IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1595 of 2018

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Kishan Roy Son of late Kshetra Nath Roy Resident of Mohalla- Purab Palli Road Near Dr. Arvind Kumar, Ward no. 11, P.S. and District- Kishanganj.

... ... Petitioner

Versus

1. North Bihar Power Distribution Company Limited Through Its Managing Director
2. Managing Director, North Bihar Power Distribution Company Limited, Bihar, Patna.
3. Senior Manager (Audit), North Bihar Power Distribution Company Limited, Bihar, Patna.
4. Executive Engineer Electrical, Electric Supply Division, Kishanganj.
5. Assistant Electrical Engineer, Electric Supply Sub Division, Kishanganj.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Pafull Chandra, Advocate
		Mr. Apurva Kumar, Advocate
For the NBPDCL	:	Mr. Kunal Tiwari, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

5 17-03-2023 Heard learned counsel for the petitioner and Mr. Kunal Tiwari, learned counsel for the North Bihar Power Distribution Company Limited (in short ‘Power Company’)

2. Pursuant to the order dated 16.03.2023, the Managing Director had appeared, however, this Court has dispensed with his personal appearance on oral mentioning.

3. In course of hearing, learned counsel for the respondents admits that so far as the recovery of Rs. 91,843/- vide letter no. 180 dated 01.04.2017 from the petitioner is concerned, the same has been made without any enquiry and without giving any opportunity of hearing to the petitioner.

4. Mr. Tiwary, learned counsel submits that vide Audit

Report no. 32/2016-17, the Senior Manager (Audit) of the Power Company informed the Electrical Executive Engineer, Electric Supply Division, Kishanganj about the objections of the Auditor in respect of the financial year 2014-15 to 2015-16. He called for a report on each and every objection raised by the Auditor within a period of 15 days. This Audit Report has indicated misappropriation of money and recovery thereof with interest from the guilty employees /officers. It is an admitted position that so far as the letter of the Senior Manager (Audit) (Annexure 'A' to the counter affidavit) is concerned, it does not specifically names the petitioner but the submission is that the name of the petitioner has come as one who had received money receipt no. 155201 to 155308 whereunder a sum of Rs. 91,843/- had been collected. The Auditor has in paragraph '4' of his report (Annexure 'A') pointed out that the amount mentioned in the money receipts issued by several persons including the petitioner has not been entered in the daily collection register and the cash book and thereby a sum of Rs. 46,39,931/- has been misappropriated.

5. The report, however, nowhere mentions that the amount collected by the petitioner was not deposited with the Cashier who had the ultimate responsibility to keep accounts of the money collected during the day, enter the same in the register and to deposit the same with the bank.

6. Learned counsel for the Power Company submits that one Sri Raju Kumar, whose name appears at serial no. 4 in the list of the employees and has been shown guilty was working as Junior Accounts Clerk and regarding him the Auditor has made allegations that he had not made available 138 money receipt books and 48 security receipt books. Further, he had not made available 136 money receipt books and 35 security receipt books for audit when it was demanded on second occasion.

7. It is stated that said Raju Kumar, Junior Accounts Clerk has been proceeded against in the departmental proceeding and his guilt was proved whereafter he has been awarded punishment of stoppage of two increments with cumulative effect and recovery of a sum of Rs. 4,17,750/- with interest. The rate of interest is, however, not mentioned in the order of the disciplinary authority.

8. The records of the departmental proceeding held have been placed before this Court.

9. This Court has found from the records that in the said departmental proceeding which was conducted against Raju Kumar, there is no material suggesting that this petitioner had not deposited the money receipt book of the given serial number and the collected amount.

10. Fact remains that the petitioner retired as a Skilled Khalasi on 31.08.2016. His pension was also approved. Admittedly, he had been issued a 'No Dues Certificate' and the Junior Accounts Clerk Raju Kumar had certified that this petitioner had returned all the money receipts and no money receipt book was lying with him. There is another important fact worth taking note that the petitioner was not working in the Accounts Section, he had otherwise no duty to collect the money but it was said Raju Kumar who had been involving the petitioner in collection of money which the petitioner did vide money receipt no. 155201 to 155308.

11. The admitted fact is that those money receipts which were handed over to the petitioner were very much available in the office and the same were made available to the Auditor. The Auditor found that the amount collected through those money receipts were not entered in the daily collection register. There is no denial of the fact that this petitioner had no role to play in maintaining the daily collection register.

12. Learned counsel for the Power Company has already admitted that this deduction from the entitlements of the petitioner against ACP arrears has been done without giving any opportunity of hearing to the petitioner much less any Enquiry on this issue was ever conducted.

13. This being the position, this Court is of the considered opinion that the impugned order as contained in Annexure '4' is wholly illegal, arbitrary and bad in law. The Electrical Executive Engineer, Electric Supply Division, Kishanganj has, only in order to shirk his own responsibility to answer the objections of the Auditor proceeded to take action against the petitioner without any Enquiry. There is nothing on record to show that the petitioner had not deposited the sum of Rs. 91843/- collected through the money receipts. The order as contained in Annexure '4' is, therefore, set aside.

14. Learned counsel for the Power Company submits that the amount deducted from the petitioner shall be made available to him within a period of four weeks from today.

15. In the facts of the present case where this Court finds that the petitioner having retired from service as a skilled Khalasi in Grade III has been subjected to arbitrary deductions which has compelled him to come to this Court and contest this issue and that kept him deprived of his entitlements for over five years, this Court deems it just and proper to direct the respondents to pay interest at the rate of 9% per annum to the petitioner from the date the deduction was made till the date of payment. He would also be paid a cost of litigation which is assessed at Rs.15,000/- (Rupees Fifteen Thousand only) within the same period. The Managing Director, North Bihar Power Distribution Company Limited shall fix the responsibility upon such officers who are responsible for making unlawful deductions from a retired Class III Employee in the manner stated above. The entire interest and cost amount shall be recovered from them after giving them an appropriate opportunity in accordance with law.

16. Since the records of the case suggest that the Audit Report is pointing out huge financial illegality and misappropriation of money, it will be open for the Managing Director to take an appropriate view of the matter to ensure that those who are responsible for such misappropriation should not go unpunished.

17. Let the entire matter be reviewed at his end within a period of two weeks from today.

18. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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