

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10821 of 2017

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Gangai Mandal, S/o- Late Mansukh Mandal, resident of Mohalla- C/o- Janki Niwas, Tirhut Colony, Ward No.- 21, Near Electric Office, P.O. & P.S.- Madhubani, District- Madhubani, at present C/o- 82, Ganga Tower, L.T.C. Ghat, P.S.- Mainpura, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department, Government of Bihar, District- Patna.
2. The Bihar State Food & Civil Supplies Corporation Ltd., Khadya Bhawan, Daroga Rai Path, Patna, District- Patna.
3. The Managing Director, Bihar State Food & Civil Supplies Corporation Ltd., Khadya Bhawan, Daroga Rai Path, Patna, District- Patna.
4. The Chief of Administration, Bihar State Food & Civil Supplies Corporation Ltd., Khadya Bhawan, Daroga Rai Path, Patna, District- Patna.
5. The Chief of Claims, Bihar State Food & Civil Supplies Corporation Ltd., Khadya Bhawan, Daroga Rai Path, Patna, District- Patna.
6. The Chief of Finance, Bihar State Food & Civil Supplies Corporation Ltd., Khadya Bhawan, Daroga Rai Path, Patna, District- Patna.
7. The District Manager, Bihar State Food & Civil Supplies Corporation Ltd., Siwan, P.O. & P.S.- Siwan, District- Siwan.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ram Shankar Pradhan, Senior Advocate Mr. Jainandan Kumar, Advocate
For the State	:	Mr. Ravi Verma, A.C. to G.P.-4
For the B.S.F.C.	:	Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 31-08-2018

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Bihar State Food and Civil Supplies Corporation Limited.



In this case, the petitioner is challenging the order containing memo no.9508 dated 03.08.2015, passed by the Managing Director, Bihar State Food and Civil Supplies Corporation, Bihar, Patna, whereby and whereunder altogether four punishments have been awarded to the petitioner viz. the petitioner will not be paid the retirement benefit, loss sustained by the Corporation amounting to Rs.33,99,269/- be recovered from the petitioner. It has also been directed to recover the cost of 327.63.65 quintal of wheat and 150 quintal of rice, which were declared to be rotten food-grains, if the entire amount of item nos. 2 and 3 is not satisfied from the pensionary amount of the petitioner, then the rest amount along with interest should be recovered from the petitioner under the P.D.R. Act. This order has been affirmed by the Secretary, Food and Consumer Protection Department -cum- Appellate Authority vide order containing memo no.1330 dated 15.03.2017.

This writ petition can be disposed of on short point that the departmental inquiry has not been conducted as per the law. The petitioner was served two charge-sheets vide "*Prapatrak-K*"; first charge-sheet is dated 19.03.2009 and second charge-sheet is dated 03.11.209, consisting of several allegations against the petitioner. Whereafter, the petitioner was



asked to give explanation, later on, the petitioner was asked to participate in the inquiry, ultimately, the Inquiry Officer submitted inquiry report against the petitioner. As per learned counsel for the petitioner, it was an *ex parte* inquiry, which has been disputed by learned counsel for the Corporation. However, two uncontroverted facts are there that in the inquiry neither the Presenting Officer has been appointed nor the report of the Inquiry Officer nor second show cause was served upon the petitioner as the petitioner has made allegation that he was not given chance to rebut the allegation made against him and as such, the entire proceeding of the inquiry vitiates.

This Court is refusing to go into the merit of the case as it is disposed of on the ground that the inquiry has not been done in accordance with law without ensuring participation of the delinquent in the inquiry. At the same time, while holding the inquiry it should have been ensured that the Inquiry Officer should not act as a Prosecutor as well as an Arbitrator, rather he has to act independently as an independent Arbitrator, record a finding on the basis of the materials available on record. But, this Court vide order dated 28.08.2018 directed the learned counsel for the B.S.F.C. to produce the record of the inquiry proceeding, which has been produced by him. On perusal of the



same, it appears that the inquiry was conducted without the appointment of the Presenting Officer as well as the second show cause along with report was not given to the petitioner, that itself is sufficient for this Court to interfere in the matter. Reliance can be place on two judgment of the Hon'ble Supreme Court rendered in the case of ***Roop Singh Negi vs. Punjab National Bank and Ors.*** reported in ***(2009) 2 S.C.C. 570*** and in the case of ***Union Of India and Ors vs Mohd. Ramzan Khan*** reported in ***1991 AIR 471***.

In such view of the matter, the inquiry proceeding is vitiated. Accordingly, the order of punishment containing memo no.9508 dated 03.08.2015, order of the Appellate Authority containing memo no.1330 dated 15.03.2017 including the inquiry report are quashed and set aside. The proceeding will start from the stage of appointment of Inquiry Officer as well as Presenting Officer. It will be duty of the Inquiry Officer to give a fair opportunity of hearing to the petitioner as the petitioner must be given a chance to bring his own evidence. In the event, the Corporation examines the witnesses, the petitioner will be at liberty to cross-examine the said witnesses and after recording the finding, it will be obligatory on the part of the competent authority to serve the second show cause along with inquiry



report upon the petitioner and after considering the explanation, if any, filed by the petitioner, the competent authority would pass appropriate order in accordance with law. The entire exercise will be completed by the competent authority within a period of 5 (five) months from the date of receipt/production of a copy of this order. It is expected that the petitioner would co-operate in early dispose of the inquiry proceeding. If the petitioner would fail to participate in the inquiry proceeding, the Inquiry Officer will be at liberty to complete the inquiry *ex parte*.

With the aforesaid observations and directions, this writ petition is allowed to the above extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	13.09.2018
Transmission Date	N/A.

