

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 209 of 2019**

{Arising out of Order dated 19.04.2018 passed in Writ Petition (S) No. 3175 of 2018 and 27.10.2018 in Review Petition No. 96 of 2018 by the learned Single Judge}

1. State of Chhattisgarh, Through the Secretary, Government of Chhattisgarh, Department of Technical Education and Manpower, Planning, Science and Technology, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
2. Joint Director (Training) Regional Office, Government Industrial Training Institute, Bilaspur, District Bilaspur, Chhattisgarh.
3. Principal, Government Industrial Training Institute, Bilaspur, Chhattisgarh.

----Appellants**Versus**

1. Abbu Hussain S/o Shri Nur Hussain, aged about 53 years, R/o Bada Barel, Takhatpur, Tahsil Takhatpur, Police Station Jarhagaon, District Mungeli, Chhattisgarh.
2. Chhattisgarh Infrastructure Development Corporation Limited, Through its Managing Director, Head Office, Shastri Chowk, Raipur, Chhattisgarh.

----Respondents

For Appellants/State	:	Shri Gagan Tiwari, Deputy Government Advocate.
For Respondent No. 1	:	None
For Respondent No. 2	:	Shri Anup Majumdar, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per Parth Prateem Sahu, Judge****12/12/2019**

1. Challenge in this appeal is to the order dated 19.04.2018 passed in Writ Petition (S) No. 3175 of 2018 whereby the learned Single Judge has allowed the writ petition and set aside the order dated 22.03.2018 (Annexure P/1) whereby a sum of Rs. 32,451/- was directed to be recovered as well penalty of withholding two increments with non-cumulative effect was imposed.

2. Submission of the learned counsel for the Appellant/State is that the private Respondent No. 1/Petitioner was working as Assistant Grade III at Industrial Training Institute, Takhatpur and during that period, some misappropriation of fund was detected in the accounts of the institution which was amounting to Rs. 1,91,900/-. He submits that the notices were issued to the Respondent No. 1/Petitioner in which he admitted his liability to the extent of Rs. 32,451/-. His further submission is that an enquiry was also conducted by the Enquiry Officer on account of misappropriation of the amount and after the enquiry, the Enquiry Officer has found one R.A.Ansari and the Respondent No.1/ Petitioner to be liable for the misappropriation of the amount. The Enquiry Officer has relied upon the note sheet dated 04.05.2017 wherein admission made by the Respondent No. 1/Petitioner was recorded and on that basis, order Annexure P/1 was passed. He submits that this fact was overlooked by the learned Single Judge and erroneously passed the order under challenge.
3. There is no representation on behalf of Respondent No. 1/Petitioner. Shri Majumdar appears on behalf of Respondent No. 2 and submits that he is a formal party in this appeal.
4. We have perused the records with utmost care. On perusal of Annexure A/2, which is a note sheet dated 04.05.2017, it only reveals that there is a difference in the account of the institution to the tune of Rs. 1,19,900/- which is required to be deposited in the accounts. It further records that the said amount has been bifurcated between Shri K.K.Netam and Abbu Hussain, *i.e.* the Respondent No. 1/Petitioner and thus, he has been held liable for making deposit of the amount of Rs. 32,451/- in the accounts of the institution. There is no admission as such stated to be made by the Respondent No. 1.

5. We have also gone through the reply submitted by the Respondent No. 1 in pursuance of the notice issued to him and perusal of the reply dated 16.11.2017 clearly reveals that he has not accepted any liability for payment of the amount or withdrawal of the amount from the accounts of the institution. In fact, he has stated that it was the liability of the earlier department head i.e. Shri K.K.Netam. The liability imposed on the Respondent No. 1 for making the deposit of Rs. 32,451/- was without initiating any enquiry in accordance with law and therefore, the learned Single Judge taking into consideration the materials placed before him, set aside the order Annexure P/1 whereby the recovery as well as punishment of withholding increments has been imposed against him reserving rights of Appellants to initiate appropriate proceedings against the Respondent No. 1/Petitioner.
6. Looking to the facts and materials available on record and particularly to the fact that the Appellant/State has not initiated any enquiry against the Respondent No. 1/Petitioner so as to arrive at a conclusion that it is the Respondent No. 1/Petitioner who is liable for commission of the embezzlement as alleged against him, as also taking into consideration that there is no such admission available on record on the basis of which Annexure P/1 order was passed, we do not find any infirmity or error in the judgment passed by the learned Single Judge.
7. The appeal being devoid of any substance is liable to be and is hereby dismissed.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE