

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.9173 of 2005**

=====

MAHMUDUL HAQUE, son of Shukal Mian, resident of village- Paswaria,  
Police Station- Chautarwa, District- West Champaran (Bettiah).

... .. Petitioner/s

Versus

1. Bihar State Food and Civil Supplies Corporation Limited, through the Chairman Cum Managing Director, Sone Bhawan, Birchandra Patel Path, Patna-800001.
2. The Chairman Cum Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Birchandra Patel Path, Patna-800001.
3. The Chief of Administration, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Birchandra Patel Path, Patna-800001.
4. The Chief of Finance, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Birchandra Patel Path, Patna-800001.
5. The Chief of Finance Cum Conducting Officer, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Birchandra Patel Path, Patna-800001.
6. The Deputy Chief of Procurement Cum Presenting Officer, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Birchandra Patel Path, Patna-800001.
7. The Desk Padhadhikari, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Birchandra Patel Path, Patna-800001.
8. Shree Nirmal Kumar Rai, The then District Manager In-charge, Bihar State Food and Civil Supplies Corporation Limited, District Officer at Bettiah, District- West Champaran.

... .. Respondent/s

=====

**Appearance :**

|                      |   |                                      |
|----------------------|---|--------------------------------------|
| For the Petitioner/s | : | Mr. GAJENDRA KUMAR JHA 2             |
| For the Respondent/s | : | Mr. Shailendra Kumar Sinha, Advocate |
|                      | : | Mr. Lalmani Sharma, Advocate         |

=====

**CORAM: HONOURABLE MR. JUSTICE S. KUMAR**  
**ORAL JUDGMENT**

**Date : 22-03-2018**

Heard learned counsel for the parties.

2. This petition under Article 226 of the Constitution of India has been filed for quashing the office order dated 22nd December 2004 as contained in Annexure-13 by which Chairman-Cum-Managing Director, (respondent No. 2) has



imposed punishment of dismissal from service. The petitioner has further prayed to reinstate him with all consequential benefits and back wages. However, during the pendency of this writ petition, petitioner has already retired, as such, no order of reinstatement can be made.

3. Petitioner was appointed on 4th of April 1976 on a class IV post and remained posted in Ramnagar Godown in Bettiah, West Champaran for sometime. The petitioner remained posted since 1995 in a Godown of Corporation situated in the campus of Bettiah Market Committee. In July 1996 petitioner was granted and received Rs. 5040/- as an advance subject to adjustment from salary but thereafter no salary was paid for the years 1996-97, 1997-98 and 2001-2002 and by the allotment made by the Head Office on the basis of bill prepared by the office of District Manager, statement of bills were forwarded to Head Office in February 2004 for authorization of such payment and payment of 22 workers including the petitioner of Rs. 53,251 was authorized by the Head Office with a direction that payment should be made after same is re -verified before actual payment and during the process it was found that petitioner had taken an advance of Rs. 5040/- and after deducting the said amount Rs. 48,211 was payable to the petitioner and



accordingly said amount was paid.

4. The petitioner was served with office order passed by the Managing Director respondent No. 2 dated 25.08.2004 by which petitioner was put under suspension on the ground of preparing excess bill of arrears of his salary. Petitioner represented on 07.09.2004 to the Managing Director, respondent No. 4 and explained his position and prayed for revocation of his suspension order, but the same was not done, rather a decision was taken to initiate a departmental proceeding by appointing Enquiry Officer and presenting Officer and same was communicated to the petitioner by order dated 14.09.2014.

5. Memo of charge dated 20.09.2004 was served upon the petitioner and he was directed to appear before the Enquiry Officer on 05.10.2004 and petitioner submitted his reply to the memo of charges on 05.10.2004. Thereafter the Enquiry Officer by letter dated 07.10.2004 asked the petitioner to appear before him in the Head Office at Patna on 02.11.2004 the date so fixed for enquiry and petitioner appeared on 02.11.2004 and on that date no witness was examined on behalf of Presenting Officer although District Manager, who was cited as witness on behalf of Disciplinary Authority, was present but he only stated that he had already submitted his written opinion and same may be



treated as a evidence against petitioner. However, the official witness was not examined before the Enquiry Officer nor the petitioner was given any opportunity to cross-examine him and even the so-called written statement of District Manager, who was cited as a witness on behalf of department was not given to the petitioner. The 2nd witness to be examined on behalf of department was Assistant Accountant of District Office and he was also not examined by the Enquiry Officer in presence of petitioner and petitioner was not given any opportunity to cross examine him, even in his statement he has not stated anything in support of charge as such, the written statement filed earlier and statement of Assistant Accounts Officer could not be treated as evidence or material before the Enquiry Officer on which any finding can be based by the Enquiry Officer.

6. On the basis of materials available before the Enquiry Officer, the Enquiry Officer found that the charges as framed against the petitioner stands proved. Although charges against the petitioner was of submitting bill to the drawing and disbursing Officer without deducting Rs. 5040/- taken as advance for which petitioner was not responsible and same was sanctioned by the Head Office without any deduction being made and for which he and other employees committed unruly



behaviour in the office of District Manager, State Food Corporation.

