

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20945 of 2012

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Hari Man Mohan Choudhary Son Of Late Bhola Nath Choudhary Resident Of
Village- Sahuria, Via- Babubarhi, Police Station Andhra Thadhi, District-
Madhubani

.... Petitioner/s

Versus

1. The Bihar State Electricity Board through its Chairman, Vidyut Bhawan, Bailey Road Patna
2. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
3. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
4. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. N.K. Malhotra,
Mr. Raja Ram Mishra,
Mr. Binod Kumar Sinha, Advocates.

For the Respondent/s : Mr. Vinay Kirti Singh,
Mr. Akhileshwar Singh, Advocates.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 27-01-2015

Heard learned counsel for the petitioner and learned
counsel for the Bihar State Power Holding Company Ltd.

In the present case, petitioner is challenging the Board's
Resolution No.2157 dated 4.10.2012, issued vide Memo
No.2158 dated 4.10.2012 by which he has been terminated from
service on compulsory retirement in exercise of power under
Clause 74 of the Bihar State Electricity Board Service
Regulation, 1976 read with Rule 135 of the Bihar Pension Rules.



The petitioner was serving the erstwhile Board as an Executive Engineer. He was proceeded departmentally by issuing charge sheet but in midway the departmental enquiry was dropped, the Board instead of dismissing the petitioner has passed the order of compulsory retirement by giving three months notice taking recourse to Clause 74 of the Bihar State Electricity Service Regulation, 1976 read with Rule 135 of the Bihar Pension Rule.

Learned counsel for the petitioner submits that exercise of power under Clause 74 of the Service Regulation is misplaced as the petitioner has been dismissed on the charge of misconduct which has been recorded in the impugned order, though the departmental proceeding has not been concluded. When the Board has proceeded departmentally in the charge of misconduct and also the order of compulsory retirement shows that cause of compulsory retirement is misconduct cannot take recourse of terminating service by way of compulsory retirement. A person cannot be compulsorily retired on the charge of misconduct. Employee can compulsory retired after considering entire service record and he cannot be dismissed by giving form of compulsory retirement.

Learned counsel for the Board tried to justify the action of the Board and submitted that petitioner has not been

compulsory retired on the charge of misconduct. The manner the petitioner has been treated cannot be approved by this Court, instead the Board ought to have completed the enquiry and on proving the charge, the Board was liberty to pass any order. The aforesaid view is supported from the order passed by this Court in C.W.J.C. No.21909 of 2012 and in C.W.J.C. No.22397 of 2012.

In such view of the matter, the order of compulsory retirement dated 4.10.2012 is hereby quashed. However, liberty is given to the Board to complete the departmental enquiry which has been left in the mid way and pass the order in accordance with law. As this Court finds that the order is not sustainable, the petitioner is entitled to full salary save and except the pay which the petitioner received by way of notice and by way of pension.

With the aforesaid observation and direction this writ petition is allowed.

Vinay/-

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(Shivaji Pandey, J)