

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1392 of 2018

In
Civil Writ Jurisdiction Case No.9173 of 2005

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1. Bihar State Food and Civil Supplies Corporation Limited.
 2. The Chairman Cum Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Sone B
 3. The Chief Administration, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Bir null null
 4. The Chief of Finance, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Birchan null null
 5. The Chief of Finance Cum Conduction Officer, Bihar State Food and Civil Supplies Corporation Limited null null
 6. The Deputy Chief of Procurement Cum Presenting Officer, Bihar State Food and Civil Supplies Corpora null null
 7. The Desk Padhadhikari, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Bircha
 8. Shree Nirmal Kumar Rai, the then District Manager In-Charge, Bihar State Food and Civil Supplies Company.

... .. Appellant/s

Versus

Mahmudul Haque Son of Shukal Mian Resident of Village Paswaria, Police Station- Chautarwa, District West Champarn, Bettiah.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shailendra Kumar Singh, Advocate
For the Respondent/s : Mr. Gajendra Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 21-09-2022

The present LPA is filed by the Bihar State Food & Civil Supplies Corporation Ltd. (for short 'Corporation'). Corporation has assailed order of the learned Single Judge dated



22.03.2018 passed in CWJC No. 9173 of 2005. Respondent- Mahmudul Haque was subjected to disciplinary proceedings in framing of article of charges on 28.09.2004 on the alleged allegations that he and four others were involved in payment of certain amount to workers in excess. In the disciplinary proceedings the charges levelled against the respondent were stated to have been proved, thereafter, disciplinary authority proceeded to complete the formalities of issuing second show cause notice along with Inquiring Officer's report and on receipt of respondent's reply proceeded to impose the penalty of dismissal from service on 22.12.2004.

02. Feeling aggrieved and dissatisfied with the order of dismissal dated 22.12.2004 respondent preferred CWJC No. 9173 of 2005. Learned Single Judge allowed the writ petition in terms of the order passed in Jageshwar Choudhary's case. Para 5 and 6 of the order passed in Jageshwar Choudhary has been extracted in para 12 and order of the learned Single Judge in the case of Jageshwar Choudhary was affirmed by the Division Bench in LPA 1096 of 2014. Ultimately, para 15 and 16 of the learned Single Judge reads as under:-

“15. In the result, the writ petition is allowed. The order of Disciplinary Authority as well as Reviewing Authority is set aside and the respondents are directed to pay



full salary for the intervening period from the date of dismissal of petitioner till the date of his superannuation. The petitioner is also entitled for salary for the period 25.08.2004 to 22.12.2004 during which he remained suspended and only subsistence allowance was paid to him.

16. The petitioner is also entitled for all post retirement benefits and same should be sanctioned and paid within three months from the date of production/receipt of copy of this order.”

03. Feeling aggrieved and dissatisfied with the order of the learned Single Judge the present LPA is filed by corporation. One of the contention stated in the LPA is that the respondent and four others have caused financial loss to the corporation while discharging the duties of the post held by each of them. The respondent was holder of Group D post and he was in-charge of particular section (Clerk). It is also submitted that respondent has proposed payment of bills to workers higher than the what is required to be disbursed. The same was confirmed by the next four higher official resulted in financial loss to the corporation. If dismissal order is set aside on technicality and if the allegations are relating to financial loss/misappropriation in that event matter is required to be remanded to the disciplinary authority to proceed afresh from the defective stage in support of the aforesaid contention. He relies on decision in the case of **ECIL vs. B. Karunakaran** reported in (1993) 4 SSC 727 and **Chairman-cum-**



Managing Coal India Ltd. vs. Ananta Saha and Ors. reported in
(2011) 5 SCC 142 & The State of Uttar Pradesh & Ors. vs.
Prabhat Kumar (Civil Appeal No. 1567 of 2019).

