

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3394 of 2014

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Md. Wasim Uddin, son of late Salimuddin Assistant, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna presently posted at BIADA, Regional Office Industrial State, Barari Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Industrial Development Commissioner, Industries Department, Bihar at New Secretariat, Patna.
2. The Director, Industries Department, Government of Bihar at New Secretariat, Patna.
3. The Chairman, Bihar Industrial Area Development Authority, Udyog Bhawan (East Gandhi Maidan), Patna.
4. The Managing Director, the Bihar Industrial Area Development Authority, Udyog Bhawan (East Gandhi Maidan), Patna.
5. The Secretary, Bihar Industrial Area Development Authority Udyog Bhawan (East Gandhi Maidan), Patna.
6. The Executive Director, Bihar Industrial Area Development Authority, Regional Office at Muzaffarpur/Bhagalpur.
7. The Executive Director, Bihar Industrial Area Development Authority, Regional Office at Bhagalpur.
8. The Proceeding Officer, Bihar Industrial Area Development Authority, Udyog Bhawan (East Gandhi Maidan), Patna.
9. Placing Officer, Bihar Industrial Area Development Authority Udyog Bhawan (East Gandhi Maidan), Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Prasad Singh, Advocate.
For the State : Mr. Satyendra Rai, A.C. to S.C. 30
For the BIADA : Mr. Prashant Pratap, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

6 17-03-2015 Heard learned counsel for the parties as with regard to
the following relief prayed in this writ application:

"1.....direction or order against respondents authorities as to why the order dated 14.02.2012 passed by the Managing Director, Bihar Industrial Area Development Authority, whereby the petitioner has been punished in a departmental proceeding which are vague & cryptic and against the rules prescribed and against principle of natural justice and without jurisdiction be quashed and for consequential benefits to petitioner along with compensation to petitioner for wrong done/caused to petitioner."

2. At the outset, learned counsel for the respondents



has raised a preliminary objection with regard to maintainability of the writ application on the ground that the petitioner has not exhausted the statutory alternative remedy of appeal against the order of punishment, which lies before the Chairman of the Bihar Industrial Area Development Authority (hereinafter referred to as 'the BIADA'). In this regard, he relies on Clause 2.8.1 of the Bihar Industrial Area Development Authority (Financial, Service and Technical) Regulations, 2007 (hereinafter referred to as 'the Regulations') framed under Section 15 read with Section 5 of the BIADA Act.

3. Learned counsel for the petitioner, in reply, has submitted that the aforementioned Regulations shall not be applicable in the case of the petitioner, who was a regular employee of the BIADA.

4. This Court would find it difficult to accept such submission of the learned counsel for the petitioner in view of definition of employee given under Clause 1.3.6 of the Regulations which defines "Employee" to mean any person serving the BIADA on any post, on contract or 'Otherwise', and includes those on deputation to BIADA.

5. In view of the above, this Court will have no difficulty in holding that even if the petitioner was holding the post of a permanent employee in BIADA in prescribed pay scale,

he will be one of the employees as per the aforementioned Regulations. Once, this aspect has become clear, this Court will have no difficulty in holding that the present writ application filed after almost two years of the impugned order, without exhausting the statutory alternative remedy of appeal, is fit to be dismissed both on the ground of delay and laches as also non-exhausting the statutory alternative remedy of appeal.

6. At this stage, learned counsel for the petitioner submits that since the impugned order of punishment was wholly without jurisdiction inasmuch as the Managing Director had no power to frame charges against the petitioner because the appointing authority of the petitioner was the Committee consisting of so many persons including the Managing Director, the decision to initiate a departmental proceeding and/or framing of memo of charge by the Managing Director in person was not permissible.

7. This Court would find it very difficult to accept such submission of the learned counsel for the petitioner for more than one reason. Firstly, by now, it is well settled that any person who has the supervising power to control the service condition of an employee, can frame charge. In the present case, the situation is still better because the Managing Director has been declared the appointing authority for all categories of post as per Clause 1.3.2

of the Regulations and, therefore, there will be a difficulty for this Court to accept the submission of the learned counsel for the petitioner that even being appointing authority, the Managing Director, could not have taken a decision to initiate a departmental proceeding against the petitioner and/or to frame charge against him.

8. Once, this aspect has become clear, this Court would come to the conclusion that the impugned order is not without jurisdiction.

9. As a matter of fact, the Managing Director, in the impugned order, has taken note of this aspect that the main plank of the petitioner was the raising issue of jurisdiction of the Managing Director and, therefore, this Court will also have no difficulty in holding that if the petitioner had any other grievance with regard to proceedings not being conducted as prescribed manner under the service regulation or in terms of the rules or is in violation of principle of natural justice, these issues were capable of being raised in appeal before the appellate authority.

10. That apart, the petitioner has very smartly acted in this case. He knew that he was going to retire in the month of February 2014 and, therefore, he did not challenge the order of punishment for the next two years and when he was going to retire after a few days in the month of February, 2014 itself, he had filed



this writ application challenging an order whose scope was only awarding Censure for two years or stopping for payment of salary in the period of suspension. Thus, the effect of order of punishment dated 14.02.2012 had already been completed on 11.02.2014, when this writ application had been filed and the delay in filing of the writ application, therefore, itself became fatal.

