

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16400 of 2013

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Vimal Kumar Wife/Son of Late Chandrashekhar Pathak, resident of village -
Bethna, Mohabat, P.S. Goraul, District – Vaishali.

... .. Petitioner/s

Versus

1. Bihar State Power holding Company Ltd.
2. Chairman, Bihar State Power Holding Company Limited, Patna
3. Joint Secretary, Erstwhile Bihar State Electricity Board, Bihar, Patna Power Holding Company Ltd., P

... .. Respondent/s

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Appearance :

For the Petitioner/s : M/s Shrinandan Prasad Singh and Navesh Nandan, Adv.
For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Adv.
Mr. Vijay Kumar Verma, Adv.
Mr. Akhileshwar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 25-02-2019

Heard learned counsel for the petitioner and the learned
counsel for the State.

The petitioner was a petty Cashier posted at Barauni Thermal Power Station, Begusarai. During audit, it was found that heavy amount has been drained out by the chief Cashier and connected employees. At the relevant time, Mr. Sudhir Kumar was the chief Cashier and now he has died and on the basis of the audit report, the rest of the persons working in the accounts were proceeded departmentally, even Engineer was also proceeded departmentally for being involved in manipulation and misappropriation of the fund of the Bihar State Electricity Board and finally the enquiry report came against the petitioner. There



was four charges against the petitioner, out of that, two charges were found proved against him and rest two charges were not fully proved and ultimately the Joint Secretary of Bihar State Power Holding Company Limited, Patna vide letter dated 18th December 2012 dismissed the petitioner from service on account of causing a pecuniary loss of Rs.6,52,40,443.88(rupees six crore fifty two lacs forty thousand four hundred forty three and paise eighty eight) and deprived of terminal benefit, against that, the petitioner filed an appeal, which has been rejected vide letter no. 69 dated 08.04.2013 itself shows that it is a communication letter, not the order of appeal.

The counsel for the petitioner has raised two points that the enquiry report in which two charges have been found proved against the petitioner and two charges have been partially proved against the petitioner was not supplied and straightway the petitioner has been dismissed from service. Now the second show cause notice has been issued. He further submits that even the order communicating the appeal has not shown the basis for rejection of appeal filed by the petitioner and, as such, requires interference, placing reliance on the judgment passed in C.W.J.C.No. 2474 of 2013 (Sunil Kumar Sinha vs. the Bihar State Power [Holding] Company Ltd. through its Chairman-cum-



Managing Director & others) and C.W.J.C. No. 3778 of 2014 (Ajay Kumar Verma vs. the Chairman, Bihar State Power [Holding] Company Ltd. Patna and others) in which identical ground has been taken and this Court has interfered with the order of dismissal.

The counsel for the Bihar State Electricity Board has submitted that the petitioner nowhere has shown anything of causing prejudiced on account of non-supply of the enquiry report, but it is also true that neither the enquiry report was supplied nor the second show cause was given so it is a fragrant violation of the principle of natural justice, placing reliance on the judgment passed in the case of Union of India vs. Mohd. Ramzan Khan reported in (1991) 1 SCC 588 and Managing Director, ECIL vs. B. Karunakar reported in (1993) 4 SCC 727, in both the cases, it has been said that though after 42nd Amendment, the 2nd show cause provision has been repealed but as a part of natural justice when the enquiry report adverse to the employees submitted it is expected as a part of natural justice to supply the same ask the explanation from the government servant. Admittedly in the present case neither the enquiry report has been supplied nor the second show cause has been given to the petitioner so it violates natural justice. Hence the order of dismissal is set aside and



consequently the order dismissing the appeal which has been communicated through letter no. 69 dated 08.04.2013 is also quashed. The matter is remanded back to the competent authority to proceed from the stage of supply of enquiry report to the petitioner and ask him to show cause thereafter the authority will take decision in accordance with law. It has been informed to this Court that the petitioner has already superannuated from service, certainly the proceeding would be converted into 43 (b) of the Bihar Pension Rule, which is applicable to the employees of the Bihar State Power (Holding) Power Company Limited including Power Generation Company. It is made clear that the petitioner would be paid any amount under the category of retiral dues after the decision taken by the competent authority in the matter of disciplinary proceeding.

With the above observation and direction, this petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	01.03.2019
Transmission Date	N/A

