

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16087 of 2008

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1. Vijay Kumar Pathak Son Of Sri Kedar Nath Pathak, Resident Of Village-Bathana, P.S.- Goraul, P.O.- Sandho, District- Vaishali

.... Petitioner/s

Versus

1. The Bihar State Food & Civil Supplies Corporation Limited Through Its Secretary-Cum-Managing Director, Sone Bhawan, Veerchand Patel Path, Patna- 1
2. The Chairman-Cum-Managing Director, Bihar State Food & Civil Supplies Corporation Limited, Sone Bhawan, Veerchand Patel Path, Patna-1
3. The Chief Of Administration-Cum-Conducting Officer, Bihar State Food & Civil Supplies Corporation Limited, Sone Bhawan, Veerchand Patel Path, Patna-1
4. Chief Of Claims, Bihar State Food & Civil Supplies Corporation Limited, Sone Bhawan, Veerchand Patel Path, Patna-1
5. The Deputy Chief Of Finance, Bihar State Food & Civil Supplies Corporation Limited, Sone Bhawan, Veerchand Patel Path, Patna-1
6. District Manager, State Food Corporation, Vaishali
7. District Manager, State Food Corporation, Palamu, District- Palamu
8. Arun Kumar, The Deputy Chief Of Finance, Bihar State Food & Civil Supplies Corporation Limited, Sone Bhawan, Veerchand Patel Path, Patna-1
9. Principal Secretary, Food & Consumer Protection Department, Govt. Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. GANPATI TRIVEDI, Sr. Adv.

For the Respondent/s : Mr. S.D. Yadav, AAG -9

Mr. Anil Kumar Verma, AC to AAG-9

For the B.S.F.C. : Mr. Shailendra Kumar Singh, Adv.

Mr. Amrendra Narayan Rai

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 22-02-2017

Heard Mr. Ganpati Trivedi learned counsel for the petitioner Mr. S.D. Yadav, learned AAG – 9 for the State and Mr. Shailendra Kumar Singh learned counsel appearing on behalf of the B.S.F.C.

2. The petitioner by filing this writ petition seeks



quashing of order, as contained in Memo No. COADP 02/2003-2970, Patna dated 27.04.2004 (Annexure-25) by which the services of the petitioner have been terminated. The petitioner further seeks quashing of order, as contained in Memo No. 3151 dated 22.05.2012 (Annexure -30) by which the appeal of the petitioner has been dismissed.

3. The brief facts which are relevant for the disposal of this writ petition are that the petitioner was working in B.S.F.C. as Laboratory Incharge from the year 1977. A departmental proceeding was initiated while the petitioner was posted in the district of Palamu. Memo of charge and supplementary memo of charge were given to the petitioner on 11.07.2003 and 30.07.2003. Again supplementary memo of charge was given on 03.09.2003. The petitioner also gave his reply on 25.08.2003 and on 05.11.2003. The Enquiry Officer was appointed and he fixed the date of hearing in the departmental proceeding as 15.01.2004. Enquiry Officer submitted his report. Thereafter, the petitioner was served a second show-cause on 05.02.2004 along with the enquiry report dated 03.02.2004. The petitioner submitted his show-cause on 01.03.2004. Disciplinary Authority issued the order of termination of the petitioner on 27.04.2004, as contained in Annexure-25. The petitioner thereafter filed review petition before the Appellate Authority, but the same was not disposed of, therefore, the petitioner filed this writ petition.



During the pendency of the writ petition the appellate forum was constituted and accordingly the petitioner filed his appeal (Annexure-29) before the Principal Secretary, Food Civil Supplies Department, Government of Bihar. The Principal Secretary, Government of Bihar dismissed the appeal of the petitioner on 22.05.2012 (Annexure-30).

4. Learned counsel for the petitioner submits that from the enquiry report dated 03.02.2004 appended with the second show-cause (Annexure – 23), it would appear that no enquiry was held. The Enquiry Officer did not examine any witness either oral or documentary nor allowed the delinquent to examine oral or documentary evidence and submitted his report on his own on 03.02.2004. From the proceeding, it would appear that on 30.12.2003 the date of hearing was fixed as 15.01.2004, but no evidence was produced on that day and thereafter, on 03.02.2004 the report was submitted. Therefore, the order of dismissal of the petitioner is vitiated and not sustainable. Similarly, the Appellate Authority did not pass the order giving any reason and the order itself is non-speaking.

5. Mr Shailendra Kumar Singh learned counsel for the respondents/Corporation submits that the petitioner was posted in the district Palamu and now it has been resolved that the staff of the Corporation posted in Palamu shall be treated as employee of Jharkhand State Food Corporation and not of Bihar. Annexure-E of



the supplementary counter affidavit filed on behalf of the Bihar State Food & Civil Supplies Corporation shows that it has been resolved that any monetary claim including post retiral dues of the employees who were working in Jharkhand after 14.11.2000 shall be paid by the State of Jharkhand.

6. At the same time, learned counsel for the State could not be able to show that a departmental enquiry was held in accordance with law.

7. Having considered the submission of the parties and on perusal of the records, I find that the Enquiry Officer submitted his report without examining any witness on behalf of the Presenting Officer, the Enquiry Officer did not allow the petitioner to examine his evidence for defending his case and submitted the report and on such enquiry report Disciplinary Authority dismissed the petitioner from his service. Therefore, the order is violative of principles of Natural Justice and could not be allowed to stand. Even the Appellate Authority did not consider any grounds taken by the petitioner in his Memo of Appeal and the order is non-speaking and the same is also violative of Principles of Natural Justice.

8. Accordingly, the writ petition is allowed. The order dated 27.04.2004, as contained in Memo No. COADP 02/2003-2970, Patna (Annexure-25) and order dated 22.05.2012, as contained in



Memo No. 3151 (Annexure -30) are set aside. The matter is remitted to the concerned authority to proceed afresh in accordance with law.

(Prabhat Kumar Jha, J)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.03.2017
Transmission Date	NA

