taken place in the institute at Baloda Bazar and theft of cash amount of Rs. 1,90,762/- was committed. In the morning of 31.08.2019 when the petitioner

reached the institution he was informed about the same by the watchman. Immediately the petitioner had lodged the FIR at Police Station, Baloda Bazar.

3. Simultaneously, it is said that the three member enquiry Committee was constituted by the respondents to enquire into the alleged incident. Finally the impugned order (P-1) was passed making the petitioner also liable to compensate the loss caused to the institution to the tune of Rs. 1,90,762/-. Of which the amount ordered to be recovered from the petitioner was 63,588/-.
4. The challenge of the petitioner to the impugned order is primarily on the ground that petitioner has not been afforded any opportunity of hearing before the impugned order was passed. It is also the contention of the petitioner that the impugned order has been passed without conducting any sort of enquiry nor was the petitioner taken into confidence by the three member Committee which had enquired into the issue. According to the petitioner the order of recovery firstly is in total violation of principles of natural justice and that secondly the order has been passed without the petitioner in any manner being held responsible for the same.
5. State counsel on the other hand defending the impugned order submitted that the petitioner was in fact was the person in-charge of the said institution on the fateful day. According to the respondent, the three member Committee on a thorough enquiry reached to the conclusion that petitioner along with two other persons i.e. Assistant Grade -II, Shri L.K. Chandrakar and the Chowkidar, Shri Dilip Kumar Dhruv of the said institution are equally responsible for the loss caused and thus are recovering the said amount equally from the

three persons. Therefore, the order cannot be said to be either bad in law or illegal in any manner. According to the State counsel, undisputedly there has been a loss caused to the department and which has been ordered to be recovered from the persons responsible of the said institution. Since the petitioner was also in-charge of the said institution, he also has been equally held responsible.

6. Having heard the contentions put forth on either side and on perusal of records, what foremost is to be borne in mind is that admittedly there was a theft which happened in the office of the respondent on the intervening night between 30.31/08/2006. If the finding of the respondent is that the petitioner is involved in the said offence of commission of theft then the matter is quite serious. The respondents could not have let off the responsible employees with only an order of recovery. Moreover, though the FIR has been lodged, there does not seem to be any further progress on the said FIR or atleast it has not been reflected in the reply of the State Government. Nor is it the stand of the State Government that petitioner has been found involved in the commission of the said theft.
7. At this juncture, the counsel for the petitioner submits that he has instruction to say on the FIR which was lodged subsequently, a closure report was submitted by the Police. Another aspect which cannot be lost sight of is that the petitioner or for that matter, the other two persons, namely, Shri L.K. Chandrakar and Shri Dilip Kumar dhruv against whom also the order of recovery has been passed have not been subjected to any sort of disciplinary proceedings for the loss caused or for the alleged theft that is

committed. In spite of the fact that petitioner have specifically contended that the order of recovery and also the enquiry which is said to have been conducted by the three member Committee, he was not given any opportunity of hearing, the respondents have not produced any documents to disprove the same, except for an averment in their reply denying the contentions and saying that the petitioner was given an opportunity of hearing. In the absence of any documentary proof to disprove the contention of the petitioner the averment alone which the respondents have made in their reply would not be sufficient to accept their contention of the petitioner having been given an opportunity of hearing. It is by now well settled principles of law that any order that is passed by the employer or by the State Government and which has an adverse Civil consequences, the least that is required is an opportunity of hearing or a opportunity of defence. In the absence of same, the order passed by the respondents Annexure (P-1) dated 27.12.2006 would not be sustainable and it would amount to being an order passed in violation of principles of natural justice. The impugned order therefore is not sustainable and same deserves to be and is accordingly set aside/quashed with consequences to follow.

8. The writ petition accordingly stands allowed.

Sd/-
(P. Sam Koshy)
Judge