

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7754 of 2017

Md. Nazim son of Late Md. Ali Hassan, resident of Khja Sarai, P.O. and P.S.-
Laheriasarai, Town and District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Food Commissioner, Food & Civil Supplies Department, Government of Bihar, Main Secretariat, Patna
2. The Bihar State Food and Civil Supplies Corporation Ltd., through its Managing Director, Road No.2, Daroga Rai Path, R-Block, Patna
3. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Road No.2, Daroga Rai Path, R-Block, Patna
4. The Deputy Chief (Claims), Bihar State Food and Civil Supplies Corporation Limited, Road No.2, Daroga Rai Path, R-Block, Patna
5. The Deputy Chief (Administration), Bihar State Food and Civil Supplies Corporation Limited, Darbhanga.
6. The Assistant Commissioner, Employees Provident Fund, Surya Complex, Lakshmi Chowk, M.I.T., Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Shivendra Kishore, Sr. Advocate
For the BSFC	:	Mr. Harsh Kumar, Advocate
For the EPFO	:	Mr. Prakash Sinha, Advocate
For the Respondent/s	:	Mr. Upendra Pratap Singh, AC to SC-4

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 30-08-2019

Ref.:- I.A. No. 1 of 2019

The present interlocutory application has been filed for amending the writ petition and now, the petitioner seeks quashing of the order dated 27.7.2019 passed by the Managing Director, Bihar State Food and Civil Supplies Corporation Ltd.

I.A. No. 1 of 2019 is allowed and the registry is directed to add the prayer made in the present interlocutory application in paragraph no. 21 as additional prayer to paragraph no. 1 of the main writ petition.



CWJC No. 7754 of 2017

The present writ petition was initially filed for quashing of the letter no. 5778 dated 11.7.2012 issued by the Managing Director, Bihar State Food and Civil Supplies Corporation Ltd., Patna (hereinafter referred to as the 'Corporation') whereby and whereunder the petitioner has been directed to deposit his share of 10% of the total defalcated amount, which comes to a sum of Rs. 21,16,062/-. The petitioner has further prayed for directing the Respondents-Corporation to consequently pay the retiral dues, which have not been paid to the petitioner herein.

2. The brief facts of the case are that the petitioner had joined the services of the Respondent-Corporation and during the course of his service period, he was posted as District Manager, Sitamarhi from 15.6.2006 to 27.8.2008 under the Respondent-Corporation wherein one Mahesh Kumar Karn (since deceased) was the Assistant Manager, Sitamarhi and was incharge of KR. Mills and Runi Saidpur Godown since the year, 2005. It appears that the said Mahesh Kumar Karn died in the year, 2010 whereupon it transpired that there was huge defalcation in the KR. Mills and Runi Saidpur Godown to the tune of Rs. 4,19,06,511/- and to the said extent, an audit report dated 8.8.2011 was furnished by the Auditor of the Respondent-



Corporation.

3. It is the case of the petitioner as canvassed by the learned Senior Counsel appearing for the petitioner that in violation of the principles of natural justice and without either initiating any departmental proceeding or issuing any show cause notice, the Respondents-Corporation has sought to recover a sum of Rs. 21,16,062/- from the petitioner herein by the impugned order dated 11.7.2012. The learned Senior Counsel for the petitioner has submitted that the fact is that the petitioner has got no complicity whatsoever in the alleged defalcation committed by the deceased Mahesh Kumar Karn and the petitioner has been made an escape goat in order to save the skin of higher officials of the Respondent-Corporation.

4. At this juncture, the learned Senior Counsel for the petitioner has relied upon a judgment rendered by a coordinate Bench of this Court, reported in **2015 (2) PLJR 184 (Md. Alimuddin vs. State of Bihar & Ors.)**, to canvass before this Court that an audit objection cannot be a proof of the offence itself. In this regard, paragraph no. 13 of the said judgment is relevant to be reproduced hereinbelow:-

13. The audit objection cannot be a proof of offence by itself. It may be a starting point for enquiry and culminating in an order of punishment in a departmental proceeding. An



audit objection is but an objection raised for procedural deviations which may or may not be answerable. Therefore, merely because the audit objection may have named certain others also, it may not be sufficient for the petitioner to allege that they should also have been proceeded with, but simultaneously if the audit objection had put the petitioner along with any others in the same boat and departmental proceedings were directed to initiate against some only, there has to be a proper and reasoned consideration in the file at least why it was not considered necessary to hold departmental proceedings against others indicted in the audit objection. In absence of such a procedure to arbitrarily pick out only some persons mentioned in the audit objection may not be sustainable.”

5. The learned Senior Counsel for the petitioner has further relied upon a judgment rendered in **2017 (2) PLJR 466 (Lalita Devi vs. The State of Bihar & Ors.)** to submit that if any dues are outstanding to be recovered from a delinquent on account of misconduct / misappropriation committed by him, the employer is required to take recourse to the remedy of filing a money suit for the purposes of recovery of the said amount. In this regard, it would be relevant to quote paragraph nos. 9 to 11 of the said judgment hereinbelow:-

“9. On query made by the Court, learned counsel for the State admitted that no disciplinary proceeding or criminal proceeding was initiated against the husband of the petitioner while he was alive. Learned counsel for the State also failed to refer to any rule empowering the State or any of its



authority to recover from the post-retiral dues of the widow. The amounts shown as due under the heads scholarship and building construction are not admitted by the petitioner. In the opinion of this Court in case of dispute in respect of outstanding amount and in absence of any rule empowering the State to recover such disputed amount from the terminal benefits, no recovery can be made from the pension and gratuity amount.

