

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6776 of 2009

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Jay Narayan Prasad Rai @ Jay Narayan Rai Son of late Mokhtar Rai, Resident of Village – Manikpur, P.O. – Manikpur via Dayalpur, P.S. – Ekma, District – Saran, retired Accounts Assistant, Electricity Supply Sub-division, Chapra Urban, under Electricity Supply Division, Chapra East, At & P.O. & P.S. – Chapra, District – Saran.

.... Petitioner

Versus

1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna, through its Secretary.
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 Engineer-in-chief, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
5. Financial Controller, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
6. The General Manager-cum-Chief Engineer, Bihar State Electricity Board, Muzaffarpur.
7. The Superintending Engineer, Bihar State Electricity Board, Electrical Circle, Chapra.
8. The Executive Engineer, Electrical Supply Division, Chapra.
9. The Sub-divisional Officer, Electricity Sub-division, Chapra.
10. The Assistant Engineer, Electricity Sub-division, Chapra Urban, Chapra.
11. The Accounts Officer, Electrical Circle, Chapra.

.... Respondents

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Appearance :

For the Petitioner : Mr. Mahesh Narayan Parbat, Sr. Advocate.

For the Respondents : Mr. Anand Kumar Ojha, SC

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 23-02-2017

Heard Mr. Mahesh Narayan Parbat, learned senior counsel for the petitioner and Mr. Anand Kumar Ojha, learned standing counsel of North Bihar Power Holding Company Limited.

2. The petitioner is aggrieved by the order as contained in Memo No. 1937 Muz dated 04.04.2008 (Annexure-12) by which Rs.



10000/- was directed to be recovered from the petitioner and the petitioner shall not be entitled to get any pay or other allowances except subsistence allowance during the period of suspension.

3. Mr. Mahesh Narayan Parbat, learned senior counsel for the petitioner submits that no second show cause was given to the petitioner and the order of stoppage of salary and other allowances during the suspension period is not passed in accordance with the provisions as contained in Rule 97 of the Bihar Service Code. On such, Mr. Ojha submitted that, of course, it appears that no second show cause was given to the petitioner after submission of the enquiry report but it has not been pointed out anywhere that any prejudice was caused to the petitioners.

4. On the facts and submissions of the parties, it is evident that although the petitioner was put under suspension but no punishment was imposed and only Rs. 10,000/- was directed to be recovered as the petitioner is alleged to have not deposited the amount after realizing from the customers. At the same time the authority also withheld the pay and other allowances of the petitioner for the suspension period. Rule 97 of the Bihar Service Code deals as to how the salary and allowances of a delinquent can be withheld. In a case the delinquent is dismissed/removed from service he is not entitled to get salary or other allowances during the suspension period but if the



delinquent is not found guilty his salary and other allowances shall be paid as if he had not been suspended. In the present case no substantive punishment was given to the petitioner but at the same time his salary and other allowances during the suspension period was withheld. Clause-3 and 5 of Section 97 of the Bihar Service Code say that in case of minor punishment the authority has to give notice to the delinquent for withholding the salary and other allowances during the suspension period. This view has been fortified by a Division Bench judgment of this Court reported in Mahabir Prasad Singh Vs. The State of Bihar and Ors., AIR 1988 page 82. The disciplinary authority did not issue any notice to the petitioner and withheld the salary and other allowances during the suspension period. Therefore, the order dated 04.04.2008 is illegal and the same is not sustainable.

5. In the result, this writ petition is allowed. The order aforesaid as contained in Memo No. 1937/Muzaffarpur (Annexure-12) is set aside and the matter is remitted and the disciplinary authority to pass order afresh in accordance with law.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	
CAV DATE	
Uploading Date	11.03.2017
Transmission Date	

