

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2371 of 2013

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1. Mahesh Chandra Jha Son Of Late Kamal Narain Jha Resident Of Village Chainpur, P.O. Balua Bazar, P.S. Bhimpur, District Supaul

.... Petitioner/s

Versus

1. The Bihar State Co-Operative Marketing Union , Having Its Office At Biscomaun Tower, West Gandhi Maidan, Patna Through Its Managing Director
2. The Chairman, Biscomaun, West Gandhi Maidan, Patna
3. The Managing Director, Biscomaun, West Gandhi Maidan, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. GAUTAM KUMAR KEJRIWAL

For the Respondent/s : Mr. SIDDHARTHA PRASAD

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 04-01-2016

Heard counsel for the petitioner and the respondents.

In the present case, initially counsel for the BISCOMAUN submitted that the present writ petition is not maintainable in view of order of this Court in 2014(1) PLJR 695, whereas the counsel for the petitioner has pointed out that the impugned order was passed on 10th November 2012 and the election had taken place on 23rd November 2012 by the Administrator, as such, it cannot be said that the impugned order is not amenable to writ jurisdiction.

In the present case, petitioner is challenging the order of punishment dated 10th November 2012 passed by the disciplinary authority (Annexurte-16) whereby he has directed for realization of Rs.5,00,000/-.



In the present case, petitioner was posted as Chemist in Granular Fertilizer Unit at Tilrath, Barauni (Begusarai) from 23rd July 2012 upto the date of his superannuation. Biscomaun published advertisement for giving the Factory to the private person on lease along with others Kisan Tractor had also submitted sealed cover tender, was selected and finally the factory was handed over to Kisan Tractor

A show cause notice was issued by the Biscomaun on 30th June 2012 asking explanation for the acts misconduct committed by the petitioner, followed by a charge-sheet dated 27th July 2012 making allegation that he had handed over four godowns to the Kisan Tractors against the terms of the lease, enquiry was conducted, petitioner participated in the said proceeding and later on enquiry report was submitted on 16th October 2012 where the Enquiry Officer did not find the charges proved against the petitioner and submitted report of exoneration.

The disciplinary authority vide order dated 10th November 2012 passed the impugned order which shows that it is a cryptic perfunctory order without examining the report of the Enquiry Officer. Counsel for the petitioner submits that when the Enquiry Officer has submitted the enquiry report in favour of petitioner, in terms of judgment Punjab National Bank v. Kunj Bihari Mishra, 1993

FJR 588: (1998)7 SCC 84 was required to be given notice with tentative finding of disagreement and seeking explanation.

In the said judgment, the Hon'ble Supreme Court has held that in a case where the Enquiry Officer has submitted the enquiry report in favour of delinquent, he must give notice with a tentative finding of disagreement with asking explanation. It is well known that the disciplinary authority may disagree with the report of the Enquiry Officer but must disclose the points of disagreement.

Counsel for the Biscomaun submits that there is an alternative remedy available to the petitioner and he may approach the appellate authority against the error committed by the disciplinary authority. He could not satisfy the Court in the manner the procedure for enquiry has been adopted.

Having considered the submissions of the parties this Court is of the view that when the Enquiry Officer has submitted a report in favour of petitioner did not find any of the charges has been proved in terms of the judgments as aforesaid, if the disciplinary authority disagreed with the report of the Enquiry Officer, then in that case he must give a notice with tentative finding of disagreement, seek explanation only thereafter it could have passed the order so much so the order passed by the disciplinary authority must disclose his mind but the order is silent, shows arbitrary exercise of power.

In such view of the matter, the impugned order is quashed and the matter is remanded back to the disciplinary authority who will proceed and take a decision in accordance with law within a period of three months from the date of receipt/production of the order.

This Court is not giving any opinion on the merit of the case.

With this observation/direction, this petition is disposed of.

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(Shivaji Pandey, J)