

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.71 of 2020

In

Civil Writ Jurisdiction Case No.7754 of 2017

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1. The Bihar State Food and Civil Supplies Corporation Limited through its Managing Director, Road No. 02, Daroga Rai Path, R-Block, Patna.
 2. The Managing Director, Bihar State Food and Civil Supplies Corporation Ltd. Road No. 02, Daroga Rai Path, R-Block, Patna.
 3. The Deputy Chief (Claims), Bihar State Food and Civil Supplies Corporation Ltd. Road No. 02, Daroga Rai Path, R-Block, Patna.
 4. The Deputy Chief (Administration), Bihar State Food and Civil Supplies Corporation Ltd. Darbhanga (present post in Headquarter).

... .. Respondents/Appellants

Versus

1. Mohan Nazim Son of Late Mohan Ali Hassan, Resident of Khaja Sarai, P.O. and P.S. Laheriasarai, Town and District Darbhanga.
--- Petitioner/Respondent
2. The State of Bihar through the Food Commissioner, Food and Civil Supply Corporation Department, Govt. of Bihar, Main Secretariat, Patna.
3. The Assistant Commissioner Supply Provident Fund, Surya Complex, Lakshmi Chauk, MIT Muzaffarpur.

... .. Respondents/ Respondents

Appearance :

For the Appellant/s : Mr.Shailendra Kumar Singh, Adv.
For the Respondent/s : Mr.Saroj Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 28-04-2022

Heard Mr. Shailendra Kumar Singh, learned advocate
for the appellant and Mr. Saroj Kumar for the respondents.

The Managing Director of the Bihar State Food and
Civil Supplies Corporation, Patna had passed an order on
11.07.2012, directing the respondent no.1 to deposit his share of



10% of the total defalcated amount which figure was quantified as Rs. 21,16,062/-. The respondent no.1 was also not being paid his retiral dues. Some part of the EPF amount was paid to the respondent no.1 but, a clarification was sought by the Organization whether the rest of the amount could be released in favour of the respondent no.1 in view of the decision of the employer to recover the so-called defalcated amount from his salary.

It appears that the respondent no.1 had worked for a brief period as District Manager, Sitamarhi. However, one Mahesh Kumar Karn who had been officiating as District Manager and was handling two godowns had committed some regularities but before that could be detected, he died in the year 2010. It was only after his death that it was discovered that there was defalcation in the aforesaid godowns which was quantified to the tune of Rs. 4,19,06,511/-.

This assessment was based on the audit report dated 08.08.2011.

It appears that without initiating any proceeding against the respondent no.1, the Corporation sought to recover Rs. 21,16,062/- from the respondent no.1 on the ground that the same was permissible under Clause 26(3) of the Service Conduct Rules of the Food and Civil Supplies Corporation.



The challenge to the aforesaid decision of the Corporation was sustained by the learned Single Judge who has rightly held that an audit objection can never be the proof of the offence of defalcation itself; rather it is only a starting point for any enquiry which could culminate in an order of punishment in a departmental proceeding. [Refer Md. Alimuddin Vs. State of Bihar & Ors.; 2015 (2) PLJR 184].

The learned Single Judge has also held that if at all some money was to be recovered from the respondent no.1 because of the assessment of the losses which could be attributed to him, the only way out was to file a money suit. In the absence of any inquiry, the guilt of defalcation by the respondent, such order of recovery could not have been made even with the aid of the rules permitting recovery of money from the delinquent employee being only a minor punishment for which no regular departmental proceeding is required.

The learned Single Judge has rightly held that even if that rule is stretched to some limits, it cannot justify the recovery of money from the pay or the pension of a retired employee.

The learned Single Judge, by the judgment impugned, has also directed the E.P.F. to pay to the respondent no.1 entire contributory amount and has quashed the order of the Managing



Director of Bihar State Food and Civil Supplies Corporation of recovery of the amount so quantified as the loss suffered by the Corporation from the salary and pension of the respondent no.1.

Mr. Shailendra Kumar Singh, learned advocate for the appellant Corporation has fairly submitted that now with the death of the respondent no.1 during the pendency of this appeal, it would be a futile exercise to substitute him with his heirs, more so when this Court is in agreement with the judgment and order passed by the learned Single Judge.

For the reasons aforesated, we dismiss this appeal but without costs.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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