IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12268 of 2024

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Shatrughan Singh Son of Late Raghunandan Singh, Resident of Road No. 7, Magadh Colony, Police Station- Magadh Medical, District- Gaya.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Rural and Urban Development Department, Government of Bihar, Patna.
2. The District Magistrate cum Collector, Gaya.
3. The Gaya Municipal Corporation, Gaya through the Chief Executive Officer.
4. The Town Commissioner, Gaya Municipal Corporation, Gaya.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Nilendu Kumar Choudhary, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar, SC 9
For the Municipal Corporation, Gaya	:	Mr. Rabindra Kumar Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 19-08-2024

Heard Mr. Nilendu Kumar Choudhary, learned counsel appearing on behalf of the petitioner; Mr. Kinkar Kumar, learned SC 9 for the State and Mr. Rabindra Kumar Priyadarshi, learned counsel for the Municipal Corporation, Gaya.

2. Petitioner has *inter alia* prayed for following reliefs in the paragraphs No.1 of the writ petition:-

> *"That the present writ application is being filed for issuance of an appropriate writ/writs, direction/directions, order/orders for setting aside the Memo No.640/SA, dated 05.03.2024 issued by the Town Commissioner, Gaya Municipal Corporation, Gaya, whereby and whereunder the petitioner has been directed to deposit Rs.9,81,725/- (Nine lakhs eighty one*

thousand seven hundred twenty five only) along with annual interest at the rate of 2.50 percent per annum and/or for any other relief/reliefs to which the petitioner may be found entitled to in course of hearing of the present writ application."

3. Learned counsel appearing on behalf of the petitioner submitted that though he has not given the date of appointment of the petitioner but it is clear from paragraph no.3 that petitioner retired from the post of Tax Collector on 31.12.2019 and before the date of retirement and after the date of retirement, no demand was made from the petitioner to deposit a sum of Rs.9,81,725/- as per the objection raised by the audit in respect of financial year 2014-15, though in the impugned order contained in Memo No.640 dated 05.03.2024, the audit report which has been relied by the Executive Officer, Gaya is of financial year 2015-16 and a reference in the said audit report has been made on certain non-deposit of Rs.9,81,725/- at Clause 6(ka) of the audit report. Learned counsel submitted that *vide* memo no.589 dated 31.03.2014 the petitioner was directed to daily collect rent from the shops situated at Kedarnath market, as a result of failure of anyone to participate in the auction held for yearly collection. The petitioner was never communicated about the short fall during his entire service period but all of a sudden, after his retirement,

he has faced with a penalty as a consequences of the direction contained in Memo No.1728 dated 22.11.2014. On these grounds, learned counsel seeks interference of this Court.

4. *Per Contra,* Mr. Rabindra Kumar Priyadarshi, learned counsel appearing on behalf of the Municipal Corporation, Gaya submitted that from the impugned order dated 05.03.2024, it would appear that during the service period of the petitioner**,** the petitioner after having collected the applicable rent from the shops owners from the Kedarnath market in light of Memo No.589 dated 31.03.2024, deliberately did not deposit any amount in respect of rent collected by him, amounting to Rs.9,81,725/-. He was served with a notice contained in Memo No.1728 dated 22.11.2014 and the said fact has been taken into consideration by the Town Commissioner in communication contained in Memo No.640 dated 05.03.2024. The petitioner chose not to challenge the said memo no.1728 dated 22.11.2014 at any point of time, while he was in his service. The petitioner has not denied that he has not collected the amount as has been found by the audit, nor he has denied the fact that audit report No.1601/2015-16 held for financial year 2014-15 was ever communicated to him or he had ever demanded a copy of the audit report in his defence. In these

backgrounds, learned counsel submitted that there is no merit in the present writ petition.

5. At this stage, learned counsel appearing on behalf of the petitioner has referred to paragraph no.7, 8 , 9 and 10 in respect of his denial that the audit report was not served to the petitioner before taking final action against him. I find it proper to reproduce paragraph nos.7, 8, 9 and 10 *inter alia* which is as follows:-

> *7. That by the representation dated-23.03.2024 the petitioner raised objection over the audit report no.1601/2015-16 and memo No.640 dated-05.03.2024 stating therein that he got retired in 2019 and the objection raised in report was of 2015-16 then why he wasn't informed on that particular time about such objection raised through the report, so it should be verified as there are chances of mistake. He also stated that the irregularities that has been raised is against the market's branch Incharge Laxman Singh who according to the order in Memo No.1728 told him to collect the rent and also told him that there would not be any problem as the petitioner raised suspicion that he is an employee and he would not be able to collect as a contractor. The Gaya Municipal Corporation and Laxman Singh said him to collect the amount of rent and revenue there would not be any problem whether it would be less amount or the amount expected or estimated.*
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> *8. That the petitioner in his representation also stated that from 2016 to 2019 he was working with Gaya Municipal Corporation if he was guilty anyhow why not the amount was deducted from the salary that was given to him. Why such an issue has been raised after four years of his retirement.*
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> *9. That the petitioner got superannuated in 2019 itself even after that he was not paid his retiral benefits. The petitioner finally for his legal redressal approached to Hon'ble High*

