

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9662 of 2017

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Vijay Shankar, Son of Jagat Pd. Rai, resident of Village Ranipur, P.O.- P.S.-
Phulwarisharif, Patna 801505.

.... Petitioner/s

Versus

1. Managing Director, Bihar State Power Transmission Company Ltd. Vidyut Bhawan, Baily Road, Patna.
2. General Manager cum Chief Engineer Transmission Gone-III, Gaya
3. Electrical Superintending Engineer Transmission Circle, Patna
4. Electrical Executive Engineer, Transmission Division, new Punaichak, Patna-9
5. Assistant Electrical Engineer Transmission Sub-Division, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pranav Kumar

For the Respondent/s : Mr. Vinay Kirti Singh

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 10-05-2018

1. The writ petitioner, by way of the present writ petition, has prayed for consideration of the petition filed by his father and for grant of all consequential benefits.

2. The brief facts of the case are that the father of the petitioner entered the services of the Bihar State Electricity Board in the year 1965. During the course of his employment, the father of the petitioner was put under suspension on the allegation of assaulting the then Assistant Executive Engineer, Grid Sub-section, Jakanpur, Patna and an FIR was lodged. Thereafter, a departmental proceeding was conducted against the father of the petitioner and the father of the petitioner was dismissed, after considering the inquiry report, by an



order dated 16.04.2002. Subsequently, the petitioner was given the benefit of doubt and was acquitted for the charges under Sections 307, 353/ 144 of Indian Penal Code but convicted under Section 323 of Indian Penal Code, in the criminal case, by a judgment passed by the learned trial court dated 29.10.2005. The father of the petitioner had then filed an appeal against the order of dismissal but the same was rejected, whereafter he filed a writ petition bearing **CWJC no. 249 of 2004** and the same was dismissed by an order dated 27.10.2010 passed by this Court, with a direction to the disciplinary authority to reconsider the punishment awarded to the petitioner herein taking into consideration the length of service rendered by the petitioner and award punishment of compulsory retirement. The said order **dated 27.10.2010** was challenged by the respondents in **L.P.A. no. 764 of 2011** and a Division Bench of this Court, by a judgment dated 15.12.2011, allowed the appeal and set aside the order of this Court **dated 27.10.2010** passed in **CWJC no. 249 of 2004**, hence the order of dismissal of the petitioner dated 16.04.2002 was confirmed. Admittedly, the father of the petitioner did not challenge the aforesaid judgment dated 15.12.2011 passed by a learned Division Bench of this Court before the Hon'ble Apex Court. The father of the petitioner is said to be died on 10.07.2015.

3. The learned counsel for the petitioner has submitted that according to the provision of the Bihar Board Miscellaneous Rule, the



disciplinary authority is required to review the order of punishment after acquittal in the criminal case and despite the father of the petitioner having filed a petition before the Managing Director, South Bihar Power Holding Company Ltd., no decision has been taken.

4. I have heard the learned counsel for the parties and perused the materials on record. At the very outset, this Court is of the opinion that the present petition smacks-of the greed of the petitioner and is an abuse of the process of the Court inasmuch as, the order of dismissal has already attained finality in view of the judgment of this Court ***dated 15.12.2011*** passed in ***LPA no. 764 of 2011*** (Annexure 5 to the writ petition), relevant portion whereof is reproduced herein below :-

The respondent being the petitioner in the writ petition is aggrieved by office order no. 1407 dated 16.04.2002 as contained in Annexure-12 whereunder he has been dismissed from service pursuant to a departmental proceeding initiated against him for abusing the Superior Officer. He is also aggrieved by the appellate order dated 30.07.2002 as contained in Annexure-14, whereunder the punishment imposed upon him has been affirmed.



The learned Single Judge after having heard the matter and considering the finding of guilt recorded against the writ petitioner-respondent herein has directed the disciplinary authority to reconsider the punishment awarded to him in the light of the length of service rendered by him and award the punishment of compulsory retirement and for such consideration two months time was granted from the date of receipt of a copy of this order. Aggrieved by such direction the present appeal has been preferred by the Bihar State Electricity Board. I

It has been contended by learned counsel appearing on behalf of the appellant-Board that the allegations against the respondent-herein was of serious in nature and a criminal case has also been lodged against him under Sections 307 and 323 of the Indian Penal Code, but even though Section 307 of the Indian Penal Code was not proved he was found guilty of Section 323 of the Indian Penal Code by the trial Court. It was found by the



Inquiry Officer in the disciplinary proceeding that he used physical force against the officers concerned which was proved in the departmental proceeding and, accordingly, he was dismissed from service vide order as contained in Annexure -12 and the dismissal order was also affirmed vide order contained in Annexure-14.

The learned counsel further argued that the direction of the learned Single Judge to the authority to reconsider the punishment awarded to the petitioners in the light of the length of service rendered by him and award the punishment of compulsory retirement, goes beyond the scope of writ petitioner as there is no finding assessed in the enquiry report of the Inquiry Officer which violates the principles of natural justice. It has also been further contended that this Court can interfere with the disciplinary proceeding if there is any perversity in the findings of the Enquiry Officer which violates the principles of natural justice. In absence of any such



finding available on the record, the order of the learned Single Judge cannot be sustained.

Per contra, the learned counsel appearing on behalf of the petitioner respondent-herein has submitted that even though the petitioner was convicted for an offence punishable under Section 323 of the Indian Penal Code but he was acquitted by the trial Court for other charges merely because he has used only the physical force and, therefore, this is not a case where punishment of dismissal from service can be imposed upon the petitioner respondent-herein. The punishment imposed upon him is too harsh.

We also had an occasion to go through the material available on record as also the judgment passed by the trial Court in Sessions Trial No.933 of 2001 dated 29th October, 2005. It appears that a criminal case was lodged against the petitioner respondent-herein under Sections 323, 307,



353/144 of the Indian Penal Code and the Court below finds that wherein the charges for the offence under Sections 307 of the Indian Penal Code and other allied sections were not proved, the offence under Section 323 of the Indian Penal Code was proved and, therefore he was acquitted. But however as the Inquiry Officer in the departmental proceeding has found the respondent guilty for the misconduct but in absence of any material placed before us with regard to any perversity which violates the principles of natural justice, we are of the opinion that the order of the learned Single Judge has to be set aside.

Accordingly, it is set aside and the appeal is allowed.

5. It is apparent that the order of punishment of dismissal of the petitioner from service was passed on 16.04.2002, the order of partial acquittal in the criminal case was passed on 29.10.2005 and only thereafter, the judgment dated 15.12.2011 was passed by the learned Division Bench of this Hon'ble Court in the case of the father of the petitioner, upholding the order of dismissal of the father of the



petitioner from service dated 16.04.2002 and at that moment of time, the father of the petitioner had the occasion to canvass the issue being raised in the present petition to the effect that after acquittal (actually partial acquittal in the present case), the disciplinary authority is required to review the order of punishment but neither the same was raised by the father of the petitioner before the learned Division Bench nor the learned Division Bench thought the said issue to be worth consideration, though it had dealt with the issue of partial acquittal of the father of the petitioner. Thus, that being the position, the present writ petition is clearly barred by the principles of *res judicata* and constructive *res judicata*.

6. For the reasons mentioned herein-above, I find no merit in the present writ petition and accordingly, the same is dismissed.

(Mohit Kumar Shah, J)

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CAV DATE	-
Uploading Date	08.06.2018
Transmission Date	-

