

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8246 of 2014

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Om Prakash Son of Sri Dwarika Prasad resident of Flat no. 306, Ambaji Palace, Mohalla Sheikhpura (Behind Mangal Market), P.S- Shastrinagar, Patna- 800014

.... Petitioner/s

Versus

1. The Bihar State Power Holding Company Ltd. through its Deputy General Manager (Human Resource and Administration) Vidyut Bhawan Bailey Road, Patna.
2. The Chairman Cum- Managing Director, Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
3. The Director (Human Resource and Administration) Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
4. The Managing Director, North Bihar Power Distribution Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
5. The General Manager (Human Resources and Administration) Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
6. The Deputy General Manager (Human Resources and Administration, Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Adv & Mr. Mahesh Kumar, Adv

For the Respondent/s : Mr. Anand Kumar Ojha, Addl.S.C.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

5 03-04-2015 Heard learned counsel for the parties as with regard to the following reliefs, prayed in this writ application:-

“For issuance of a writ in the nature of certiorari of any other appropriate writ, order/s, direction/s quashing order No. 2358 communicated vide memo No. 2359 dated 30.10.2012 (Annexure-2) whereby and whereunder the petitioner has been compulsory retired in public interest which is in fact against the public interest.

For allowing the consequential benefits which may accrue therefrom.”

2. When this writ petition was heard first on 26.02.2015 and again on 09.03.2015 this Court had passed the following orders :-

"26.02.2015 Heard in part.

Mr. Anand Kumar Ojha, having produced the record and having found in difficulty to support the impugned order under the guise of Rule 74(a) of the Bihar State Electricity Board Service Regulation, 1976 being para materia to Rule 74 of the Bihar Service Code, seeks time to discuss the issue with the concerned authority and to file supplementary counter affidavit as with regard to not only the justifiability of the impugned order but also the reasons of passing such an order by the senior officials like Mr. Rana Awadhesh, the then Member (Administration) and Mr. P.K.Roy, the Chairman and the Managing Director of the Company.

It will be open for Mr. Ojha to bring subsequent events on record in such supplementary counter affidavit.

09.03.2015 Having regard to the earlier order dated 26.02.2015, Mr. Anand Kumar Ojha, learned counsel appearing on behalf of the respondent-Company seeks two weeks time to file supplementary counter affidavit duly sworn by the present Chairman-cum-Managing Director of

the Bihar State Power Holding Company."

3. Thereafter an affidavit has been filed by Mr. Pratyay Amrit the C.M.D. of the Company relevant portion whereof reads as follows:-

"6. That by the order dated 09.03.2015 the Hon'ble Court was pleased to direct for an affidavit of the CMD of the Bihar State Power (Holding) Company Ltd. The direction dated 27.02.2015 issued earlier was for submitting justification of the order of compulsory retirement.

7. That in the backdrop of decision taken by the present management on the compulsory retirement of Sri Om Prakash, the circumstance of justifying the said order does not arise today. Still from the records containing notes, proposals and approval by the then Chairman of the erstwhile Board, it appears that the decision to award the punishment of compulsory retirement was taken on the basis of several instances of dereliction of duty, lack of diligence and want of due sensitivity towards the instruction of the Apex Board or the Hon'ble Court as well as failure in proper supervisory role discharge by the writ petitioner.

8. That substantially there had been issues relating to Sri Prakash in his role in the project work of the 33 KV line from 132/33 KV grid sub-station, compliance of instruction of the Apex Board, compliance of the Order of the Hon'ble Court in Letter and spirit etc.



9. That the allegations forming basis for an order of compulsory retirement were examined by the present management. It was noticed that these are allegations warranting detail departmental enquiry. It was also observed that the condition precedent or appropriate process and procedure before awarding compulsory retirement had been missing.

10. That the present management resolved to strike a balance between justice to the petitioner on one hand and protecting the interest of the administration without according and allowing any premium upon negligence and dereliction of duty, if prima-facie established.

11. That it is respectfully submitted that with a view to administer justice to the petitioner the deponent took unto himself the exercise of hearing the petitioner on several dates. It is in furtherance of the same that Sri Prakash was asked to respond to the charges accumulated at one place. No doubt the petitioner appeared for hearing and had also responded to the explanation sought by the management as directed by the deponent, it appeared to the management to resolve the matter by recalling the Resolution No. 2538 dated 30.10.2012 with liberty to the Managing Director, South Bihar Power Distribution Company Ltd. to proceed under Rule 43(b) of the Bihar Pension Rules if he is satisfied on prima facie charges of negligence and dereliction of duty.

