IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1039 of 2020

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Mod Narayan Jha, Son of Late Sureshwar Jha, Resident of Village Sunderpur Vira P.S. Sadar District Darbhanga

... ... Petitioner/s

Versus

1. The Bihar State Road Transport Corporation through its Chairman, Patna.
2. The Administrator, Bihar State Road Transport Corporation, Pariwahan Bhawan, Bir Chand Patel Path, Patna.
3. Divisional Manager, Bihar State Road Transport Corporation, Muzaffarpur.
4. Depot Superintendent, Bihar State Road Transport Corporation, Muzaffarpur.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Durga Nand Jha, Advocate
For the Respondent/s : Mr.Prabhat Kumar Verma, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

9 03-07-2023

1. The writ petitioner was performing responsibility of a *Bus-Conductor* when a Superintendent of the respondent-Corporation carried out a search operation of the bus and found some irregularities in collection of fare and its accounting.

2. The petitioner was placed under compulsory retirement on 21.05.2004, which was subsequently set-aside by the Administrator on 19.02.2008, giving liberty to the disciplinary authority to hold an enquiry for the above noted alleged lapses.

3. The petitioner, thus, had approached this Court for being paid salary in between 21.05.2004 to 19.02.2008. The writ application for this relief bearing CWJC No. 15408 of 2004 was allowed by this Court and a direction was issued for payment of salary and other allowances to the petitioner for the period 22.05.2004 till 19.02.2008.

4. The petitioner, much later was placed under suspension on 24.09.2013, just about one month prior to his date of superannuation, 31.10.2013.

5. It is not in dispute that petitioner has retired from the services of respondent-Corporation.

6. The petitioner now has approached this Court, since he has been visited with an office order dated 28.06.2016 issued by the Administrator of the respondent-Corporation relying upon certain audit reports, pursuant to inspection of the stores of Muzaffarpur/Sitamarahi depot. Certain spare parts and materials were found missing. Certain other irregularities were also found. The resultant loss has been quantified as Rs. 4,22,908/- and a decision has been taken to recover this amount from the petitioner.

7. Learned counsel for the petitioner submits that the order visiting the petitioner with penal/civil consequence of recovery of huge amount after his retirement is based merely on an audit report. The same was prepared behind his back, much after he had retired. Under these circumstances, the orders, without complying with the principles of natural justice, are unsustainable.

8. Learned counsel for the respondent-Corporation, on the other hand, has submitted that the amount sought to be recovered is with respect to the stores/depot for which the petitioner was liable during his services period. The loss has been ascertained and re-ascertained by two audit reports by a three-member audit team. The petitioner cannot escape his liability. Several communications have been referred to by the learned counsel for the respondent-Corporation in the counter-affidavit filed by them to submit that a proceeding was also instituted against the petitioner under charge-memo dated 31.07.2013. The petitioner evaded appearance in the proceeding for a long time.

9. It is not the case of the respondents that the issue regarding loss on account of irregularities discovered during audit in inspection of the stores at Muzaffarpur/Sitamarhi depot was a charge in the charge memo dated 31.07.2013. This issue was not subject matter of the inquiry, under charge memo dated 31.07.2013. It is nobody's case that the petitioner was at any point of time confronted with these charges. It is trite law that an order visiting the petitioner with penal/ civil consequence is required to be preceded by compliance with principles of natural justice as held by Hon'ble Apex Court in the case of ***Sahara India (firm) Lucknow vs. Commissioner of Income Tax, Central-I & Anr.*** *reported in* ***(2008)14 SCC 151***, which, in the instant case, has not been done.

10. The petitioner has been visited with the impugned order dated 28.06.2016 merely based on an alleged audit report pursuant to an audit conducted behind the back of the petitioner, that also after the master servant relationship of the department with the petitioner had snapped. The impugned order, thus, is unsustainable in the eyes of law. The impugned order dated 28-06-2016 is quashed. The petitioner, as a result, would be entitled to all consequential benefits.

11. The writ petition is allowed.

(Madhuresh Prasad, J)

SUMIT/-

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