

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1096 of 2014

In

Civil Writ Jurisdiction Case No.23405 of 2012

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1. The Bihar State Food & Civil Supplied Corporation Limited through its Chairman Cum Managing Director, Sone Bhawan, 5th Floor, Birchand Patel Path, Patna
 2. The In - Charge District Manager, State Food Corporation Bettiah, Bihar
 3. The Chief of Finance Cum Conducting Officer, State Food & Civil Supplies Corporation, Sone Bhawan, Patna
- Appellants

Versus

1. Jageshwar Choudhary son of late Gopi Choudhary resident of village - Madepur, P.S. & P.S. Kashichak, District - Nawada, Permanent Address Village Amba Bigha, P.O. Gilani, District - Nalanda
2. The Principal Secretary, Civil & Food Supply Department Govt. of Bihar, Patna

... .. Respondents

Appearance :

For the Appellants	:	Mr. Anjani Kumar, Senior Advocate Mr. Shailendra Kumar Singh, Advocate
For the Pvt. Respondent	:	Mr. Rajendra Prasad Singh, Senior Advocate Mr. Anjani Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 20-02-2018

Heard learned senior counsel representing the Corporation and learned senior counsel representing the private respondent.

This appeal has been preferred against the order dated 11.02.2014 passed by the learned single Judge, who has allowed the writ application and quashed the order of punishment of dismissal passed by the Chairman-cum-Managing Director of the



Corporation on 04.01.2005. He has further also quashed the revisional order dated 01.03.2007 passed by the Chairman-cum-Managing Director of the Corporation whereby the said order of dismissal was affirmed including the appellate order dated 30.10.2012 passed by the Principal Secretary, Civil and Food Supply Department, Government of Bihar.

The origin of the present dispute relates to the posting of the private respondent as a salesman at Bettiah under the Corporation. Certain charges were brought against him for misconduct, he was put under suspension and disciplinary proceeding initiated. The enquiry officer held the charges proved against the private respondent and based on the said finding the order of dismissal from service was passed.

After considering the rival submissions the learned single Judge had this to say in paragraph 5 and 6 :

“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.”

A sham of an enquiry is no enquiry in the eye of law especially when the ultimate punishment of dismissal was passed against the employee. A fair proceeding is *sine qua non* to any



order of punishment and that too punishment of dismissal which is as good as a death sentence to an employee.

The learned single Judge in his order, as reproduced in the earlier part of this order, went through the original record relating to the enquiry, the infirmities therein in the record has been taken note of, which is a pointer to one fact that no proper enquiry worth the name was held by the authorities. Somehow effort was made to reach a conclusion which led to the order of dismissal being passed against the private respondent.

We are not convinced that a case for interference with the order is made even though it is pointed out by the learned senior counsel for the appellant that so far as the aspect of non-appointment of a Presenting Officer is concerned that fact is belied after having a look at Annexure-3 to the writ application.

Mere appointment of a Presenting Officer may not satisfy the requirement if the records do not indicate whether the Presenting Officer participated in the proceeding or he placed any evidence, oral or documentary, which was taken on record. Obviously mere appointment is of no avail to the present appellants, from the situation they are in.

We do not find any infirmity in the order of the learned single Judge which requires rectification in appeal.



Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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