

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14598 of 2015

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Sri Umesh Chandra Roy S/o Sri Mahendra Roy R/o Ramchandra Loachan
Vatika, Flat No. 403, Mohanpur Road, Punaichak, P.S. Shastri Nagar, Distt.
- Patna Petitioner

with

Civil Writ Jurisdiction Case No.5239 of 2015

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Sri Suman Bhai Patel S/o Sri Lalan Prasad , Mohalla- Habibpura, P.O. +
P.S. - Sohsarai, District- Nalanda (803118) poseted as an Ex - Manager
(QC) Petitioner

Versus

1. The Food Corporation of India through its Chairman Headquarters, 16-20 Barakhambha Lane, New Delhi- 110001.
2. The Chairman, Food Corporation of India, Headquarters, 16-20 Barakhambha Lane, New Delhi-110001
3. The Managing Director, Food Corporation of India, Headquarters, 16-20 Barakhambha Lane, New Delhi-110001
4. The Executive Director (East Zone) Food Corporation of India, Zonal Office, 10A, Middleton Raw Kolkata- 700071.
5. The Chief General Manager (F&A) East Zone , Food Corporation o f India Zonal Office, 10A, Middleton Row, Kolkata- 700071.
6. The General Manager (Bihar) Food Corporation of India, Regional Office, Arunachal Bhawan Exhibition Road Patna- 800001.

..... Respondents in both cases

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Appearance :

For the petitioners :- Mr. Shyama Pd. Mukherjee, Sr. Advocate ,
Mr. RN Roy, PKr.Singh

For the Corporation :- Mr. P.K.Verma, Sr. Advocate and Dr.M Tiwari,
Advocate

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH**
ORAL JUDGEMENT

6 07-01-2016 Both the writ petitions are taken up together as the facts
and issues involved are common to each other.

2. Petitioners have prayed for following reliefs:-

(a) quashing of order, dated, 27.11.2012 passed by the
Executive Director (East) FCI, Kolkata awarding punishment of
“dismissal from service and forfeiture of terminal benefits

including gratuity”.

(b) quashing of order dated 17.5.2013, passed by the Appellate Authority i.e. the Managing Director, Food Corporation of India (herein after referred to as ‘the FCI’), (Annexure 9) awarding “removal from service along with forfeiture of terminal benefits including gratuity” slightly modifying order of punishment of dismissal passed by Disciplinary authority and

(c) quashing of order of the Chairman, FCI, Kolkata dated 6.12.2013 (Annexure 10) by which the appellate order dated 17.5.2013 has been upheld.

(d) petitioner of C.W.J.C.No. 14598/15, by filing I.A.No.8741/15, has prayed for quashing order dated 28.9.2015, passed by the General Manager (Vigilance), FCI Zonal office, Kolkata rejecting his representation for payment of salary from 20.12.2012 till superannuation on 30.6.2013 along with retiral benefits, whereas, petitioner of C.W.J.C.No. 5239/15, by filing I.A. No.9760/15, has prayed for passing appropriate order in view of subsequent development in the matter.

3. I would take up CWJC No. 14598 of 2015 as lead case for referring to the pleadings and annexures.

4(a) The petitioners are officials of the FCI. In the year



2009, the petitioner Umesh Chandra Roy was working as Manager (A/C) under district office, FCI, Patna, whereas petitioner Suman Bhai Patel was similarly working as Manager (QC), FCI, FSD, Mokama. One Jayant Kumar was working as Manager (Civil) under District office, Patna of the FCI.

(b) In the year 2009, a case of unprecedented procurement of 12427 MT paddy in one day i.e. on 30.5.2009, by one Sri UK Dubey, AG I(D) In-charge, Paddy Procurement Center (PPC), Dumraon came to the notice of the authorities. The Area Manager, in pursuance of FCI, RO, Patna's DO letter issued under Ref. No. Vig.4 (1179/2/2009 dated 3.6.2009, constituted a committee consisting of the two petitioners and Jayant Kumar and directed them to proceed to PPC, Dumrao to investigate the matter of abnormal procurement of 12427 MT paddy in one day i.e. 30.5.2009 by Sri UK Dubey, AGI(D) In-charge, PPC, Dumraon and to submit their investigation report by 16.6.2009. A copy of office order dated 8.6.2009 is contained in Annexure 1.

