

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22161 of 2011

SATYA NARAYAN MISHRA, Son Of Late Subansh Mishra, Resident Of
Village - Chandauna, Police Station - Galley, District - Darbhanga The Then
Store-Keeper-Cum-Cashier, Common Facilities Service Centre, Darbhanga

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Principal Secretary, Department Of Industries, Bihar, Patna
3. The Director Of Industries, Government Of Bihar, Patna
4. The General Manager, District Industries Centre, Darbhanga
5. The Special Secretary, Department Of Industries, New Secretariat,
Government Of Bihar, Patna
6. The Accountant General, Bihar, Patna
7. The Treasury Officer, Darbhanga

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Md. Shamimul Hoda, Advocate Mr. Surya Narayan Yadav, Advocate
For the Respondent/s	:	Mr. Md. Fazle Karim, AC to SC-9

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 23-02-2023

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The short facts giving rise to the instant writ
proceeding is the petitioner's dismissal from service vide order
dated 28.06.1991. The petitioner was dismissed from his
services as 'Store-Keeper' in the Industrial Department by
order issued by the Director of Industries, Government of Bihar.
It is not in dispute that the dismissal order has attained finality.

3. The foundational facts for initiation of proceedings



against the petitioner, which culminated in the order of dismissal; also gave rise to criminal proceedings, wherein the petitioner was acquitted. The issue of petitioner's dismissal was thus re-agitated in *C.W.J.C. No. 1002 of 2005*, which was dismissed by recording an order, which reads as follows:-

“Petitioner wants quashing of order dated 28.6.1991 by virtue of which he was dismissed from service. One of the reasons for filing the present writ application is the acquittal of the petitioner in a criminal case by the appellate court which has been brought on record as Annexure- 5.

Learned counsel for the State submits that years ago, petitioner had filed C.W.J.C. No. 7045 of 1992 for the same set of relief and the same came to be dismissed by a Division Bench on 30.11.1992. Even the review application filed by the petitioner was dismissed on 19.7.1992. Issue of validity of the order of dismissal, therefore, cannot be allowed to be re-agitated at this stage merely because the petitioner stands acquitted by a court of appeal in a criminal case. It is also stated that against the said order of acquittal Government Appeal No. 4 of 2005 has been filed by the Government before this Court which has already been admitted and is pending for final decision. Therefore, it may be too early to say that the petitioner has been let off.

In the totality of the circumstances, it is a misplaced kind of writ application. This writ application is dismissed.”

4. It is submitted that this Court vide order dated 13.08.2013 passed in *Government Appeal (S.J.) No. 4 of 2005* has declined to interfere with the judgment of acquittal.



5. In the instant proceedings, petitioner is aggrieved by a Government notification dated 28.09.2011, being an order in a departmental proceeding conducted against one Sri Rama Shankar Thakur, the then Deputy Chief Engineer, wherein a loss caused to the Government Exchequer has been quantified to be an amount of Rs. 9,45,014.04/- (Nine lakh forty-five thousand fourteen rupees and four paise). The notification, however, records that the amount shall be recovered in equal proportions from the said Sri Rama Shankar Thakur, the instant petitioner and one Sri Ganga Prasad Labh, the then Cashier. It is this part of the Government notification dated 28.09.2011 by which the petitioner is aggrieved and has approached this Court by filing the instant writ proceedings. The extract of the notification by which the petitioner is aggrieved, reads as follows:-

“(4) गबनादि द्वारा राज्य को आकलित कुल क्षति की राशि ₹ 9,45,014.04 (नौ लाख पैंतालीस हजार चौदह रूपया एवं चार पैसे मात्र) को बराबर-बराबर भागों में विभक्त कर दोषियों (श्री रामाशंकर ठाकुर, तत्कालीन उप मुख्य अभियंता, श्री सत्य नारायण मिश्र, तत्कालीन भंडारपाल एवं श्री गंगा प्रसाद लाभ, तत्कालीन रोकडपाल, सामान्य सुलभ सदा केन्द्र, दरभंगा) की चल एवं अचल सम्पत्ति से गबन प्रकाश में आने की अवधि वर्ष 1984-85 से 18% दण्डात्मक ब्याज के साथ नियमानुसार वसूल करने की कार्रवाई की जायेगी। ”

6. It is submitted by learned counsel for the petitioner that the order has been passed as a result of the proceedings



conducted against one Sri Rama Shankar Thakur. He submits that the petitioner cannot be visited with any penal consequences arising out of an order passed in a departmental proceedings conducted against another employee. Before the Authorities could have considered the petitioner responsible for any part of the alleged loss, the petitioner was required to be proceeded against, in accordance with law, which has never been done. Under such circumstances, vide earlier order dated 12.01.2012, the consequences of the impugned notification has been stayed by this Court till disposal of the instant proceedings.

7. The counter affidavit in the meantime has been filed. Learned counsel for the State submits that the loss to the State Exchequer to the tune of Rs. 9,45,014.04/- (Nine lakh forty-five thousand fourteen rupees and four paise) has come to light in the proceedings conducted against Sri Rama Shankar Thakur, the then Deputy Chief Engineer. Thus, by the notification dated 28.09.2011, the loss has been divided in equal proportions between Sri Rama Shankar Thakur, the petitioner and one Sri Ganga Prasad Labh, as all three were at that time posted in project where loss has occurred.

8. He, however, is not in a position to dispute the assertion of learned counsel for the petitioner that decision to



deduct any proportion of the alleged loss from the petitioner was not proceeded by complying with principles of natural justice. It is also a fact borne from the records that the petitioner stood dismissed from service on 28.06.1991, long before issuance of the impugned notification dated 28.09.2011.

9. Whether the petitioner can be held liable for alleged loss quantified in a disciplinary proceedings conducted against another person and that also after he has been dismissed from service; and the Master-Servant relationship has snapped, is another issue which falls for consideration.

10. The Court would have no difficulty in finding that the petitioner cannot be visited with any penal consequences contained in notification dated 28.09.2011, for the simple reason that the findings are recorded in a departmental proceeding conducted against another person, and without affording any opportunity to the petitioner. The notification dated 28.09.2021 is the outcome of a departmental proceedings, but conducted against one Sri Rama Shankar Thakur, behind the petitioner's back. The respondents have not placed any material to show that any charge memo was issued to the petitioner, before apportioning against the petitioner, a part of the alleged loss caused to the State Government. Only if a charge memo



was issued and proceedings conducted against the petitioner, while he was in service, as has been done against Sri Rama Shankar Thakur, could any order having civil consequences, like the notification dated 28.09.2011, be issued. But the same admittedly has not been done.

11. The notification dated 28.09.2011, insofar as the penal consequences effecting the petitioner is concerned, is thus found to be legally and factually unsustainable. The notification dated 28.09.2011, insofar as the quantum of petitioner's liability is concerned, is quashed.

12. Writ petition is allowed.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.03.2023
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