12. That in view of the above mentioned subsequent decision of the Management of recall the order of Compulsory Retirement the present writ application has become infructuous."

4. The order which has been passed by C.M.D. on 21.03.2013 reads as follows:-

"On consideration of the appeal submitted by Sri Om Prakash, the then GM-cum-CE, MESA, Gaya Since compulsory retired), against the punishment of compulsory retirement awarded vide resolution no. 2358 dated 30.10.2012, the petitioner was called for personal hearing by the undersigned on 03.01.2012.

While Sri Om Prakash was posted as GM-cum-CE, MESA, Gaya his work and conduct was evaluated by erstwhile BSEB, and it was observed that on several instances Sri Prakash failed in discharge of his duty with utmost devotion and sincerity. On the grounds of several serious charges, it was decided to retire Sri Prakash compulsorily from the services of BSEB in Public interest under Rule 74(a) of BSEB Service Regulation, read with Rule 135 of Bihar Pension Rules along with notification no. 1217 dated 30.01.2013 read with corrigendum letter no. 17 dated 01.07.2013.

Sri Prakash appeared before the undersigned for personal hearing on 19.07.2014, 20.12.2014 and 03.01.2015. On 19.07.2014 Sri Prakash submitted that his compulsory retirement was not in accordance with



rules. He mainly pleaded that on the charges against with he had been compulsory retired in public/Board's interest had not been substantiated with appropriate evidence. Further that no opportunity was given to him to be heard before retiring him compulsorily which is violation of Natural Justice Principles.

According, I orders that an explanation incorporating all the charges as mentioned in the order of compulsory retirement be issued to Sri Prakash and he may be directed to submit his reply within fifteen days for further consideration on his appeal. An explanation incorporating all the charges, was issued to him vide letter no. 1516 dated 11.08.2014. Sri Prakash submitted his reply on 22.08.2014 which was not at all acceptable as he did not submit any document in order to prove his innocence.

One more opportunity was extended to Sri Prakash to prove his innocence. According he was once again called for personal hearing on 20.12.2014 in which he requested to grant him some more time to produce t he evidence in favour of his appeal. Accordingly two weeks time was given to him. On 03.01.2015 and 20.01.2015 some documents were submitted by him in favour of is appeal which was thoroughly examined.

Huge amount of money was involved in the project work of erecton of 33 KV line from 132/33 KV Grid Sub Station. In this work the contractor left t he work midway but Sri Prakash did not bother to take



punitive action against the contractor as per terms of contract. Sri Prakash in his defence explained the non co-operation of the contractor in completion of work but he did not disclose any reason for delay made in acting against the contractor. In the instant matter the dereliction of duty and slackness in tender work against Sri Prakash was established in accordance with Rules. Had he informed the top management regarding non co-operation of the contractor within time the management would have resolved the issue and financial loss would have been minimized to a great extent but Sri Prakash failed to do so.

In the matter of M/s Regal Hotel, Station Road, Gaya the consumer has submitted an application seeking compliance of the directions of Hon'ble High Court Patna as envisaged in its judgments dated 05.01.2012 in CWJC No. 5248/2011. In this case also, despite repeated reminders no compliance status was informed from his end to the Board. This shows his complete ignorance and insensitivity towards board's/Hon'ble High Court orders.

Besides this, Sri Prakash failed in discharge of his duty with utmost devotion and sincerity regarding the other charges leveled against him in the show cause asked vide letter no. 1516 dated 11.08.2014.

On the basis of available records, I find that Sri Prakash was promoted in the post of Electrical Superintendent Engineer on 05.03.2010 and he was allowed to work as GM-cum-CE, Magadh Electric



Supply Area, Gaya with effect from 27.01.2011. The charges leveled against him in the orders of compulsory retirement refer to a brief stint of 4 months only whereas for invoking the provision under Rule 74(a) of BSEB Service Regulation the entire service period of Sri Om Prakash should have been evaluated and analyzed upon. Notwithstanding above, at no point of time negligence and dereliction of duty and it needs to be examined in a detailed departmental enquiry.

Therefore on the basis of careful examination of available records the punishment order issued vide Resolution No. 2538 dated 30.10.2012 is hereby recalled.

Further, on the basis of facts mentioned above, Managing Director, South Bihar Power Distribution Company Limited will be at liberty to initiated departmental proceeding against he appellant Sri Prakash under Rule 43(b) of Bihar Pension Rules, if he is convinced about the prima facie charges of negligence and dereliction of duty. Regarding payment etc. of the period of compulsory retirement till his actual date of retirement may be decided in accordance with the outcome of the Departmental Proceeding. However the said period will be considered as in service for re-fixation of pension.

