

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5552 of 2003

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Ram Kripal Sahi, s/o late Murat Sahi, r/o vill-Chaksait, PO+PS- Rajapakar, Dist-
Vaishali

.... Petitioner/s

Versus

1. The State of Bihar through Registrar Cooperative Department, Govt. of Bihar, Patna.
2. The Registrar, Cooperative Department, Govt. of Bihar, Patna
3. The Bihar State Cooperative Marketing Union Ltd. (BISCOMAUN) through its Administrator, BISCOMAUN, West Gandhi Maidan, Patna
4. The Administrator, BISCOMAUN, West Gandhi Maidan, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manindra Kumar, Adv.

For the Respondent/s : Mr. Rakesh Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 01-02-2018

1. Heard Sri Manindra Kumar, the learned counsel for the petitioner and Sri Rakesh Kr. Jha, the learned counsel appearing on behalf of Bihar State Cooperative Marketing Union Ltd. (hereinafter referred to as the BISCOMAUN).

2. The petitioner, by way of the present writ petition, seeks to challenge the order dated 21.08.1993, as contained in Annexure-1 to the writ petition, whereby and whereunder, the petitioner herein has been dismissed from service with immediate effect. It has been directed that he would not be paid anything apart from the suspension



allowance for the period of suspension. It has further been directed that separate proceeding would be initiated for recovery of the amount of loss caused to the respondent no. 3-BISCOMAUN. The petitioner herein further seeks to challenge the order dated 10.09.2002 passed by the Registrar, Cooperative Department, Govt. of Bihar, Patna, in Service Appeal no. 42 of 1994 whereby and whereunder, the order of dismissal dated 21.08.1993 has been upheld.

3. The short facts of the case are that the petitioner herein being Depot Manager was suspended by an order dated 22.03.1986 and after service of charge-sheet, a departmental proceeding was initiated against the petitioner herein. The Inquiry Officer submitted his inquiry report dated 26.09.1992 exonerating the petitioner herein from all the charges. However, the disciplinary authority instead of taking appropriate decision on the basis of the said inquiry report dated 26.09.1992, appointed a second Inquiry Officer, who did not even start the inquiry and the matter remained pending for about two years. The disciplinary authority of the respondent no. 3, then appointed a third and fourth Inquiry Officer to conduct the proceedings on the same set of charges which had already been inquired into by the first Inquiry Officer and the inquiry report was finally submitted by the 4th Inquiry Officer on 26.09.1992.



4. The petitioner herein being aggrieved by the appointment of the second and third Inquiry Officer, approached this Court by filing a writ petition bearing C.W.J.C. no. 7632 of 1991 primarily on the ground that successive inquiry was illegal and a decision was to be taken by the disciplinary authority on the basis of the inquiry report already submitted by the first Inquiry Officer.

5. The learned Division Bench of this Court by an order dated 15.09.1992 held as follows :-

“ It is well established that the inquiry report is not binding on the disciplinary authority and it is open to the disciplinary authority to differ from Inquiry Officer, for reasons to be recorded, and to pass appropriate orders. There may be cases where, for cogent reasons which must appear from the record, the disciplinary authority may decide to get the proceeding conducted afresh, such as where there is any defect in the proceeding, or there is violation of the principles of natural justice or materials have been shut out and so on. However, no such ground has been disclosed in the counter affidavit. On the facts of



the case, therefore, I direct the disciplinary authority to take a final decision in the disciplinary proceeding within a period of two months from the date of receipt or production of a copy of this order. If no final order is issued within the aforesaid period, the order of suspension dated 22.03.1986 shall stand withdrawn from the date of the order. ”