Court at Patna through C.W.J.C. No.18250 of 2022 which was heard and decided on 28.11.2023. In its decision the Hon'ble Court directed the Respondent No.4 to ensure the payment of all admissible retiral other dues in accordance with law withing a period of six weeks thereafter when the representation is filed by the present petitioner. The petitioner was directed to file a representation within four weeks from the day of the order in C.W.J.C. No.18250 of 2022..

10. That the petitioner gave a representation on 14.12.2023 along with the copy of the order of the Hon'ble High Court, but his retiral benefits were not released."

6. Having considered the rival submissions made on behalf of the parties and having perused the pleadings made in the writ petition and also paragraphs no.7, 8, 9 and 10 of the writ petition as recorded in above paragraphs, as well as, paragraph no.14 in which the petitioner has given information that he is suffering from heart disease and is being treated at CMC Vellore and he is fighting with life and death and is also in need of money for his treatment. On perusal of the order contained in Memo No.640 dated 05.03.2024, I find that the then Town Commissioner had issued Memo No.1728 dated 22.11.2014 and had directed the petitioner to deposit the due amount of Rs.9,81,725/-, which was allegedly collected by him as rent from the shop owners of the ground floor situated in Kedarnath Market as a consequence of failure of any auction in respect of those shops for the financial year 2014-15. The petitioner has not denied in writ petition that Memo No.1728

dated 22.11.2014 was not served to him or he has ever challenged the same before any authority or before any forum. However, at the same time, it is also clear from the order dated 05.03.2024 that there is no reference of any action taken in light of the communication dated 22.11.2014 during the entire service period of the petitioner. It is admitted by the parties that petitioner had retired on 31.12.2019 and no action was taken against the petitioner, nor any deductions were made from the retiral benefit of the petitioner on account of the allegation that he has put loss to the Corporation a sum of Rs.9,81,725/-. I have also perused the representation of the petitioner dated 28.06.2024. I find that there is no denial that any action has been taken on the representation of the petitioner. The fact which calls for interference by this Court, as to whether, in absence of any departmental proceeding initiated against the petitioner during his service period and any action taken in accordance with law to realize a sum of Rs.9,81,725/- can the authority after 5 years of retirement of the petitioner penalize him to realize the amount from him.

7. Mr. Priyadarshi has clarified that it is a demand which is from the petitioner and therefore no disciplinary action was taken against the petitioner either during his service period

or after his retirement. The petitioner has not denied the fact that he had not carried to collect rent in accordance with the direction contained in Memo No. 589 dated 31.03.2014. I find in absence of action taken by any authority and in view of the information given on behalf of the petitioner in paragraph no. 14 that he is fighting for life and death, no action was taken against the petitioner on the basis of audit report, I find that the petitioner cannot only be solely liable for the loss caused to the Municipal Corporation and at the same time, the municipal authorities holding higher post can also not be absolved from the charge of loss to the municipality.

8. In view of settled principle of law any penal action can be taken only after giving proper opportunity of hearing. In the present case, the petitioner though has not denied that he has ever been served the copy of the audit report and any action was taken in pursuance of communication dated 22.11.2014. The order contained in Memo No.640/SA, dated 05.03.2024 issued by the Town Commissioner, Gaya is hereby set-aside and quashed for aforesaid reason and discussion made hereinabove.

9. Considering the aforesaid facts and discussion made hereinabove, I find it proper to direct the Additional Chief Secretary, Urban Development Department, Government of

Bihar to call for the records relating to financial year 2014-15 and the audit held during 2015-16 for the said period and verify, as to whether, any action was taken by any authority to realize the amount apart from the fact that by Memo No. 1728 dated 22.11.2014, petitioner was directed to deposit the amount and no information is contained in the order dated 03.05.2024 of the Town Commissioner, Gaya Nagar Nigam that any action was taken thereafter. As I have already quashed the order contained in Memo No.640/SA, dated 05.03.2024 passed by the Town Commissioner, Gaya, I direct the Additional Chief Secretary, Urban Development Department, Government of Bihar to consider the grievance of the petitioner after giving due opportunity of hearing to the petitioner in accordance with law, considering the fact that penal action has been taken against the petitioner after nearly six years from the date of his retirement.

10. The writ petition is, accordingly, disposed of.

11. There shall be no order as to costs.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.08.2024
Transmission Date	NA