Order:- Ordered that a copy of this order be sent to the appellant Sri Om Prakash for information.

Sd/-
(Pratyaya Amrit)
CMD"



5. Mr. Chitranjan Sinha, learned counsel appearing on behalf of the petitioner at the outset has submitted that there has been subsequent development during the pendency of this writ application, inasmuch as, the order of the compulsory retirement of the petitioner has been sought to be withdrawn under the Chairman cum Managing Director of Bihar State Power (Holding) Company Limited (B.S.P.H.C.L.). He has, however, submitted that the last part of such order of the Chairman cum Managing Director of Bihar State Power (Holding) Company Limited is wholly bad because once the authority himself had found the order of compulsory retirement of the petitioner unsustainable in terms of Rule-74A of the Bihar State Electricity Board Service Regulation, he could not have withheld the salary and emoluments of the petitioner to which he was deprived on account of the illegal order of compulsory retirement.

6. He has further highlighted that the liberty given by the Chairman cum Managing Director of Bihar



State Power (Holding) Company Limited to initiate proceeding under Rule-43(b) of the Bihar Pension Rules can have no exception in law but where such liberty has been coined would go to show that it is the negligence and dereliction of duty which has weighed upon the Chairman cum Managing Director to make such observation. He with reference to Rule-43(b) of Bihar Pension Rules, points out, that there is no case of gross misconduct or pecuniary loss caused by the petitioner to the employer and the provision of Rule-43(b) of Bihar Pension Rules can not be made applicable.

7. Mr. Anand Kumar Ojha, learned additional standing counsel appearing on behalf of the respondents on the other hand points out that the use of word 'prima facie charge of negligence and dereliction of duty' has to be only read in the context that if such negligence and dereliction of duty could have resulted into financial loss or gross misconduct then alone the petitioner would be subjected to a proceeding under Rule-43(b) of the Bihar



Pension Rules. He has further pointed out that the petitioner has not worked for a singly day from 31.12.2012 till the date of his superannuation on 30.06.2014 and therefore, the petitioner should not be held to entitled for full salary for the period in question.

8. In the considered opinion of this Court, the moment the respondents have found the order of compulsory retirement of the petitioner to be unsustainable, the effect in law would be that such order never existed. In that view of the matter, as this order has been passed after the petitioner has attained the age of superannuation which as noted above was reached by the petitioner on 30.06.2014, he cannot be subjected to deprivation of payment of salary and emoluments for the period he was forcibly kept out of employment on account of illegal order. In that view of the matter, this Court would hold the petitioner to be entitled to get all his due emoluments including the salary and allowances for the post he was holding as on 30.10.2012 and for the

period commencing from 31.10.2012 to 30.06.2014.

This Court would therefore direct that all such emoluments to the petitioner must be paid within a period of one month from the date of receipt of this order.

9. This has to be ordered only because the impugned order of compulsory retirement in terms of Rule-74A of Bihar State Electricity Board Service Regulations has been found to be bad by the respondents themselves and has been sought to be withdrawn.

10. As with regard to the explanation given by Mr. Ojha that the proceeding under Rule-43(b) of Bihar Pension Rules can be drawn for gross misconduct and/or causing pecuniary loss to the Board and/or the successor Company, there can never be any impediment in doing so, but then if the relevant part of order of the Chairman cum Managing Director where he proceeds to subject the petitioner to a proceeding under Rule-43(b) of Bihar Pension Rules only on the ground of negligence and

dereliction of duty, that by itself is not in consonance with Rule-43(b) of the Bihar Pension Rules, which for the sake of clarity and convenience is quoted hereinbelow:-

“Rule 43(b). *The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to the government by misconduct or negligence, during his service including rendered on re-employment after retirement:*

Provided that-

(a) Such departmental proceedings, if no instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.”

(underlining for emphasis)

11. Admittedly, no departmental proceeding was



drawn against the petitioner till he remained in service and was somehow subjected to an order of compulsory retirement under Rule-74A of the Bihar State Electricity Service Regulation and therefore, if the respondents now want to proceed under Rule-43(b) of Bihar Pension Rules the same has to be within the four corners of Rule-43(b) which permits employer to initiate a departmental proceeding in terms of Rule-43(b) of Bihar Pension Rules, only if there are charges of 'gross misconduct' and/or 'financial loss' to the employer.

12. This Court therefore, while disposing of this writ application must make it clear that the petitioner can be subjected to any departmental proceeding only if aforesaid underlined provisions of Rule 43 (b) is applicable to the case of the petitioner.

13. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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