

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2484 of 2019

Jindalal Mahto Son of Late Deni Mahto Resident of Village- Madhopur P.O.
and P.S. Motipur, District-Muzaffarpur

... .. Petitioner/s

Versus

1. The Bihar State Electricity Board, Now Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road Patna, through its Chairman
2. The Chairman, Cum Managing Director, Bihar State Electricity Board, now Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road, Patna
3. The General Manager, Human Resources (Administration) South Bihar Power Distribution Company Ltd. Electricity Board now Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road Patna
4. The Secretary, Bihar State Electricity Board, Now Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar Mishra with Ms. Manini Jaiswal, Ms. Komal Mishra and Mr. Ashwini Kumar, Advocates
For the Respondent/s	:	Mr. Prakash Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 18-11-2024

Heard Mr. Sanjeev Kumar Mishra, learned Advocate
for the petitioner and Mr. Prakash Kumar, learned Advocate for
the South Bihar Power Holding Company Limited.

2. The petitioner is aggrieved by the order dated
02.09.2018 issued under the signature of the respondent no. 2
whereby the respondent no. 1 vide letter No. 2707 dated
09.10.2018 rejected the appeal preferred by the petitioner and
withheld the salary for the period during suspension by



modifying the earlier order of punishment dated 30.08.2002. The petitioner also sought quashing of the resolution no. 2039 dated 30.08.2002 whereby the petitioner has been awarded the punishment that except subsistence allowance the petitioner will not get anything during the suspension period apart from censure for the period 2001-2002. The disciplinary authority has also inflicted the punishment of withholding three annual increment with cumulative effect.

3. While the petitioner was posted as Assistant Electrical Engineer at Electric Supply Division, Jamui, in the meantime, an FIR bearing Patna Vigilance Case No. 1 of 2002 (Special Case No. 2 of 2002) was instituted for the offences under Sections 120B and 420 of the Indian Penal Code read with Section 13(2), 13(1)(d) of the Prevention of Corruption Act. In the afore noted criminal case the petitioner along with other officers had also been made accused leading to separate departmental proceeding against all of them. Vide Resolution No. 2255 dated 20.12.2001 a departmental proceeding was initiated against the petitioner. The charges were identical to the charges alleged in the FIR. The Enquiry Officer after enquiry exonerated the petitioner from some of the charges. However, differing with the view of the Enquiry Officer the disciplinary



authority issued second show cause with a direction to ensure explanation. The petitioner submitted show cause explanation, which did not find favour and finally the departmental proceeding culminated into final order of punishment as per resolution No. 2556 dated 25.10.2002.

4. Learned Advocate for the petitioner narrating the aforesaid facts contended that in an identical manner, the Junior Engineer Ram Lakshman Prasad had also been departmentally proceeded and he was visited with the identical punishment awarded to the writ petitioner as aforesaid. The aforesaid order of punishment was questioned in CWJC No. 8609 of 2004 which was finally set aside and the writ petition came to be allowed vide order dated 05.07.2011, copy of which is marked as Anneuxre-4 to the writ petition.

5. It is next contended that in the meantime the Special Judge Vigilance II, Patna has also proceeded in the trial and the petitioner along with other co-accused persons, including the Junior Engineer Ram Lakshman Prasad, were convicted vide judgment dated 30.06.2014. Pursuant to the judgment aforesaid, the petitioner has also been dismissed from service. The petitioner being aggrieved by the judgment of conviction and order of sentence preferred Criminal Appeal No.



397 of 2014. The aforesaid appeal was heard along with another analogous case and finally all the appeals came to be allowed vide judgment dated 16.09.2016 and the judgment of conviction and order of sentence were set aside. None of the charges as alleged in the criminal case were held to be found prove nor there was any evidence on record to hold the appellants guilty of the charges. The learned Court found the conviction and the order of sentence by the trial court totally perverse and wholly unsustainable.

6. Based upon the aforesaid facts the petitioner represented the matter before the Chairman-cum-Managing Director of the Company. Having found no succor the petitioner approached before this Court in CWJC No. 4423 of 2017 for quashing of the impugned order of punishment. However, considering the fact that the petitioner had the remedy of appeal the writ petition was withdrawn with liberty to file appeal against the order of punishment dated 29.12.2016. In terms of the liberty granted by this Court, the petitioner preferred appeal before the appellate authority wherein the order of punishment has been modified to the extent that the petitioner has been inflicted with the punishment of censure and the period during suspension has not been taken into consideration for salary.



