(2010) 09 PAT CK 0085

In the Patna High Court

Case No : CWJC No. 13403 of 2010

Ganpati Jha APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Citation : (2011) 1 PLJR 156

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—Heard learned Counsel for the Petitioner, the State and the Respondent Nos. 2 to 4.

2. Petitioner at the relevant time served as Depot Manager on deputation under Respondent Nos. 2 to 4 at their Bettiah Depot, is aggrieved by the order dated 8.7.2010, Annexure-8 to this application, whereunder he has been directed to deposit 40% of the amount of loss caused in the depot i.e. Rs. 4,25,314/-. Prior to issue of the impugned order, Petitioner was served with notice dated 4.12.2009, Annexure-5 asking him to show cause as to why MRP of 13081 bottles which was lost in the depot amounting to Rs. 10,63,285/-during the period between 16.12.2007 to 18.8.2009, which appears to be a mistake for 18.8.2008, be not recovered from him. In response to the notice, Petitioner requested Respondent No. 2 the author of notice dated 4.12.2009, Annexure-5 under his letter dated 14.12.2009, Annexure-C to the counter affidavit to furnish copy of the documents required by him to file his show cause reply. From the counter affidavit, it appears that the documents required by the Petitioner under letter dated 14.12.2009 to file his show cause reply was served on the Petitioner under letter dated 21.12.2009, Annexure-D through one Ramnath on 23.12.2009 as is evident from extract from the Dispatch Register, Annexure-E. Petitioner disputed receipt of the documents in the writ petition and rejoinder affidavit, however, admitted filing of his show cause reply dated 29.12.2009, 2.2.2010, Annexures-6,7 in which he again requested Respondent No. 2 to furnish all the

audit reports as also the report of the Committee constituted by Respondent No. 2 to go into the aspect of stock verification of Depot made during his tenure. He further explained in his show cause that demand draft of Rs. 1,22,824/- has not been entered into the computer. He further filed show cause dated 2.2.2010, Annexure-7 explaining demand draft dated 12.4.2008 for Rs. 25,000/-, Nine drafts of the value of Rs. 2,59,600 dated 24.4.2008 and other drafts mentioned therein and further submitted that unless position of the stock of the depot is verified from the date of its establishment the loss caused during the period between 16.12.2007 to 18.8.2008 cannot be assessed. In this connection, he also relied upon the information furnished by him to the General Manager under letter dated 14.1.2008, Annexure-11 to the second supplementary affidavit as also the order of the Managing Director dated 30.4.2008 whereunder the Managing Director having learnt about the lack of maintenance of the account in the depot from the Petitioner, directed the Petitioner to lodge First Information Report for the loss caused in the depot from the date the depot was established till 15.12.2007 i.e. just a few days prior to the Petitioner assuming charge on 5.1.2008. In compliance of the direction of the Managing Director, Petitioner reported the matter to the Officer-in-charge, Bettiah Police Station about the shortage in the depot from the date of its establishment till 15.12.2007 i.e. shortage of 16,850 bottles. The report was made under letter No. 99 dated 2.5.2008. Counsel for the parties are not aware about the result of the First Information Report lodged by the Petitioner on 2.5.2008. The Managing Director, Respondent No. 2 having considered the show cause reply dated 29.12.2009 and 2.2.2010, Annexures-6 and 7 fixed 6.1.2010 the date of hearing in the proceeding when the Petitioner requested him to furnish copy of the audit report, the Managing Director having considered such request, directed under order dated 6.1.2010 to furnish the internal audit report to the Petitioner which the counsel for the Respondents states was actually furnished to the Petitioner under letter dated 27.1.2010, which was served on him on the same day in his office i.e. the office of the Forest Development Corporation where it was received by Sri Suresh Thakur, Peon serving in that office and such fact is evident from the signature of Sri Suresh Thakur on the extract from the Issue Register, Annexure-B.

3. Counsel for the Corporation states that service of the letter dated 21.12.2009, 27.1.2010, Annexures D, A on Suresh Thakur and Ramnath be accepted as service on the Petitioner.

4. I regret not to accept such submission. It is elementary that service of the document has to be effected on the person concerned or his agent. M/s Suresh Thakur and Ramnath are serving as peon in the office of Forest Development Corporation and service of the document called for by the Petitioner on them cannot be held to be service on the Petitioner. The impugned order dated 8.7.2010, Annexure-8 passed without the service of the documents called for by the Petitioner, therefore, suffers from the vice of having been passed without granting adequate opportunity to the Petitioner to defend himself being arbitrary

is accordingly, quashed.

5. One another aspect which is relevant and required to be considered is that notice which was served on the Petitioner was to account for the loss caused during the period between 16.12.2007 to 18.8.2008 amounting to Rs. 10,63,285/-, but from the impugned order it does not appear as to why only 40% of the loss caused was directed to be recovered from the Petitioner. Petitioner being the In-charge of the depot, if he is involved in causing pilferage at the depot, he should have been saddled with the responsibility for the entire recovery because under his nose pilferage was committed. The impugned order distributing the loss amongst the employees serving the depot is not understandable. The matter is remitted back to the Managing Director with direction to first serve the documents which the Petitioner asked for either by effecting personal service on the Petitioner or by requesting the Managing Director of the Forest Development Corporation to serve the document on the Petitioner and obtain receipt showing service of the documents on the Petitioner and thereafter to proceed with the hearing of the matter and pass order after giving reasonable opportunity to the Petitioner of being heard. Before, proceeding with the hearing, the Managing Director should ascertain the result of the criminal case which he himself got registered and should also record as to what was the stock position on the date the Petitioner assumed charge of the Depot as without ascertaining such stock, it would be very difficult to ascertain the loss caused during the period between 16.12.2007 to 18.8.2008.

6. The writ application is, accordingly, disposed of.