

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1150 of 2018

In

Civil Writ Jurisdiction Case No.21938 of 2014

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Pankaj Kumar Chaudhary Son of Madan Chaudhary Resident of Village /
Mohalla - Chora Bagicha, P.O - Rana Bigha, P.S- Morarpur, District -
Nalanda.

... .. Appellant/s

Versus

1. The Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna, through its Secretary
2. The Secretary, Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna.
3. The Joint Secretary, Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Subodh Kumar Jha, Advocate Mr. Sarveshwar Tiwary, Advocate Mr. Krishna Kumar, Advocate
For the Respondent/s	:	Mr. Anand K. Ojha, Advocate Mr. A.K. Karna, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-07-2019

Heard learned counsel for the appellant and the
learned counsel for the Bihar State Power (Holding) Company.

The appellant was dismissed from service on
account of two charges: the 1st was of indecent conduct and use
of foul language against his superiors and the 2nd is with regard
to unauthorized absence of the appellant. The matter proceeded
and, according to the respondents, the appellant did not co-
operate in the enquiry as a result whereof the enquiry proceeded



ex parte.

The contention of Shri Jha, learned counsel for the appellant, is that the entire proceedings of the enquiry are clearly vitiated as the charges alleged were never proved and the submission of the enquiry report was a mere empty formality followed by the so called 2nd show cause notice. The submission, therefore, is that if the procedure has not been followed, even assuming that the appellant did not co-operate in the enquiry, then in that event, the enquiry proceeding being vitiated, the learned Single Judge was not justified in dismissing the writ petition. The contention of Shri Jha is that even if the charge for absenteeism did exist, it ought to have been proved during the course of enquiry and since no such proceedings were held, which is stated to have been concluded by submission of an enquiry report, then in that event, the guilt cannot be presumed to have been established on the appellant.

We have examined the documents on record and have weighed the contentions that have been advanced before the Court. The counter affidavit filed by the respondents before the Writ Court in paragraphs No. 11 and 12 states as follows:-

“11. That the writ Petitioner was served show-cause vide L.No. 102 dated 20/04/2012 in this episode. The Paper publication was done for the Writ



Petitioner to explain his illegal & unauthorized absence from 24/11/2011 and not to submit written statement in the aforesaid Departmental Proceeding. Further, he was given a last opportunity for the same through Newspaper notice. Thereafter Enquiry officer submitted enquiry report vide his L.No. 1010 dated 18/10/2012.

12. That the after thorough examination of Enquiry Report and other relevant papers, ESP(H)CL vide R.No. 90 dated 22/05/2013 dismissed the Writ Petitioner with effect from 24/11/2011 and also ordered not to pay service dismissal amount.”

Admittedly, no rejoinder was filed to the said allegations contained in the counter affidavit. Learned counsel contends that the matter had been argued before the learned Single Judge, but the aforesaid aspect of the matter appears to have been overlooked and an incorrect conclusion has been drawn.

We find that the appellant in spite of having been given an opportunity appears to have not participated in the enquiry proceedings at all. The fact that he had received notices and was aware of the pendency of the enquiry proceedings does not appear to be disputed on record.

In these circumstances, the non-participation of the appellant cannot be made a ground for any prejudice so as to avail any benefit in the exercise of extraordinary jurisdiction



under Article 226 of the Constitution of India. The contention on the legal principle that even in a case of absenteeism, the enquiry has to be concluded with the proving of the charges in respect of non-cooperation of the delinquent. On the facts of the present case would not apply keeping in view the uncontroverted fact that were stated in the counter affidavit referred to hereinabove.

Consequently, we are of the opinion that no prejudice has been caused to the appellant as he himself abstained from the enquiry proceedings and did not even care to file a rejoinder to the counter affidavit filed on behalf of the respondents.

The next argument advanced by Shri Jha is that the punishment is absolutely disproportionate even if it is assumed that the appellant was absent. In this regard, keeping in view the nature of the charges and the manner in which the appellant abstained from even participation in the enquiry proceeding, does not entitle him for any sympathetic relief from this Court. The third argument of Shri Jha is that ultimate direction of the learned Single Judge to extend the benefit of any dues that may be available to the appellant has not been redressed.

Today, during the course of the arguments, Shri



Ojha, learned counsel for the Power Holding Company, has produced the order dated 16th of July, 2019 whereafter the said request of the appellant has been rejected. The photostat copy of the order has been handed over to the learned counsel for the appellant who, if may, choose, question the correctness or otherwise of the same before the appropriate forum.

It is pertinent to indicate here that it has also been narrated in the impugned judgement that the appellant himself did not avail of any remedy of appeal and, as a matter of fact, his father represented the matter before the higher authorities as well as the administration. The said fact also adds to the attitude of the appellant, who does not appear to be interested in pursuing his own remedy before the appropriate forum. We, therefore, cannot extend any such benefit to the appellant on that score.

Accordingly, the appeal fails and is hereby dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Saif/-

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CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

