

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2026 of 2015
IN
Civil Writ Jurisdiction Case No. 2577 of 1999**

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1. The Bihar State Financial Corporation, Fraser Road, Patna, through its Managing Director.
2. The Board of Directors of Bihar State Financial Corporation, through its Chariman, Patna.
3. Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.

.... Appellants

Versus

1. Md. Nafis S/o Late Md. Zahir resident of Mohalla Tarni Prasad Lane, Paschim Darwaja, P.S. Khajekalan, District - Patna.
2. Ashok Kumar Singh s/o name not known the then Managing Director of the Bihar State Financial Corporation and presently Member Finance, Bihar State Electricity Board.
3. Ashok Kumar s/o name not known Assistant General Manager, Bihar State Financial Corporation, Fraser Road, Patna.

.... Respondents

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Appearance :

For the Appellants : Mr. Y.V. Giri, Senior Advocate
Mr. Nikhil Kumar Agrawal, Advocate
For the Respondents : Mr. Manik Vedsen, Advocate
Mr. S.C. Bose, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 21-07-2017

Private respondent No.1 was the petitioner before the learned single Judge challenging the order of punishment of dismissal from service dated 07.06.1997 passed by the erstwhile Managing Director of Bihar State Financial Corporation, Patna. From perusal of the impugned order dated 03.04.2015, it is evident that a detailed kind of argument was made by both sides and taking a complete narration of facts in the manner in which the enquiry was



held and the obvious serious omission committed by the appellants in conduct of such an enquiry and reaching conclusion of guilt virtually all in a day has already been commented upon by the learned single Judge. The learned single Judge has come to a conclusion that the finding of guilt, which culminated into imposition of punishment of dismissal, was a case of no evidence at all.

This Court would not like to reproduce the various principles and the decisions which weighed with the learned single Judge in setting aside the order of punishment of dismissal because it will be unnecessary repetition, but the Bench comes to a considered opinion that in the given facts and the manner in which the appellants had proceeded with the departmental enquiry one can go to the extent of saying that the order was preordained and a formality of an enquiry was gone through to achieve the object of imposing punishment against the private respondent. The facts being what they are, if the order of dismissal was held to be perverse and bad in law and since the private respondent had retired way back in the year 1999 itself, order for payment of back wages was passed. The Court refused to remand the matter back, at such belated stage, to continue with the enquiry.

A valiant effort was made on behalf of counsel



representing the appellants that there are settled principles of law that the rules of evidence do not apply to cases of departmental enquiry. The rigors of evidence required in a court of law is not required to be either produced or established in a departmental enquiry and the learned counsel tried to derive advantage of this proposition by referring to a few observations and paragraphs of decisions rendered in the case of *Director General, Indian Council of Medical Research and Others vs. Dr. Anil Kumar Ghosh and Another*, reported in (1998) 7 SCC 97 and in the case of *Sujeet Kumar vs. The Union of India through the General Manager, E.C. Railways and others*, reported in 2016(2) PLJR 895.

After having gone through these decisions and the paragraphs, which were relied upon by the learned counsel for appellant, the Court can only observe that none of the judgments have gone to the extent of saying that no requirement of resemblance of evidence is required to be either produced or established in a departmental enquiry. This Court is not aware of any judgment where a disciplinary authority or an enquiry officer can bring a bundle of documents on record, label it to be undisputed and authentic and pronounce the verdict of guilt without a modicum of an effort made by any authority even as a matter of formality to prove those document as authentic both with regard to its form and content.



Learned counsel for the appellants, therefore, has pegged his argument too high which no court of law or a society which is governed by the principles or rule of law can accept that position.

The other argument made on behalf of the appellants is that if the learned single Judge found reasons to quash the enquiry report and, therefore, the punishment, the matter should have been remanded back for a re-enquiry in the fairness of things. To this our observation is that since the man has retired way back in the year 1999, a retired employee could not be allowed to be proceeded again in the year 2015 that too when there is no similar provision as Rule 43(b) of the Bihar Service Code in the Corporation.

The last bit of submission on behalf of the appellant is that there was no occasion to order payment of back wages. There are series of decisions of the Hon'ble Apex Court these days where discretion is required to be exercised and at times even payment of 50% back wages has been held to be sufficient compensation to an otherwise employee who has been proceeded against.

There is no set thumb rule as to what should be the compensation in case order of dismissal is held to be bad by the Court. It depends upon the fact and the findings and if the exoneration of an employee is on the ground that the order of



punishment based on an enquiry is outcome of a perverse exercise then a person cannot be allowed to be punished in a via media way by ordering the holding of his emoluments or salary despite the Court being fully convinced about the order’s illegality per se.

Since in the present case, the enquiry and the decision and the order of dismissal was held to be perverse, the order of payment of entire back wages for the period of dismissal cannot be said to be irrational or illegal.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Pawan/-

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