

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1000 of 2015

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Rajesh Kumar Ray Son of Sri Sunil Kumar Rai Resident of Bekapur Gola Road PO and PS - Munger, District - Munger.

.... Petitioner/s

Versus

1. The Bihar State Power Holding Company Limited through its Chief Managing Director, Vidyut Bhawan, Bailey Road, Patna.
2. The Managing Director, South Bihar Power Distribution Company, Vidyut Bhawan, Bailey Road, Patna.
3. The General Manager (HR and Administration), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
4. The Deputy General Manager (HR), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
5. The Electrical Superintending Engineer, Electric Supply Circle, Gaya.
6. The Electrical Executive Engineer, Electric Supply Division, Sherghati, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Bajrangi Lal, Adv.

For the Respondent : Mrs. Nilu Agrawal, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT
(Date-12.03.2015)

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application

reads as follows:

"1.(i) For issuance of appropriate writ in the nature of certiorari for setting aside memo no. 229 dated 12.08.2013 issued by the Deputy General Manager (HR), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna by which services of petitioners to the post of Junior Electrical Engineer has been dispensed with for the allegation that cases of huge quantity of transformers have been reported burning in the supply section of the petitioner and despite instruction for proper maintenance of the transformers, petitioner has not taken corrective measures in his working pattern.

(ii) That further for quashing of communication contained in letter no. 1211 dated 20.09.2014 issued by the respondent no. 3 the General Manager (HR and Administration), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna by which it has been informed to petitioner that his appeal representation has been rejected by the competent authority but order/decision rejecting the appeal representation has not been communicated to petitioner.

(iii) That further for a direction upon the respondent to reinstate

the petitioner in the services of the respondent corporation along with entire consequential monetary benefits including month to month back wages and other services benefits."



3. Learned counsel for the petitioner, while making his submission in support of the aforementioned prayer, has explained that the petitioner's appointment on the post of Junior Engineer, though on contract basis, was continuing since 2006 while the erstwhile Bihar State Electricity Board was in existence. He has in this regard also submitted that the services of the petitioner even though was extended from time to time, but all of a sudden, on 12.08.2013, his such services were terminated on the ground of misconduct in form of lack of sincerity in performing his duty. According to the learned counsel for the petitioner, such order of termination of services of the petitioner dated 12.08.2013 was passed by Mr. K.K.Jain, Deputy General Manager (H.R.) of South Bihar Power Distribution Company Limited (hereinafter referred to as 'the SBPDCL') on a direction given by the Managing Director even without giving him a show cause notice much less an opportunity of hearing.

4. Learned counsel for the petitioner has also submitted that the solitary reason given in the impugned order of termination of services of the petitioner that he (petitioner) being not vigilant in the maintenance of transformer under his



jurisdiction, is factually incorrect because not a single transformer, within his jurisdiction, had been burnt. He has further submitted that when this aspect of the matter was explained by the petitioner in his appeal filed before the Chairman-cum-Managing Director of Bihar State Power Holding Company Limited (hereinafter referred to as 'the BSPHCL'), the same was also rejected under an order of Managing Director of SBPDCL without giving any reasons much less addressing to the report of the Electrical Superintending Engineer, Electric Supply Circle, Gaya dated 12.07.2014 called for by the Appellate Authority wherein it was clearly stated that none of the 09 transformers, within the jurisdiction of the petitioner during his tenure as Junior Engineer had been either burnt or even repaired.

5. Learned counsel for the petitioner, therefore, has summed up his submission that the order of termination of services of the petitioner, even though carrying stigma, was passed in clear violation of the principle of natural justice and the appeal also was disposed of by the same authority, namely, Managing Director, SBPDCL on whose direction the initial order of termination of services of the petitioner was passed.

6. Noting the aforementioned submissions, this Court on 16.02.2015 had passed an order not only for filing of counter

affidavit but also directing the Respondents for producing of the records, relevant portion whereof reads as follows:

"Having regard to the fact that the original order against the petitioner terminating his services was passed by the Deputy General Manager (HR), South Bihar Power Distribution Company Limited, Patna even without giving show cause notice much less opportunity of hearing and the appellate authority in his order rejecting the appeal of the petitioner dated 20.09.2014 has not given any reason while disposing of the appeal of the petitioner, this Court would direct the learned counsel for the Company to file counter affidavit as also produce the records to justify both the orders."

7. When such a counter affidavit was filed on 09.03.2015 and the record in form a file was produced, on its perusal it became absolutely clear that the order of termination of the services of the petitioner was passed on a mere whimsical direction given by the Managing Director of SBPDCL. This became visibly clear from perusal of page 4 of the correspondence portion of the file in which on a plain sheet of paper, the Managing Director of SBPDCL had scribbled one word order for dismissal against the petitioner as also taking actions of stopping of increment or other punitive orders against other officers as well. As a matter of fact, on this, one word order of the Managing Director of SBPDCL and the termination order was prepared and issued. Thus, from reading of the said file, it became absolutely clear that the petitioner even though was removed from service by way of termination of his services along with stigma, but he was never given even a show cause

notice much less an opportunity of hearing.

