IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21522 of 2012

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Md. Jalaluddin S/O Late Md. Naziruddin R/O Bank Of India Colony, Near North Side Of Tata Enclave, P.S- Shastri Nagar, P.O- P.B.V. Collage, Shekhpura, District- Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Managing Director, Bihar State Food And Supplied Corporation Limited, Bihar, Patna.
3. The Chief Of Finance, Bihar State Food And Civil Supplies Corporaton Limited, Bihar, Patna.
4. The District Manager, State Food Corporation Aurangabad.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prabhakar Singh, Advocate.

For the State : AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 27-06-2024

Heard Mr. Prabhakar Singh, learned counsel appearing on behalf of the petitioner and learned AC to GP-4 for the State.

2. The petitioner has sought for the following reliefs, as prayed for in Para-1 of the writ petition, which are, *inter alia,* reproduced hereinafter:

> *"That this is an application on behalf of the petitioner above named for issuance of writ / writs in the nature of certiorari for quashing the order dated 25.09.2011 and 03.09.2012 passed by the respondent no.2 and the respondent Principle Secretary-cum-Commissioner, Bihar State Food and Consumer Protection Department, Patna whereby and whereunder the petitioner has been punished in a departmental proceeding for defalcation of amount made by another employee and direction has been given to recover the amount of 2.5% of the defalcated amount which is contrary to the report of conducting officer and the appeal filed against the punishment order has been also*

rejected without discussing the fact and giving reason and for any other relief/reliefs for which petitioner is illegally entitled to."

3. Brief facts of the case are that the petitioner was appointed as Accountant in the office of the Bihar State Food and Civil Supplies Corporation Limited and was posted on deputation in the office of the Deputy Development Commissioner and transferred on 26.08.2008 in the office of B.S.F.S.C., Aurangabad. The petitioner retired on 30.04.2011. A departmental proceeding was initiated during the service period of the petitioner for his alleged involvement in defalcation of amount of Rs.92,74,832.60 in Amba Godown. The charges levelled against the petitioner was proved as involvement of the petitioner to the extent of Rs.1,1586251/- which led to dismissal of one Mangal Uraon and the petitioner was awarded punishment of recovery of 2.5% of total defalcated amount vide punishment order contained in memo no.7611 dated 25.09.2011. Aggrieved by the said order, the petitioner has filed the present writ petition.

4. Learned counsel appearing on behalf of the petitioner submitted that the charges levelled against the petitioner are not sustainable. The inquiry officer has not found any charge proved against the petitioner and the disciplinary authority, without differing with the inquiry report and serving second show cause on the basis of any material, in a most

mechanical manner, imposed a penalty order against the petitioner to recover 2.5% of the defalcated amount. The penalty order was passed on 25.09.2011, while the petitioner had already retired on 30.04.2011. The petitioner was not served any notice as per the requirement of Rule 42(B) of the Bihar Pension Rules. Learned counsel further submitted that it is mandate of the provision of Section 18(2) of the Bihar CCS Rules, 2005 to serve a second show cause before the disciplinary authority differs from inquiry report. Learned counsel on theses basis has submitted that the impugned orders are perverse and call for interference of this Court.

5. Learned counsel appearing on behalf of the Bihar State Food & Civil Supplies Corporation Limited submitted that there is no infirmity in the penalty order passed against the petitioner which has been affirmed by the appellate authority. Considering the fact that the petitioner was posted on the post of Accountant and because of his conduct, the Corporation was put to a loss of total amount of Rs.92,74,832.60/-, in which, involvement of the petitioner along with one Mangal Uraon cannot be ruled out. However, considering the charge against the petitioner, taking very lenient view, a punishment order has been passed to recover 2.5% of the defalcated amount, though the petitioner was recommended by the Corporation for his dismissal. Learned counsel has not been able to make out a case

for interference of this Court.

