

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3788 of 2009

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Vijay Kumar aged about 42 years, presently correspondence Clerk, Electric Supply Division, Lakhisarai, s/o Sri Radhe Shyam Sah, r/v- Bariyarpur, P.S. Srisiyan, Via-Kalwari, P.S. –Kanti, Muzaffarpur.

.... Petitioner/s

Versus

The Bihar State Electricity Bo

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Banwari Sharma, Adv.
Mr. Nilesh Kumar Nirala, Adv.

For the Respondent/s : Mr. Anand K.Ojha, Standing Counsel
Mr. Ashok Kr. Karna, JC to SC

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 21-02-2017

Heard both sides.

2. The petitioner seeks quashing of order as contained in Memo no. 12 dated 02.01.2009 (Annexure- 1), by which following punishment has been imposed on the petitioner:

“Stoppage of three increments with cumulative effect and nothing will be paid for suspension period other than subsistence allowance and no notional increment will be admissible for suspension period. However, the period of suspension will be counted for pensionary benefits.”

3. Learned counsel for the petitioner submits that earlier the petitioner was given three punishments i.e. (1) Stoppage of three increments with cumulative effect (2) Debar from promotion for two



years from the due date of promotion and (3) Nothing will be paid for suspension period other than subsistence allowance and no notional increment will be admissible for suspension period. However, the period of suspension will be counted for pensionary benefits.

4. The petitioner moved this Court against the order of aforesaid three punishments in C.W.J.C. No. 6777 of 2005 and this Court vide order dated 15.07.2008 remitted the case to the Board to pass order in view of law laid down in **Sri Nageshwar Prasad Sinha Vs. State of Bihar and Ors.** reported in **2003 (2) PLJR 813** in which it has been held that under Rule 49, Sub-rule 3 only one punishment either stoppage of increment or stoppage of promotion can be passed. After remand the authority inflicted two punishments i.e. stoppage of increment and secondly, non-payment of salary and allowance during suspension period and shifting of notional increment during the suspension period.

5. Sri Banwari Sharma, learned counsel for the petitioner submits that this order is also bad in view of provisions as laid down under Rule 97 of the Bihar Service Code which is also applicable to the employees of Bihar State Electricity Board.

6. Sri Anand Kumar Ojha, learned counsel for the Board has submitted that the petitioner is not legally entitled to raise this issue as earlier the petitioner did not assail, on any ground, the third punishment.

7. I am of the view that the argument of Sri Anand Kumar



Ojha is not acceptable. Rule 97, Sub-rule 3 & 5 of Rule 97 of the Bihar Service Code clearly mandates that in case, a delinquent employee is punished other than dismissal, removal and termination, the stoppage of salary and other allowances during the suspension period can be deducted proportionally and that can be after giving notice to the delinquent, but no notice is given in this case. The view is fortified by the law laid down by a Division Bench of this Court in **Sri Mahavir Prasad Vs. State of Bihar & Ors.** reported in **1988(1) PLJR 82.**

8. Considering the facts aforesaid, I find that the order of punishment withholding the salary and other allowances during the suspension period and shifting of notional increment is not in accordance with provisions of Rule 97 of the Bihar Service Code and accordingly, the same is vitiated.

9. Accordingly, the writ petition is allowed and Annexure-1 dated 02.01.2009 is set aside. The matter is remitted to the authority to consider the case of the petitioner and pass order afresh in accordance with law within three months from the date of receipt of a copy of this order.

(Prabhat Kumar Jha, J.)

Rakhi

AFR/NAFR	
CAV DATE	N/A
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Transmission Date	N/A