(c) It is the case of petitioners that the Committee after due investigation submitted verbal report to the Area Manager, FCI, Patna on 16.6.2009 and written report on 9.7.2009 (Annexure 2). However, the respondents were of the opinion

that there has been inordinate delay in submitting the report, which was also vague and misleading, and misappropriation of the stock by Sri UK Dubey, AGI(D) In-charge, PPC, Dumraon went undetected.

(d) The charges were accordingly framed against the two petitioners and one Jayant Kumar vide Memo, dated, 13.6.2011 (Annexure 3) issued by Executive Director, East, FCI, Zonal Office, Kolkata, respondent no.4. All the three persons submitted their written statements/explanations taking common defence. The written statement of the petitioner Umesh Chandra Roy by way of illustration is contained in Annexure 4.

5. The Executive Director appointed one Sri Subir Dutta, DGM(Gen), as enquiry authority, whereas Sri H. Bhattacharjee, Manager (QC) of RO, Kolkata was appointed as the presenting officer vide Order, dated 30.7.2011 to present the case before the Enquiry officer on behalf of the FCI. A common departmental proceeding was initiated against all the three persons, namely, two petitioners and the said Jayant Kumar. Petitioners demanded a number of documents, some of which were not supplied as those were not available. After conclusion of enquiry, the enquiry/conducting officer submitted common enquiry report vide Memo, dated, 30.5.2012 (Annexure 6). The



disciplinary authority forwarded a copy of the enquiry report to the petitioners and sought their explanations with respect to the finding recorded in the enquiry report. The petitioners submitted their explanations on 20.7.2011 (Annexure 7). Not being satisfied with the explanation of the petitioners as well as Jayant Kumar, the disciplinary authority vide order dated 27.11.2012 in exercise of power under Regulation 58 of the FCI (Staff) Regulation, 1971 (as amended) imposed common penalty of “dismissal from service and forfeiture of terminal benefits including gratuity”.

6. All the three delinquents filed statutory appeal before the MD, FCI, New Delhi. The appellate authority vide order, dated, 17.5.2013 modified the punishment of “dismissal from service and forfeiture of terminal benefits including gratuity” into one of “removal from service and forfeiture of terminal benefits including gratuity”.

7. The petitioners thereafter filed review petition before the Chairman of the FCI, New Delhi, which too were rejected vide order dated 6.12.2013 (Annexure 10).

8. The petitioners thereafter approached the Central Government Industrial Tribunal (No.1), Dhanbad (herein after referred to as ‘the Tribunal’) giving rise to Complaint nos. 11 &

12 of 2013 challenging the order of their dismissal from service.

The Tribunal vide its award dated 9.6.2014 held as follows:-

“The action of the management is illegal and not justified. Hence the workman be treated as workman in continuous service from the date of their dismissal by the Opp.party. Accordingly, the complaint is allowed and action of the management held illegal”

9. It is relevant to state here that while the petitioners took shelter of the Tribunal, co-chargee, Jayant Kumar preferred writ application, being CWJC No.2945 of 2014 against order of dismissal/removal before this Court. The learned Single judge while allowing the writ petition observed as follows:-

“In view of the above, the impugned order of the disciplinary authority dated 27.11.2012 (annexure-4), the order of appellate authority dated 17.05.2013 (annexure-6) as well as the order of the Chairman, FCI on petitioner's review petition dated 06.12.2013 (annexure-8) are hereby quashed. The petitioner is directed to be reinstated forthwith with consequential benefits. As regards the payment of backwages, the petitioner shall approach the competent authority for payment of backwages for the period during which he remained out of service because of the impugned orders with an affidavit that he was not gainfully employed elsewhere during the said period. The petitioner will be denied backwages only if the authorities come to a finding that the petitioner was gainfully employed elsewhere during the period in question. The issue as regards payment of backwages shall be decided within a period of three months from the date of receipt/ production of a copy of this order.”