11. This Court has also examined the impugned order of punishment and does not find any error in the same. The petitioner in fact has miserably failed to establish that there was any procedural infirmity in course of departmental proceeding.

12. In this regard it has to be noted that the petitioner an employee of BIADA was subjected to a departmental proceeding by memo of charge dated 01.06.2007. He was dismissed from service on the basis of charges being proved against him by order dated 26.06.2007, and that order of punishment was assailed by the petitioner in C.W.J.C No. 15012 of 2008. The said writ petition of the petitioner alongwith batch of other writ petitions were allowed, only on the ground that the procedure prescribed for departmental proceeding was not followed and the order of punishment of the petitioner was also quashed with a liberty to take fresh action. Thereafter, the petitioner was subjected to another departmental proceeding and

was placed under suspension, he had moved this Court in C.W.J.C No. 8755 of 2009. This Court however, did not interfere with the order of suspension and had only directed the authorities to conclude the departmental proceeding within a period of four months vide order dated 28.07.2009.

13. Thereafter, the departmental proceeding was conducted against the petitioner and the petitioner had raised objection as with regard to holding of departmental inquiry by one Akhlaq Ahmad by raising a plea of bias but that application of the petitioner for change of the inquiry officer was rejected. Thereafter, the departmental proceeding was conducted against the petitioner and the ordersheet of departmental proceeding will go to show that the petitioner started evading appearance in the departmental proceeding. The inquiry officer and the disciplinary authority, however, had ensured that the notice of the inquiry was duly served on the petitioner.

14. During the pendency of the departmental proceeding, the inquiry officer however also got changed and in place of Md. Akhlaq Ahmad one Chandra Nath Jha, was made inquiry officer. In fact the second inquiry officer was also changed and thereafter it was one Vinay Saran Verma, who had conducted the inquiry against the petitioner. There were as many as 31 dates in the departmental proceeding but the petitioner had appeared



only on four dates. The presenting officer had produced documentary evidence to prove the charges against the petitioner. Such documentary evidence included letter no. 33 dated 08.05.2005 and the concerned file no. 17/STHA/BIADA/05 as also letter no. 1087 dated 10.05.2007 and letter no. 33 dated 08.05.2005. The inquiry officer had also looked into the letter of the BIADA 1613 dated 19.09.2005 as also letter no. 5736 dated 27.11.2007. That apart the petitioner's admission of charge no. 3 was also proved by letter no. 38 dated 09.05.2007. In fact all the five charges were proved against the petitioner with the help of the documents, as many as twelve in number, and the copy of the inquiry report dated 26.04.2011 was also served on the petitioner.

15. The disciplinary authority having found all the seven charges against the petitioner to be proved on the basis of the inquiry report, had supplied the copy of the inquiry report and given liberty to the petitioner to submit his second show cause reply. The petitioner did avail this opportunity and had submitted his explanation on 21.06.2011, wherein, he did not choose to assail the finding of the inquiry officer but had only gone to question the jurisdiction of Managing Director, initiating departmental proceeding against him. A reasoned order was passed by the disciplinary authority dealing each of the charge in the light of the evidence and limited explanation of the petitioner,



will leave nothing for speculation that even though charges were quite serious in nature and there was a consideration made for inflicting major punishment but a lenient view was taken by way of awarding minor punishment of censure and withholding of his salary for the period of suspension as also keeping him under watch.

16. This Court has also, accordingly, examined the misconduct defined in the service regulation and would find that the charges which were covered by those misconduct has been defined in clause-2.7 of the service regulation. The applicability of service regulation for both the categories of employees, who were earlier working or who could be appointed after enforcement of regulation also goes to show that there was no lack of power. In any event, when the petitioner had filed his second writ petition being C.W.J.C No. 8755 of 2009 and had assailed both initiation of departmental proceeding and the order of suspension, and the writ application was disposed of by order dated 28.07.2009, directing the departmental proceeding to be concluded within a period of four months, the issue as with regard to jurisdiction of the Managing Director, had got answered and the petitioner now therefore, cannot make any grievance against the same.

17. The respondents in fact have also filed their counter affidavit, wherein, the allegation of the petitioner, in the

writ petition of being opportunity in course of departmental inquiry, has also been fully explained and denied.

18. As in the departmental proceeding, the petitioner also through his learned counsel before this Court has also concentrated on the aspect as with regard to the jurisdiction of the appointing authority. The respondents in fact have also brought on record the BIADA Financial Service Technical Regulation-2007, which itself would go to show that the Managing Director, is the appointing authority and has got full disciplinary control over the officers and staff of BIADA. The petitioner who was merely an Assistant in BIADA, therefore, cannot be heard to say that either the initiation of proceeding or the order of punishment passed by the Managing Director suffers from any error or lack of jurisdiction.

19. Thus, on an overall analysis, this Court would find that the petitioner has been very leniently dealt with in form of censure.

20. That being so, this Court does not find any merit in this writ application and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

Sujit/Ranjan-
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