8. It has to be kept in mind that the respondents in the counter affidavit, however, had not been fair enough to concede this aspect relating to termination of services of the petitioner in violation of principle of natural justice and had gone to justify the order of termination of services of the petitioner by taking a plea that even if the transformers, within the jurisdiction of the petitioner, had not been burnt but there were certain other charges on which the services of the petitioner were sought to be terminated.

9. This Court, in fact, was completely shocked with the wholly perfunctory and arbitrary approach of the authorities of the company who had walked into shoes of the erstwhile Bihar State Electricity Board governed by its own rules and regulations laying down the service conditions including the mode and manner of appointment termination of services of a Junior Engineer. In such a situation, this Court on 10.03.2015 had directed for personal appearance of both, the Chairman-cum-Managing Director of the BSPHCL as also the M.D., SBPDCL to explain as to under what circumstances such perfunctory order of termination of services of the petitioner was passed and how could the appeal of the petitioner be also



rejected without giving any reason by the same authority who has passed the order of termination of services of the petitioner and that too without noticing the clear report of the Superintending Engineer that no transformer, in the working period of the petitioner, had been burnt in his jurisdiction.

10. Today, Mr. Pratyay Amrit, the Chairman-cum-Managing Director of BSPHCL as also Mr. R. Lakshmanan, M.D., SBPDCL have appeared in person and having filed a show cause reply, they have straightway conceded before this Court that the order of termination of services of the petitioner as also the appellate order were bad both on fact and in law and because of that they have recalled the order of termination of service of the petitioner without any break of his contractual assignment under an order dated 11.03.2015 which reads as follows:-

"During the Video Conferencing conducted by Managing Director, South Bihar Power Distribution Company Limited, Patna on dated 08.08.2013, it was stated that several number of transformers have either been burnt or have been defaulted due to poor maintenance of transformers by Junior Electrical Engineer, Electric Supply Section, Dumariya.

On account of the charges of poor maintenance of transformers under his jurisdiction, the contract agreement of Sri Rajesh Kumar Rai, the then Junior

Electrical Engineer (C), Electric Supply Section, Dumariya was terminated vide Company's Resolution No. 229 dt. 12.08.2013 under provisions enumerated in Job Contract Notice No. 01/06 and para IV of Office Order No. 713 dt. 06.03.07.

An Appeal against termination order was submitted by Sri Rai to the Chairman regarding re-engagement on duty on dt. 21.09.2013 in which it was mentioned that his leg not fractured during that period and he was on Medical Leave with effect from 01.08.2013 till the date of his termination. It was also mentioned in his appeal that no instance of transformer burning was observed during his tenure of work.

Electrical Superintending Engineer, Electric Supply Circle, Gaya submitted a report endorsing the claim of Sri Rai. After receipt of the aforesaid report, appeal submitted by Sri Rai was examined in detail on the basis of other available records and it was found that the allegation regarding poor maintenance of transformers/burning of transformers is not proved against Sri Rai.

On the basis of the aforesaid facts, the appeal filed by Mr. Rajesh Kumar Rai is allowed and the termination order vide Resolution No. 229 Dt. 12.08.13 is hereby quashed and he will be deemed to be in his contractual assignment without any break.

sd/-

11/3

(Pratyaya Amrit)

CMD"



11. In view of the aforesaid development nothing now is required to be decided because the petitioner has been sought to be reinstated in service after setting aside his order of termination of services as also recalling the appellate order. Mr. Mr. Pratyaya Amrit, the Chairman-cum-Managing Director of BSPHCL was also very fair in his submission that the earlier appellate order was itself bad in law because his predecessor in office ought to have not sent the memo of appeal to the M.D., SBPDCL for its disposal inasmuch as the power of appeal was only with CMD of BSPHCL. He has, in fact, also submitted that he cannot have any defence for such an illegal order of termination of service of the SBPDCL and, therefore, he has directed for reinstatement of the petitioner in service without any break in his contractual appointment.

12. Having regard to the aforementioned stand of the C.M.D., BSPHCL before this Court, this writ application is disposed of with a direction to the respondents to not only accept the joining of the petitioner forthwith but also pay him the entire back wages from the date of his termination of services and till his joining the duty on the post of Junior Engineer. Since such amount of back wages has become payable to the petitioner only on account of an arbitrary and illegal order passed by the then M.D., SBPDCL, liberty is also given to C.M.D., BSPHCL to

recover the amount in question paid to the petitioner by way of back wages from the concerned erring official(s) but the payment of back wages to the petitioner must be made to the petitioner within a period of one month from today.

13. It also goes without saying that in future the authorities of the Company shall not remove any person employed by the erstwhile Bihar State Electricity Board on regular and/or contractual basis and still retained in the services of the companies replacing the Board without following the Rules and Regulations governing their service conditions and/or observing the principles of natural Justice.

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

15. The personal appearance of Mr. Pratyaya Amrit, the Chairman-cum-Managing Director of BSPHCL and Mr. R.Lakshmanan, M.D., SBPDCL is also accordingly dispensed with.

Ranjan/Sujit-

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(Mihir Kumar Jha, J)