

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9861 of 2008

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Laxmi Prasad Singh, son of Late Lekha Singh, resident of village Bari Murheri
Police Station Haweli Kharagpur Post Office Rataitha District Munger

.... Petitioner/s

Versus

1. The Bihar State Electricity Board , Patna, through its Chairman
2. the Joint Secretary (General Administration), Bihar State Electricity Board,
Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SYED M.ASHRAF

For the Respondent/s : Mr. Ratan Prasad Sinha

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 15-04-2015

Heard Mr. Syed M. Ashraf, learned counsel for the petitioner and Sri Ratan Prasad Sinha, learned counsel who appeared on behalf of the respondents/ Bihar State Electricity Board.

This is the second writ petition filed on behalf of the petitioner under Article 226 of the Constitution Of India. Earlier, the petitioner was departmentally proceeded and punishment order was passed in the departmental proceeding. The petitioner assailed the order of punishment before this court by filing a writ petition vide CWJC No.5356 of 2004 on the ground that though the conducting officer on conclusion of departmental enquiry exonerated the petitioner from all charges, the disciplinary authority without



assigning any reasons for differing with the enquiry report has imposed punishment order. This court in view of the judgment of the Apex Court in (1998) 7 SCC 84 **Punjab National Bank v. Kunj Bihari Mishra** interfered with the order of punishment. The court was of the opinion that since no reason was assigned, order of punishment was not sustainable and order of punishment was set aside. However, while setting aside the order liberty was granted to the Department to proceed against the petitioner in accordance with law, if so advised. The said order was passed by this court on 28.6.2004 in CWJC No. 5356 of 2004 which has been brought on record as Annexure – 5 to the writ petition. After the order of the writ court the earlier punishment was set aside and from the stage of receipt of enquiry report, notice was issued to the petitioner giving reason for differing with the enquiry report. The said notice has been brought on record as Annexure - 6 to the writ petition Thereafter, the petitioner filed reply. After filing of reply and considering the same the respondents were not satisfied and issued second show cause notice on the proposed punishment vide Annexure - 8 to the writ petition and finally, order of punishment has been passed vide Resolution No. 32 dated 4.2.2006 vide Annexure -10 to the writ petition. By the said order the petitioner was held guilty for unauthorized absence without pay from 14.1.1988 to 4.3.1992. The said period was directed to be

considered for all retiral dues. Second punishment is that for three years he has been restrained from getting promotion.

Mr. Ashraf, learned counsel for the petitioner assailing the impugned order submits that again the Department has committed the same mistake which was committed earlier and thereafter, this court had quashed the order of punishment. Learned counsel for the petitioner tried to persuade the court that of –course vide Annexure – 6 to the writ petition, the respondents have tried to develop the case regarding recording reasons for difference of opinion but fact remains that there is no substantial change in the subsequent show cause i.e. Annexure - 6. Learned counsel for the petitioner further submits that since the petitioner was mentally sick he remained absent for the period indicated hereinabove. However, the petitioner had submitted medical certificate which has been ignored whereas the conducting officer had accepted the explanation of the petitioner and exonerated the petitioner. On aforesaid grounds he has prayed for setting aside the impugned order.

Sri Ratan Prasad Sinha, learned counsel for the respondents / Board has opposed the prayer of the petitioner. He submits that of- course in the departmental proceeding the petitioner had taken a plea that by letter sent through UPC he had informed the Department regarding leave but fact remains that this claim was



disputed and thereafter the petitioner had not produced any evidence to show that such letter was ever issued by the petitioner. On this issue he submits that it will be deemed that petitioner had never sent any application for grant of leave. He further submits that in the departmental proceeding the petitioner had though taken a plea that he was mentally sick, on record there were evidences to suggest that at subsequent stage the petitioner had filed an application for grant of leave showing that his wife was ill. He further submits that the fact regarding transfer was well within the knowledge of the petitioner and that was the reason that after expiry of the aforesaid period the petitioner submitted his joining at new place. On the question of non-submission of any application for leave and non- production of any evidence to draw a presumption learned counsel for the Board has placed reliance on the Apex Court judgments reported in **A.I.R. 1981 S.C. 1191 (Mst. L.M.S. Ummu Saleema v. B.B. Gujaral)** as well as **A.I.R. 2009 S.C. 1233 (V.N. Bharat v. D.D.A. & Anr.)** He has specifically referred to paragraph no. 20 of V.N. Bharat case (supra) and paragraph no. 6 of L.M.S. Ummu Saleema case (Supra). He further submits that after the earlier punishment was set aside by this court and liberty was granted to proceed afresh the petitioner was given notice vide Annexure – 6 whereby detail reason for differing with the enquiry report was provided. The petitioner was asked to



submit his explanation, which was submitted by the petitioner. However, same was not satisfactory and, thereafter, on the question of punishment also show cause notice was given to the petitioner vide Annexure - 8 to the writ petition. On aforesaid grounds it has been pleaded that there is no error in Annexure - 10 i.e. the punishment order.

Beside hearing learned counsel for the parties I have also perused the materials available on record. At the stage of exercising power of judicial review there is very limited scope for this court to examine the merit of the case. In such situation the requirement for this court is to examine as to whether in process of taking decision whether any illegality or irregularity has been committed by the Department or not. Since the irregularity which was earlier committed by the Board has already been cured by assigning detailed reason for differing with the enquiry report vide Annexure - 6 to the writ petition, the court is of the opinion that there is no ground for interference with the impugned order. The reason assigned in Annexure - 6 was sufficient enough for drawing an inference regarding commission of misconduct by petitioner and as such, I do not find any defect in the order impugned

The writ petition stands dismissed.

The original record which was produced by Sri Ratan

Prasad Sinha, learned counsel for the Board is hereby returned to Sri Sinha.

(Rakesh Kumar, J)

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