10. As noted above, no proceeding was ever initiated against the deceased employee during his lifetime. The question of outstanding amount would also involve computation and fixation of liability. Such recovery of amount, under the given circumstances, can only be made by instituting a properly constituted money suit and not otherwise.

11. In that view of the matter, the impugned order as contained in Memo No. 115 dated 11.01.2016 issued under the signature of the District Programme Officer (Establishment), Bhojpur, Ara is quashed. The respondents are directed to make payment of amount of pension and gratuity to the petitioner within two months from the date of receipt/production of a copy of the order.”

6. Per contra, the learned counsel appearing for the Respondents-Corporation has submitted that Clause 25 of the Bihar State Food and Civil Supplies Corporation Ltd. (Service Conduct), Rules provides for punishment and authorizes the Managing Director of the Corporation or any other officer authorized by him to impose punishment as prescribed upon the



employees of the Corporation who are found guilty of any misconduct under the said Rules. Clause 26 (iii) has been referred to by the learned counsel for the Respondent-Corporation to submit that “recovery from pay of the employee of the whole or part of any pecuniary loss caused by him to the Corporation by negligence of duty or breach of orders” constitutes a minor offence, hence, Corporation was / is not required to initiate a departmental proceeding. Clause 25 deals with punishment and procedure for dealing with cases of misconduct and Sub-Clause (i) thereof provides for mere issuance of show cause in cases of such employees of the Corporation who are charged with such allegations, which warrant imposition of minor punishment.

7. I have heard the learned counsel for the parties and perused the materials on record and I find that the petitioner was posted as District Manager, Sitamarhi from 15.6.2006 to 27.7.2008 whereas the Assistant Manager, Sitamarhi was one Mahesh Kumar Karn (since deceased) and he was posted from the year 2005 to the year 2010 at the said place, hence, obviously the onus and liability for any defalcation or misappropriation was on the said deceased Mahesh Kumar Karn, nonetheless, an audit report dated 8.2.2012 was submitted



by the Deputy Chief Claim, Bihar State Food and Civil Supplies Corporation Ltd., which pertains to the inquiry made for the period during which late Mahesh Kumar Karn was Assistant Manager, Sitamarhi and therein, under the heading 'conclusion and suggestion', the complicity of the said late Mahesh Kumar Karn, Assistant Manager, Sitamarhi has been found in the alleged defalcation and not that of the petitioner herein. In such view of the matter, though the Respondent-Corporation has got no case even on merits, nonetheless, without going into the disputed question of facts, it would suffice to state that as far as the present case is concerned, even considering the reliance placed by the learned counsel for the Respondent-Corporation on Clause 26 Sub-Clause (iii) of the Service Conduct Rules of the Respondent-Corporation, the same merely postulates recovery from pay of the employees as a minor punishment. It is apparent that since the Respondents-Corporation is seeking to recover the amount in question from the outstanding retiral dues of the petitioner herein, inasmuch as the petitioner has stood superannuated on 31.7.2013, no recovery can be made from the retiral dues of the petitioner, as per the aforesaid Clause 16(iii) of the Rules, which postulates recovery from the pay of an employee. Even otherwise admittedly, nothing has been brought



on record by the Respondent-Corporation to show that any show cause notice was ever issued to the petitioner herein, hence, on this count as well, the recovery sought to be made by the Respondent-Corporation from the petitioner vide letter dated 11.7.2012 is bad. As far as recovery is concerned, though the same might be attributable to misconduct or alleged defalcation by the delinquent, however in absence of any rule showing that such action of recovery can be taken after the retirement of the delinquent, no recovery can be made from the retiral dues of the petitioner herein and in case, the Respondent-Corporation is required to make any recovery, then it will have to file a money suit and prove its case in view of the law laid down by this Court in the case of **Lalita Devi**. This Court is further convinced that an audit objection cannot be a proof of the offence itself, thus on the basis of an audit objection, no penal action can be taken against the petitioner, as has been held by this Court in the case of **Md. Alimuddin** (supra).

8. The learned counsel appearing for the EPFO submits that already a sum of Rs. 2,56,689/- has been paid to the petitioner herein, however, the learned Senior Counsel for the petitioner submits that some more portion is required to be paid under the head of provident fund. At this juncture, the learned counsel



appearing for the EPFO submits that any further payment would depend on the certification by the employer with regard to the amount of contribution which has been made by the employer. This Court deems fit and appropriate to direct the Respondent-Corporation to certify and send the details of the contribution made by the employer to the EPFO authorities qua the petitioner herein so that in case, any more amount is due to be paid, the same can be paid to the petitioner.

9. Having regard to the facts and circumstances of the case, the writ petition stands allowed and the order dated 11.7.2012 passed by the Managing Director, Bihar State Food and Civil Supplies Corporation Ltd. Stands quashed.

10. As far as the order dated 27.7.2019 passed by the Managing Director of the Respondents-Corporation is concerned, the same has been passed contrary to the order of this Court dated 19.4.2019 inasmuch as the matter was referred to the Managing Director of the Respondents-Corporation only for ascertaining as to whether any departmental proceeding has been initiated or any show cause has been issued as per the audit objection to the petitioner herein before passing of the impugned order dated 11.7.2012, however, the Managing Director of the Respondent-Corporation has not considered the



said aspect of the matter, as directed to be considered by this Court and has instead passed an irrelevant, illegal & a baseless order. In any view of the matter, since the impugned letter of the Respondent-Corporation dated 11.7.2012 has already been quashed, the subsequent decision of the Managing Director of the Respondent-Corporation dated 27.7.2019 do not have any legs to stand and is bound to fall, hence, is also set aside.

11. The writ petition stands allowed, however, with a direction to the Respondent-Corporation to pay all the outstanding retiral benefits of the petitioner herein within a period of three months from today.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.10.2019
Transmission Date	NA