04. *Per contra*, learned counsel for the respondent resisted the aforesaid contention of the corporation and submitted that the learned Single Judge has rightly considered Jageshwar Choudhary case who is also identically placed. It is further, submitted that respondent was only a Group D employee. His role is limited for which imposition of penalty of dismissal is too harsh. It is also submitted that if the respondent has committed any error it could have been rectified by the next higher authorities and there was no intention to cause financial loss to the corporation. Therefore, there is no infirmity in the order of learned Single Judge. Hence, LPA is liable to be dismissed.

05. Heard learned counsel for the respective parties.

06. Respondent was subjected to disciplinary proceedings in framing of article of charges on 28.09.2004 and it was concluded in imposition of penalty of dismissal from service on 22.12.2004. Dismissal order was subject matter of CWJC No. 9137 of 2005 and it was decided in favour of the respondent on 22.03.2018. Hence, the present appeal by the corporation.



07. The Corporation counsel submitted that the alleged allegations is relating to financial loss caused to the corporation by the respondent and four others. All the five persons were subjected to disciplinary proceedings on individual basis. If the dismissal order is set aside on technicality, in that event, matter is required to be remanded to the disciplinary authority to commence enquiry from the defective stage and conclude the same in terms of the Apex Court decision in the case of **MD ECIL, Coal India Ltd., & Prabhat Kumar** decision cited (supra).

08. On the other hand, learned counsel for the respondent relied on the judgment of similarly situated person namely, Jageshwar Choudhary. The learned Single Judge has not taken note off Apex Court decisions cited (supra) to the extent that if the dismissal order is set aside on technicality read with alleged allegations relating to financial loss to the employer, in that event, matter is required to be remanded to commence the enquiry from the defective stage.

09. Therefore, we are of the view that it is a case for modification of the order of the learned Single Judge to the extent in redirecting the disciplinary authority to commence the enquiry from the defective stage and complete within a period of three months form the date of receipt of this order.



10. Learned counsel for the respondent submitted that even though he has prepared a bill imposition of penalty of dismissal from service would be too harsh. No doubt he has already attained age of superannuation and retired from service. Now, disciplinary authority cannot impose penalty of dismissal from service after retirement, therefore, the disciplinary authority is hereby directed to take note off the allegations and role played by the respondent in respect of forwarding proposals relating to payment of bills to corporation workers and such proposal could have been rectified by next four higher officials and they failed to rectify the error or mistake committed by the respondent.

11. In the light of these facts and circumstances, if the charges are proved in further enquiry against respondent the disciplinary authority is hereby directed to impose minor penalty and it should be strictly in accordance with relevant rule for the reasons that the Bihar State Food & Civil Supplies Corporation Service Conduct and Disciplinary Rules, 2001. Rule 1(iii) reads as under:-

“1(iii) It shall apply to all the employees of the Bihar State Food & Civil Supplies Corporation Ltd. Including;

(a) Persons employed on a temporary/regular basis,

(b) Persons employed on special contracts to the extent that the terms and



conditions of such contracts are inconsistent with the provision of these rules, (c) Persons governed by the Industrial Employment (Standing orders) Act, 1946 (Provided that nothing contained in the rules shall apply to the Directors of the corporation or the officers of Bihar Administration Service whose services are governed under the rules of Central/State Governments).”

12. Therefore, the aforesaid disciplinary rules is not applicable to such of those retired persons. Hence, no penalty could be imposed with reference to the aforesaid rules. Disciplinary authority is hereby directed to take note off any other rules which empowers to impose penalty like withholding of any retiral benefits, in that event, such powers shall be exercised and impose cut in retiral benefits, if any, and it should be in accordance with relevant statutory provisions.

13. After conclusion of the disciplinary proceedings whatever the monetary benefits which are due to the respondent shall be disbursed within a period of two months from date of final order to be passed by the disciplinary authority. If the same is not disbursed in that event respondent is entitle to interest @ 8% per annum.

14. Respondent shall co-operate in the disciplinary proceedings, failing which disciplinary authority is well aware to proceed *ex-parte*.



15. Accordingly, the present writ petition stands allowed
in part.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

abhishekk/-

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

