IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1435 of 2023

In

Civil Writ Jurisdiction Case No.10606 of 2023

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1. The Managing Director, Bihar State Warehousing Corporation 2/B, 1st Floor, Maurya Lok Complex, Patna.
2. The Bihar State Warehousing Corporation, 2/B, 1st Floor, Maurya Lok Complex, Patna through its Managing Director, Bihar State Warehousing Corporation.
3. The Secretary, Bihar State Warehousing Corporation, 2/B, 1st Floor, Maurya Lok Complex, Patna.
4. The Divisional Manager, Bihar State Warehousing Corporation, 2/B, 1st Floor, Maurya Lok Complex, Patna.
5. The Accounts Officer, Bihar State Warehousing Corporation, 2/B, 1st Floor, Maurya Lok Complex, Patna.
6. The Chairman, The Bihar State Warehousing Corporation, Patna, Bihar.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Cooperative, Government of Bihar, New Secretariat, Patna.
2. Awadhesh Singh S/o Ram Chandra Singh R/o Village-Lahsuna, P.S.-Masaurhi, District-Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Mithilesh Kumar Rai, Advocate
For the State	:	Mr. Sanjay Kumar, AC to GA-13
For the Respondent No.2:		Mr. Sunil Kumar Pathak, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date : 06-02-2025

Heard the learned counsel for the parties.

2. The respondent No. 2 had approached this Court *vide* C.W.J.C No. 12203 of 2013 seeking a direction to the Warehousing Corporation to make him available his retiral dues including gratuity, leave encashment, pension and arrears of salary as also the provident fund.

3. The learned Judge hearing the petition found that earlier a departmental proceeding had been initiated against respondent No. 2, which ended in an order requiring recovery of an amount of Rs. 5.7 crores against the respondent.

4. This was assailed by respondent No. 2 in C.W.J.C. No. 11254 of 2017, in which, it was held that the respondent could not have been punished without

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resorting to the provisions in that regard contained in Bihar Pension Code, after retirement. However, in this instance, the Court observed that the pension is a fundamental right and is not dependent on the whims of the employer. The employer/Warehousing Corporation was required to decide as to what amount and under which rules it was required to be deducted from the pension of the respondent.

5. This order was challenged in L.P.A. No. 635 of 2018, when a Division Bench of this Court, modifying the order dated 08.03.2018, referred above, gave a direction to the Managing Director of Warehousing Corporation to examine the claim of the respondent in accordance with law with regard to its admissibility that may have applied to similarly situated employees and pass an appropriate order within three months from the date of production of a copy of the order.

6. Pursuant to that order, the Managing

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Director passed an order, holding that since the respondent was the person in-charge of the godown from where there was pilferage and shortage worth crores of rupees was detected, the amount had to be deducted from the pensionary emoluments of the respondent only.

7. The decision of the Managing Director, Warehousing Corporation was again put to challenge in C.W.J.C. No. 10606 of 2023.

8. In this instance, a judgment was passed on 31.10.2023, which is under challenge in the present appeal.

9. The learned Single Judge found that the directions issued by the Division Bench of this Court in L.P.A. 635 of 2018 on 19.06.2019 was not carried out in letter and spirit. The respondent may have been posted as godown In-charge, but considering the large scale misappropriation which was detected by the audit team, supposedly causing losses of around Rs. 5.69

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crores, it was observed that this could not have been effected at the instance of one person only. There were other eleven employees of the Corporation, who were also made accused along with the respondent.

10. On what basis was the quantum recoverable from the respondent assessed, was not very clear from the order passed by the Managing Director.

11. Considering these aspects of the matter, the learned Single Judge directed that the Managing Director ought to pass a fresh order after giving an opportunity to the respondent to place his case on the basis of facts as well as documents, whereafter the Managing Director would assess the loss for which the respondent was responsible.

12. The contention of the appellant/Warehousing Corporation that according to the rules of the Warehousing Corporation, any loss from the godown and its corresponding quantified amount, has to be recovered from the godown In-charge and

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respondent No. 2 had been the godown In-charge at that time. The rest of the other persons were not involved with the affairs of the godown.

13. In any view of the matter, since the issue has been sent to the Managing Director to pass a fresh order with respect to the recovery of the losses suffered by the Corporation as against the respondent, we do not wish to interfere with the same.

14. The Managing Director of the Warehousing Corporation shall pass a reasoned order after taking into account all the facts and if possible, after giving a hearing to the respondent. We have said so for the reason that such huge amount is likely to be recovered from the pensionary benefits of the respondent.

15. The order so passed shall be made available to the respondent at the earliest. The exercise should be completed within a period of four months from the date of receipt/production of a copy this order.

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16. The appeal stands disposed off accordingly.

17. Interlocutory application(s), if any, also stands disposed off.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Manoj/Praveen-II

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