10. The FCI filed appeal being L.P.A.1289 of 2014 against order dated 5.8.2014, which was partly allowed in the

following terms:-

“The order of punishment dated 27.11.2012 shall stand modified to the effect that the punishment of withholding of two increments shall be imposed against the respondent. In all other respects, the order passed in the writ petition shall stand”.

11. The FCI carried the challenge to Hon'ble Apex Court, being Special Leave to Appeal(C) No.22573 of 2015, which was disposed of vide order, dated 17.8.2015 (Annexure 14) setting aside the portion of the order with respect to penalty. The matter was remitted to the disciplinary authority with the direction to impose any suitable minor punishment on the writ petitioner.

12. The Executive Director (Disciplinary authority) in terms of direction of the Hon'ble Apex Court, reinstated Jayant Kumar with minor punishment. The relevant extract of order of Executive Director dated 18.8.2015 (Annexure 15) is quoted herein below:-

“Sri Jayant Kumar is hereby reinstated as Manager (Civil Engineering) with the minor penalty of withholding of two increments for two years with effect from 27.11.2012 and with all consequential benefits. It has further been observed that during the period of withholding of increment, he will earn his normal increments and on expiry of such period, the reduction will not have the effect of postponing the future increments of his pay. As regards the back wages, it is hereby ordered that if Sri Jayant Kumar submits an affidavit that he was not gainfully employed elsewhere during the period when he was out of service, he will

be paid the back wages for the period during which he remained out of service because of the penalty imposed on him in accordance with law”.

13. Mr. Shyama Prasad Mukherjee, learned senior counsel for the petitioner making the lead argument submits that the petitioners claim parity with the case of Jayant Kumar and seek similar reliefs. They ought to have been reinstated in service like Jayant Kumar as the order of their dismissals too have been set aside by the Tribunal.

14. On the other hand, Mr. Prabhat Kumar Verma, learned Senior counsel representing the FCI states that the writ petitions are not maintainable as they have already got relief from the Tribunal, which has set aside the order of dismissal. The petitioners as such cannot again agitate the matter for the same relief which they have already got from the Central Government Industrial Tribunal-I, Dhanbad. The FCI, however, has challenged the said order dated 9.8.2014, in W.P. (L) No.2488 of 2014, which is pending adjudication before the Jharkhand High Court.

15. I find that the case of the petitioners is similar to that of Jayant Kumar, who together were members of a Committee constituted by FCI, R.O., Patna. They submitted a joint report with respect to procurement of unprecedented paddy by Sri U.K.



Dubey, AGI (D) In-charge, PPC, Dumraon on 30.5.2009. The defence of the petitioners before the Disciplinary authority was common. All of them were awarded similar punishments, whereas petitioners moved Government Industrial Tribunal-I, Dhanbad, co-chargee Jayant Kumar successfully moved this Court against his dismissal/removal in the writ jurisdiction, being C.W.J.C.No. 2945 of 2014. FCI carried the matter in appeal. The LPA bench modified the order of removal into one of withholding of increments, which order was modified by the Apex Court directing the respondents to award any suitable minor punishment to Jayant Kumar, who was consequently re-instated in service with minor punishment.

16. I would have set aside the impugned order in terms of the directions of the Hon'ble Apex Court but as the dismissal has been held to be illegal and the petitioners have been directed to be in continuous service by Government Industrial Tribunal-I, Dhanbad, I refrain from setting aside impugned orders of dismissal/removal, as FCI has challenged the order of the Tribunal before Hon'ble Jharkhand High Court, being one without jurisdiction. I would only observe that it would be fair and reasonable on part of the FCI which is a Public Sector Undertaking to act reasonably and fairly and to re-instate them in

service provisionally till disposal of the appeal in Hon'ble Jharkhand High Court, as there could be no contrary order in similar situation as to one passed by the Hon'ble Apex Court.

17. The writ petition is thus disposed of.

Shashi.

(Samarendra Pratap Singh, J)

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