However, that period has been counted for the purpose of pension and other allowances.

7. Learned Advocate for the petitioner placing reliance upon the decision rendered by this Court in the identical matter of Ram Lakshman Prasad in CWJC No. 8609 of 2004 has vigorously contended that it is the admitted fact that save and except the Dy. S.P. none of the witnesses have been examined. The learned Court also found that the order of punishment as well as the appellate order do not reflect any application of mind as neither the charges were specifically discussed nor the evidence which persuaded the Enquiry Officer to come to the conclusion that the charges have been proved, have been deliberated. The Court has also noted that all the charges were framed on the basis of the complaint made by the villagers. The non-examination of all the 14 villagers, who were made witnesses in the memo of charge, definitely deprived the Enquiry Officer in arriving at the conclusion that the charges have been proved. The Court also quashed the order of punishment as well as the appellate order and directed to ensure payment of consequential benefits.

8. Learned Advocate for the respondent Company has submitted that the original order has already been modified and



the petitioner has been inflicted only with the punishment of censure and forfeiture of salary for the period of suspension in terms of the fact that the charges were found proved against the petitioner. There is no irregularity in the process of departmental proceeding and the petitioner has been accorded proper opportunity of being heard. It is further contended that so far the criminal case is concerned, the charges are required to be proved beyond all its reasonable doubt whereas in a departmental proceeding the charges are to be proved on the basis of the preponderance of probability.

9. This Court has heard the rival contention of the learned Advocates for the parties and also perused the materials available on record. The facts are admitted that on account of the allegation levelled by some of the villagers FIR came to be instituted against the petitioner and other officials of the Bihar State Electricity Board as it then was. Though trial proceeded which resulted into conviction of the petitioner but finally the same has been set aside by this Court in Criminal Appeal preferred by the petitioner as noted hereinabove along with other analogous appeals.

10. This is also the admitted position that on identical charges the petitioner and others were put to departmental



proceeding and the identical order of punishment has been inflicted on the petitioner and Ram Lakshman Prasad which order of punishment was also questioned by said Ram Lakshman Prasad in CWJC No. 8609 of 2004 and this Court having discussed the stand of the South Bihar Power Holding Company set aside the order of punishment; the said order has never been assailed and the consequential benefits has been accorded to him. The charges against the petitioner are identical to that of the charges levelled against Ram Lakshman Prasad.

11. It would be pertinent to observe here that Rule 97(1) of the Bihar Service Code (hereinafter referred to as the 'Code') obligates the competent authority to consider and make specific order in case when a Government servant who has been dismissed, removed or suspended, has subsequently been reinstated. The competent authority is obliged to pass specific order:

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty, and

(b) whether or not the said period shall be treated as a period spent on duty.

12. An order under Rule 97(3) directing only



proportionate payment although not technically in the nature of imposition of penalty within the meaning of service rules, is nonetheless penal in its effect. Opportunity of hearing must be given before an order under Rule 97(3) is passed.

13. It appears from the materials on record that no such opportunity was given to the petitioner in terms of Rule 97(3) of the Code. It would also be relevant to observe that a Bench of this Court while considering such question in the case of *Pramod Kumar vs. The Champaran Gramin Bank & Ors.* reported in *2003 (4) PLJR 68* relying upon the decision of this Court in the case of *Mahabir Prasad vs. State of Bihar* reported in *1988 PLJR 82* held that non observance of the provisions of Rule 97(3) of the Code would amount to violation of the principles of natural justice.[*vide Dinesh Prasad vs. State of Bihar reported in 2006(4) PLJR 514*]

14. Having found the aforementioned admitted facts, this Court has no hesitation in holding that the impugned order of punishment as well as the appellate order are unsustainable and hereby set aside. So far the punishment to the extent whereby the salary of the petitioner has been forfeited for the period during suspension, the same is also contrary to the provision of Rule 97(3) of the Code. Moreover, non observance of the



provisions of Rule 97 (3) of the Code would amount to violation of the principles of natural justice; and as such the order to that effect is also found to be bad. The impugned orders hereby quashed and the respondents are directed to ensure payment of consequential benefits, preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

15. The writ petition stands allowed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	26.11.2024
Transmission Date	

