

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.169 of 2018

In

Civil Writ Jurisdiction Case No.201 of 2017

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1. The Bihar State Food and Civil Supplies Corporation Ltd. Sone Bhawan, 5th Floor, Birchand Patel Path, Patna through its Managing Director at present R-Block, Patna.
 2. The Managing Director, Bihar State Food and Civil Supplies Corporation Ltd.

... Respondents /Appellants

Versus

1. Ajit Kumar Sinha, Son of Late Bindeshwari Prasad Verma, Resident of 401-B, Quality Enclave, South Mandarin, P.S. - Buddha Colony, District - Patna.
2. The Accountant General, Bihar, Patna.

... petitionr... Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, Sr. Advocate Mr. Shailendra Kumar Singh, Advocate
For the Respondent/s	:	Mr. Ajay Behari Sinha, Advocate Mr. Suryakant Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-12-2018

Heard Shri Anjani Kumar, learned Senior Counsel who appears for the appellant-Bihar State Food and Civil Supplies Corporation Limited and Shri Ajay Behari Sinha, learned counsel for the respondent-petitioner.

2. The respondent-petitioner superannuated on 31st of December, 2008. Prior to his superannuation, he was served with a chargesheet in a disciplinary proceeding initiated in respect of an allegation of misappropriation of essential



commodities/food grains between the period 1997-2002. This ultimately, after the enquiry proceedings, culminated in an order dated 10th of April, 2009 passed by the Managing Director of the appellant Corporation whereby 100% gratuity as well as leave encashment benefits of the respondent-petitioner were forfeited. The respondent-petitioner preferred an appeal before the State Government and the said appeal was allowed on 28th of December, 2012 remitting the matter back to the competent authority for a decision afresh. A writ petition was filed assailing the said remand order being C.W.J.C. 16581 of 2012 which was disposed of with a direction to the respondent-petitioner to co-operate in the disposal of the matter afresh by the Managing Director and consequently, a fresh order was passed on 3rd of April, 2013.

3. The appellant had retired from the post of Laboratory In-charge of the appellant Corporation. He again preferred an appeal before the State Government and the same was rejected on 5th of November, 2015.

4. Questioning the correctness of the said appellate order, the appellant filed C.W.J.C. No. 201 of 2017 that was allowed by the impugned judgment dated 6th of October, 2017.

5. The appellant Corporation has questioned the



correctness of the said judgment in this appeal on several grounds. Learned Senior Counsel for the appellant submits that if the learned Single Judge had arrived at the conclusion that there was a violation of mandatory requirement of appointment of a Presenting Officer then in that event, the learned Single Judge ought not to have entered into the merits of the charges and as a matter of fact, the learned Single Judge committed an error in stepping into the shoes of the disciplinary authority to re-assess the evidence and then to hold respondent-petitioner to be not guilty. This procedure, according to the learned Senior Counsel, was not available and for this, he has relied on the judgment of the Apex Court in the case of **Punjab National Bank & Ors. Vs. Kunj Behari Misra AIR 1998 (SC) 2713**. It has further been pointed out that the findings recorded by the learned Single Judge are inconsistent in relation to the period for which the involvement against the respondent-petitioner was alleged and secondly, the question of allotment period had got nothing to do with distribution, which are two separate activities, and the charge against the respondent-petitioner was with regard to misappropriation in the distribution of the commodities and its transportation. He has invited the attention of the Court to the chargesheet served on the respondent-



petitioner to urge that apart from the involvement of a huge amount, the respondent-petitioner had also been called upon to answer the charge of transportation of the essential commodities through vehicles which were a two wheeler and a passenger bus. It is urged that no specific reply was given to it and consequently, the learned Single Judge while proceeding to reverse the orders passed by the authorities has omitted to consider such aspects of the matter and consequently the impugned judgment for all the above reasons deserves to be set aside.

6. We have considered the submissions raised and we find that there appears to be a procedural flaw in the procedure adopted during the enquiry proceeding, namely, not giving an opportunity to the respondent-petitioner to represent himself through a Presenting Officer. This issue stands covered by a Bench judgment of this Court in case of **Chandeshwar Prasad Yadav Vs. The State of Bihar through the Principal Secretary, Department of Homes & Ors. reported in 2017(4) P.L.J.R. 286.**

7. However, the learned Single Judge while proceeding further records as follows:-

“As I have observed earlier, the charges are rather serious and spread over a period of 5



years which is inclusive of the posting period of the petitioner in between December, 2001 and April, 2003.”

8. Later on, while concluding, the learned Single Judge recorded as follows:-

“6. In my opinion while the charges are sweepingly vague, the specific acts of omission and commission relates to a period prior to the posting of the petitioner at Munger office and above all the evidence relied upon by the respondents does not connect the petitioner to the charge. In fact the entire proceeding is resting on no evidence as confirmed from the enquiry report present at Annexure 7.”

9. In our considered opinion, the findings are incoherent inasmuch as the fact that the period of posting of the respondent-petitioner was also covered in the period for which the enquiry had been held remains almost undisputed. The question of no material evidence being available on record, suffice it to say that as a matter of fact, the issue relating to the transportation of the essential commodities/ food grains on vehicles like a motorcycle or a passenger bus were charges that have not even been discussed by the learned Single Judge. The findings in the impugned orders imposing the penalty on the respondent-petitioner categorically mention the said aspect and the same appears to have been omitted for consideration by the



learned Single Judge.

10. The contention on behalf of the respondent-petitioner that the District Manager had testified in his favour had to be assessed in the wake of the overall view of the charges and the evidence that had been brought on record.

11. In these circumstances, we find it expedient and in the interest of justice that the enquiry should be recommenced from the stage of providing a Presenting Officer and allowing the respondent-petitioner to submit his explanation before the Enquiry Officer as well as the evidence on which he may choose to rely on for the purpose of his defence.

12. We accordingly allow this appeal and set aside the impugned judgment dated 6th of October, 2017 with a direction to the competent authority to proceed forthwith, allowing the enquiry to proceed by providing a Presenting Officer and concluding the enquiry proceedings by appointing an Enquiry Officer expeditiously, preferably within a period of three months from the date of production of a certified copy of this order.

13. Since we are setting aside the judgment of the learned Single Judge and ordering for a re-enquiry, we also set aside the order dated 3rd of April, 2013 as well as the Appellate



Order dated 5th of November, 2015 and direct the enquiry to proceed as above.

14. The respondent-petitioner is directed to co-operate in the enquiry.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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