6. Thereafter, the disciplinary authority appears to have appointed a fourth Inquiry Officer on the pretext that it had differed from the inquiry report submitted by the first Inquiry Officer. The petitioner is stated to have opposed the said move of the disciplinary authority by filing various representations to the effect that the disciplinary authority could not have started a *de novo* inquiry inasmuch as, the learned Division Bench of this Court by the aforesaid order dated 15.09.1992 had not found any reason to conduct the inquiry afresh and instead, had directed the disciplinary authority to take a final decision in the pending disciplinary proceedings. However, it appears that the Inquiry Officer (fourth) had proceeded in absence of the participation of the petitioner and submitted his inquiry report dated 27.01.1993, finding the charges to have been proved as



against the petitioner herein. The disciplinary authority had then forwarded the copy of the inquiry report (fourth) and asked the petitioner to submit his response to the same. The petitioner had then instead of submitting the response on merits, had raised technical issues on the basis of the order dated 15.09.1992 passed by the learned Division Bench of this Court. The disciplinary authority i.e. the Administrator, BISCMAUN passed the order dated 19.08.1993 and while concurring with the findings of the fourth Inquiry Officer, found the petitioner guilty of the charges levelled against him and passed the order of dismissal, which was communicated to the petitioner by an order dated 21.08.1993.

7. It appears that in between, the petitioner had filed M.J.C. no. 147 of 1993 for initiating contempt proceeding against the respondents herein for disobedience of the order of this Court dated 15.09.1992 passed in C.W.J.C. no. 7632 of 1991. However, in the interregnum period, the order of dismissal dated 21.08.1993 was passed which was challenged by the petitioner by filing a writ petition bearing C.W.J.C. no. 10334 of 1993, however the same was dismissed as withdrawn by an order dated 02.02.1994 with an observation that the petitioner may file an appeal before the appellate authority. The petitioner appears to have filed an appeal which has also been



dismissed by the appellate authority by an order dated 10.09.2002. In view of the fact that the order of dismissal had already been passed and writ petition challenging the said order of dismissal dated 21.08.1993 had already been dismissed as withdrawn with a liberty to the petitioner to file an appeal before the appellate authority, the contempt petition was also dismissed by this Court by an order dated 29.11.1994.

8. The learned counsel for the petitioner has raised a short issue to the effect that by an order dated 15.09.1992, the learned Division Bench of this Court had categorically stated that no *de novo* departmental inquiry could be initiated afresh and the disciplinary authority should take a final decision within two months, hence there was no questions of either appointing the fourth Inquiry Officer or taking a decision on the basis of the findings of the fourth Inquiry Officer.

9. *Per contra*, the learned counsel for the BISCOMAUN has submitted that his reading of the order dated 15.09.1992 passed in C.W.J.C. no. 7632 of 1991 is that the disciplinary authority was given a free hand to differ with the inquiry report of the first Inquiry Officer which is dated 26.09.1992 and thereafter, take a final decision according to his prudence.



10. I have considered the facts and circumstances of this case and I find that the learned Division Bench of this Court by order dated 15.09.1992 had categorically come to the findings that no ground has been disclosed in the counter affidavit for getting the departmental proceeding conducted afresh, hence, the learned Division Bench had directed the disciplinary authority to take a final decision in the disciplinary proceeding within a period of two months, obviously on the basis of the first inquiry report dated 26.09.1998. It is revealed from the records that the disciplinary authority, instead of taking a final decision in the pending disciplinary proceeding, on the basis of the first inquiry report dated 26.09.1998, initiated a fresh inquiry and on the basis of the finding returned by the fourth Enquiry Officer in his inquiry report, proceeded to impose the punishment of dismissal which is clearly illegal and contrary to the mandate of the order of this Court dated 15.09.1992. It is thus clear that the second or third or fourth inquiry could not be held afresh and the disciplinary authority had to take a decision on the basis of the first inquiry report dated 26.09.1998.

In view of the aforesaid, I find that the entire proceeding subsequent to the first inquiry report dated 26.09.1998 are vitiated in law and the decision of disciplinary authority dated 21.08.1993 is also



pervse since it has been taken on the basis of the fourth inquiry report and not on the basis of the first inquiry report. Consequently, the appellate order is also bad in law.

11. In view of the aforesaid, the order of dismissal dated 21.08.1993, as contained in Annexure-1 and the appellate order dated 10.09.2002, as contained in Annexure-12 to the writ petition are hereby quashed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.02.2018
Transmission Date	

