

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12801 of 2005

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Ram Balak Singh 'Balak' Son of Late Mundrika Singh Resident of Village-
Kachchiana, P.O.- Kachchiana, P.S.- Lakhisarai, District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary-cum-Food Commissioner, Food and Civil Supply and
Commerce Department, Government of Bihar, Patna.
3. The Bihar State Food and Civil Supply Corporation Ltd., Sone Bhawan, Vth
Floor, Birchand Patel Marg, Patna.
4. The Managing Director, Bihar State Food and Civil Supply Corporation
Ltd., Sone Bhawan, Vth Floor, Birchand Patel Marg, Patna.
5. The Chief Administrator, Bihar State Food and Civil Supply Corporation
Ltd., Sone Bhawan, Vth Floor Birchand Patel Marg, Patna.
6. The District Manager, Muzaffarpur District- Bihar.
7. State of Jharkhand through the Chief Secretary, Govt. of Jharkhand, Ranchi.
8. The Jharkhand State Food and Civil Supplies Corporation, Ranchi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Ranjan, Advocate Ms. Shweta Anand, Advocate
For the BSFC	:	Mr. Shailendra Kumar Singh, Advocate
For State of Bihar	:	Mr. Sitaram Yadav, GP 16 Mr. Yatindra Narayan, AC to GP 16
For State of Jharkhand	:	Mr. Maruti Nath Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 22-03-2023

Heard learned counsels for the respective parties.

2. In the instant petition, petitioner has prayed for the
following relief/reliefs:

“(A). The order dated 22.7.2005 vide memo No. 5606
passed by the Managing Director, Bihar State Food and Civil
Supply Corporation Ltd, Respondent No. 4 whereby and
whereunder the petitioner has been dismissed/terminated from



services as contained in Annexure – 30 be quashed holding it as illegal and without Jurisdiction.

(B). The petitioner be directed as a consequence thereof to be reinstated with back arrears of salary and other dues including 3 months salary not paid prior to the date of his termination with other consequential relief.

(C). No coercive steps from the side of respondents should be taken against the petitioner.

(D) Any other consequential relief or reliefs to which the petitioner may be found entitled under the law be given to him.”

3. The petitioner while working as an Assistant Godown Manager, he was subjected to disciplinary proceedings which was concluded in dismissal on 20.07.1996 and it was subject matter of litigation before this Court in CWJC No. 5568 of 2000 and it was dismissed. Thereafter, LPA 1078 of 2000 was also dismissed. Further, he had invoked remedy before the Hon’ble Apex Court in Civil Appeal No. 1941 of 2000 and it was allowed while restoring LPA No. 1078 of 2000 and LPA was allowed on 29.09.2003. Petitioner was taken back to duty on 05.11.2003.

4. The concerned authority instead of implementing the order passed in LPA No. 1078 of 2000, to the extent that examination of inquiry report by the disciplinary authority and proceed to pass order, the respondents have resorted to issuing a fresh charge memo on 06.11.2003. The petitioner instead of questioning the validity of the charge memo or invoking contempt



proceedings, he has surrendered his right before the inquiry report insofar as facing fresh charge memo dated 06.11.2003. Second inquiry was concluded in imposition of penalty of dismissal from service on 22.07.2005. Hence the present writ petition.

5. Learned counsel for the petitioner submitted that along with the charge memo dated 06.11.2003 statement of imputation, list of documents and list of witnesses have not been provided and further he had demanded certain documents which were also not provided. It is further submitted that about four witnesses' written statement have been taken by the inquiring officer without there being summoning them to appear in the inquiry and adduce the evidence. It is submitted that author of the documents were required to be examined and cross-examined. On the other hand, all the witnesses' written statement have been taken note of in the absence of providing opportunity of cross-examining such of those witnesses, therefore, the impugned order of dismissal is liable to be set aside.

6. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that there are serious charges levelled against the petitioner and it involves financial irregularities, therefore, imposition of penalty of dismissal need not be interfered since disciplinary authority has followed the



Bihar State Food and Civil Supplies Corporation Service Conduct and Disciplinary Rules, 2001 (for short 'Rules, 2001'). He has also submitted that Rule 28 of Rules, 2001, '*Procedure For Dealing With Cases Of Misconduct*' has been followed.

7. Heard learned counsel for the respective parties.

8. Matter is of the year 2005. It is to be noted that this is second round of litigation in respect of alleged charges. First inquiry was commenced on 17.01.1989 and it was concluded in imposition of penalty of dismissal on 20.07.1996. In other words, seven years have been taken by the disciplinary authority to initiate and conclude the inquiry. Thereafter, it was a subject matter of litigation on judicial side and it has attained finality while remanding the matter on 29.09.2003. Disciplinary authority has committed glaring error in not implementing the order dated 29.09.2003 passed in LPA No. 1078 of 2000. In fact, he has committed contempt of Court order, however, it was not brought to the notice of this Court by either of the parties. On the other hand, disciplinary authority proceeded to reinstate the petitioner on 05.11.2003 and proceeded to frame fresh charges on 06.11.2003 and it was concluded in imposition of penalty of dismissal on 22.07.2005. It is a case for remand for the reasons that charge memo dated 06.11.2003 was not supported by



statement of imputation, list of documents and list of witnesses and further demanded documents by the petitioner were not provided to him and further about four witnesses have been examined by means of obtaining written statements from them in the absence of their appearance in the inquiry and providing of opportunity of cross examination by the petitioner. Once again the disciplinary authority has committed error. It is relevant to take note of Apex Court decision in the case of ***Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant and Others*** reported in **(2001) 1 SCC 182** which is aptly applicable to this case in hand. In the light of these facts and circumstances, instead of remanding the matter, this Court feels that in order to render justice, modifying the penalty of dismissal to that of compulsory retirement with effect from 22.07.2005, the date on which petitioner was dismissed from service would suffice.

9. Nodoubt, this Court has no power to modify the penalty in the light of Hon'ble Apex Court decisions, however, conscious of this Court is shocking to the extent that disciplinary authority has committed glaring error in not implementing the order of this Court passed in LPA No. 1078 of 2000 dated 29.09.2003. On the other hand, proceeded to issue fresh charge memo and concluded during the intervening period from 06.11.2003 to 22.07.2005 and



further it is second round litigation, therefore, it is a case for modification of penalty instead of remanding the matter to the disciplinary authority and asking him to revisit the entire matter and once again commencing inquiry from the defective stage like providing statement of imputation, list of documents and list of witnesses along with the fresh charge memo which was issued on 06.11.2003.

10. Accordingly, impugned order of dismissal dated 22.07.2005 is modified to that of compulsory retirement with effect from 22.07.2005, the concerned official respondent is hereby directed to extend all monetary benefits which were due to the petitioner with reference to imposition of penalty of compulsory retirement with effect from 22.07.2005. Monetary benefits shall be calculated and disbursed in accordance with law within a period of three months from the date of receipt of this order, failing which the petitioner is entitled to litigation cost and it is quantified @ Rs. 25,000/- (Rupees Twenty Five Thousand).

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.03.2023
Transmission Date	NA