7. Nothing on behalf of department either by oral witness or documentary evidence was adduced before the Enquiry Officer in support of this charge. Even thereafter, the Enquiry Officer found the charges to be true and enquiry report was submitted to the Disciplinary authority, who issued 2nd show cause notice to the petitioner on 16.11.2004 and petitioner submitted his reply against the finding of Enquiry Officer that the finding of Enquiry Officer is based on no evidence and there was no material before the Enquiry Officer on the basis of which it can be held that the charges against the petitioner has been proved. However, the Disciplinary Authority did not consider any of the grounds submitted in reply by the petitioner while imposing major punishment of dismissal from service.

8. The 2<sup>nd</sup> show cause notice was issued with proposed punishment of dismissal from service even before reply filed by petitioner which shows that authorities had made up their mind to dismiss the petitioner and as such 2<sup>nd</sup> show cause notice was only a formal notice with pre-determined mind to dismiss the petitioner from service.

9. Against the order of Disciplinary Authority, petitioner



had filed a review before the Managing Director Cum-Chairman of the Corporation. However, no order was passed by the Disciplinary Authority and petitioner filed writ petition in this Court for quashing the order of Disciplinary Authority. However, during pendency of writ petition, the review petition was dismissed by the Disciplinary Authority which has been brought on record by way of counter affidavit by the respondent Corporation.

10. After hearing learned counsel for the petitioner and learned counsel for the respondent, this Court finds that the finding of the Enquiry Officer that the charges against the petitioner is proved is based on no evidence. No evidence was adduced by the department in order to prove and substantiate the charge against the petitioner for having created nuisance before the District Manager, Bettiah and no evidence either oral or documentary was produced before the Enquiry Officer and even thereafter the Enquiry Officer found the charges to be proved.

11. The 2nd show cause notice was issued by the Disciplinary Authority alongwith a copy of enquiry report and petitioner submitted reply to the 2nd show cause stating therein that the finding recorded by the Enquiry Officer is based upon no evidence but still without considering the reply of the



petitioner the Disciplinary Authority imposed punishment of dismissal from service of the petitioner.

12. Earlier Jageshwar Chaudhary against whom also similar proceeding was initiated by the respondents and order of dismissal was passed had approached this Court in C.W.J.C. No. 23405 of 2012 in which the original records were called by this Court for its perusal and in paragraph Nos. 5 and 6 this Court observed as following:-

*“5. In view of categorical stand taken in the writ application that there was absolutely no enquiry held by the enquiry officer and no witnesses were examined at all, I had directed the respondents to produce the entire original records of the disciplinary proceeding. Those records have been produced before this court. On perusal of the records of the disciplinary proceeding, I find that no presenting officer was appointed to prove the charge leveled against the petitioner. The attendance of the petitioner on 02.11.2004 is there on record. Attendance of District Manager, Bettiah and that of Assistant Account Officer on 02.11.2004 are also there on record but no statement of any witness has been recorded by the conducting officer/enquiry officer. At page 34 of the records, I find that the Assistant Accounts Officer in his own hand writing has given his statement. It does not indicate that such statement was recorded at the instance of the Enquiry Officer. From the records, it cannot be said that the said statement of Assistant Accounts Officer was within the knowledge of the petitioner, though such statement of the Assistant Accounts Officer has been taken into consideration by the disciplinary authority. It also appears that no*



*other witness was examined. There is nothing on record to show that even the hand written statement of the said Assistant Accounts Officer, which is available at page 34, was ever supplied to the petitioner. Thereafter, second show cause notice was issued to the petitioner which is there on record.*

*6. From the original records, as indicated above, I find that as a matter of fact there was absolutely no enquiry in the name of disciplinary proceeding held against the petitioner. Neither any witness was examined nor any document exhibited or produced before conducting officer, in the presence of the petitioner in support of the charge. In my view, the entire proceeding, in the facts and circumstances of the case, is vitiated. The report of the enquiry officer is perfunctory without any basis or evidence.”*

13. The L.P.A. No. 1096 of 2014 preferred by the respondents was dismissed by Division Bench of this Court on 20.02.2018.

14. The Disciplinary Authority has imposed extreme punishment of dismissal from service on basis of such perverse and perfunctory enquiry. The dismissal from service entails major civil consequences upon the employee and its family and virtually snatches the livelihood of the sole bread earner of the family which cannot be permitted in such a casual and whimsical manner.

15. In the result, the writ petition is allowed. The order of



Disciplinary Authority as well as Reviewing Authority is set aside and the respondents are directed to pay full salary for the intervening period from the date of dismissal of petitioner till the date of his superannuation. The petitioner is also entitled for salary for the period 25.08.2004 to 22.12.2004 during which he remained suspended and only subsistence allowance was paid to him.

16. The petitioner is also entitled for all post retirement benefits and same should be sanctioned and paid within three months from the date of production/receipt of copy of this order.

17. Writ petition stands allowed.

**(S. Kumar, J)**

veena/-

|                   |  |
|-------------------|--|
| AFR/NAFR          |  |
| CAV DATE          |  |
| Uploading Date    |  |
| Transmission Date |  |