6. Heard the parties.

7. It is the case of the petitioner that the petitioner was posted as Accountant and as per inquiry report, charge of defalcation was proved against one delinquent employee Mangal Uraon. The inquiry officer has found the charges against the petitioner to be not sustainable and recorded as not proved. In spite of the said fact, the disciplinary authority has not given any reason differing with the inquiry report, nor has served any second show cause to the petitioner giving reasons for the same. No fresh evidence was before the disciplinary authority in support of the second show cause, nor any statement has been made in the counter affidavit that the petitioner was involved in any manner on the basis of such material which certainly calls for interference of this Court taking into consideration the fact that once the disciplinary authority has differed from the view of the inquiry officer which was obligatory upon him to serve a copy of the second show cause and to provide him opportunity of hearing. A denial of the same procedure is violative of principle of natural justice.

8. Now, I proceed to deal with whether the other act of the petitioner constitute a misconduct.

9. It is gainful to quote the definition of misconduct

defined in Stroud's Judicial Dictionary which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

10. In the case of **M.M. Malhotra Vs. Union of India** reported in **(2005) 8 SCC 351**, the Apex Court held that “the range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct. It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. But at the same time, though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the day. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve.”

11. In above view, I find that the law laid down by the Apex Court in the case of ***Ravi Yashwant Bhoir Versus District Collector, Raigad & Ors.*** reported in ***2012(4) SCC 407***

is of no help to the petitioner. It will be gainful to reproduce paragraphs no. 13, 15, 16, 18 and 19:

> *"**13.** Mere error of judgment resulting in doing of negligent act does not amount to misconduct. However, in exceptional circumstances, not working diligently may be a misconduct. An action which is detrimental to the prestige of the institution may also amount to misconduct. Acting beyond authority may be a misconduct. When the office-bearer is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary, of the funds, etc. constitutes a serious misconduct, inviting severe punishment. (Vide Disciplinary Authority-cum-Regl. Manager v. Nikunja Bihari Patnaik [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] , Govt. of T.N. v. K.N. Ramamurthy [(1997) 7 SCC 101 : 1997 SCC (L&S) 1749 : AIR 1997 SC 3571] , Inspector Prem Chand v. Govt. of NCT of Delhi [(2007) 4 SCC 566 : (2007) 2 SCC (L&S) 58] and SBI v. S.N. Goyal [(2008) 8 SCC 92 : (2008) 2 SCC (L&S) 678 : AIR 2008 SC 2594] .)*
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> ***15.** In M.M. Malhotra v. Union of India [(2005) 8 SCC 351 : 2005 SCC (L&S) 1139 : AIR 2006 SC 80] , this Court explained as under : (SCC p. 362, para 17)*
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> *"17. ... It has, therefore, to be noted that the word 'misconduct' is not capable of precise definition. But at the same time though incapable of precise definition, the word 'misconduct' on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve."*
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> *A similar view has been reiterated in Baldev Singh Gandhi v. State of Punjab [(2002) 3 SCC 667 : AIR 2002 SC 1124] .*
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> ***16.** Conclusions about the absence or lack of personal qualities in the incumbent do not amount to misconduct holding the person concerned liable for punishment. (See Union of India v. J. Ahmed [(1979) 2 SCC 286 : 1979 SCC (L&S) 157 : AIR 1979 SC 1022] .)*
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> ***18.** The expression "misconduct" has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, wilful in character. It may be synonymous as misdemeanour in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary*

forces.

19. *Further, the expression "misconduct" has to be construed and understood in reference to the subject-matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest."*

12. In view of the above, I find that the Disciplinary Authority has not followed the principle of natural justice by not serving the petitioner second show cause giving reason for differing with the inquiry report. No fresh evidence was before the Disciplinary Authority for his satisfaction to impose penalty to recover 2.5% of the defalcated amount in absence of any misconduct to have been committed by the petitioner. Accordingly, the order passed by the Disciplinary Authority and Appellate Authorities being not in accordance with law are hereby set aside and quashed. The authorities are required to take appropriate action in accordance with law.

13. The writ petition, accordingly, stands disposed of.

14. There shall be no order as to costs.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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