

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5516 of 2013

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Dhiraj Kumar Jha S/O Shri Sarangdhar Jha R/O Village- Raghunathpur,
Police Station- Bhargama, District- Araria

... .. Petitioner/s

Versus

1. The Bihar State Electricity Board through its Chairman, Vidyut Bhawan, Bailey Road, Patna.
2. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
3. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
4. The Chief Engineer (Commercial) Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
5. The General Manager-Cum-Chief Engineer Kosi Electric Supply Area, Saharsa, At and P.O.- Saharsa
6. The Electrical Superintending Engineer, Electric Supply Circle, Purnia
7. The Electrical Executive Engineer, Electric Supply Division, Purnia At and P.O.- Purnia

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.K. Sinha, Sr. Advocate Mr. Akash Keshav Ms. Akansha Mahriya, Advocates
For the BS.E.B.	:	Mr. Vinay Kirti Singh, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 16-01-2024

Heard Mr. D.K. Sinha, learned Senior counsel for the petitioner and Mr. Vinay Kirti Singh, learned Senior counsel appearing on behalf of the Bihar State Electricity Board, Patna.

2. The present writ petition has been filed for quashing the resolution vide Resolution No. 1999 dated 19.09.2012 issued under the signature of the Joint Secretary, Bihar State Electricity



Board, Vidyut Bhawan, Patna (respondent no. 3) and the same was communicated to the petitioner vide Memo No. 2000 dated 19.09.2012 by which the service of the petitioner has been terminated as the reason assigned in the Resolution No. 1999.

3. Learned Senior counsel for the petitioner submits that the petitioner was appointed as Electrical Junior engineer in the month of March, 2007 on contractual basis and after the filing of the K. Hat P.S. Case No. 126 of 2012 the petitioner was terminated by the authority. Learned Senior counsel for the petitioner submits that the termination of the petitioner is bad and before issuing the termination order, no show cause notice was issued to the petitioner and he has not given any opportunity to submit his case before the authority concerned. Learned Senior counsel for the petitioner further submits that during the pendency of the writ petition, the F.I.R. which was lodged against the petitioner was quashed and set aside vide order dated 28.08.2019 passed in Cr. Misc. No. 42596 of 2016.

4. Learned counsel for the petitioner relied upon a judgment/order dated 12.03.2015 passed in **C.W.J.C. No. 1000 of 2015 (Rajesh Kumar Ray Vs. The Bihar State Power Holding Company Ltd. and Ors.)**. Learned counsel for the petitioner submits that after lodging the F.I.R. which was lodged against all



the concerned Engineers/Officers including the petitioner submitted representation to the Joint Secretary, Bihar State Electricity Board, Patna (Respondent No. 3) dated 13.03.2012 in which the petitioner has stated that an order was issued to the Electrical Superintending Engineer, Purnia for lodging he present F.I.R. and during physical verification of BTS tower both disconnected with electrical connection is done every month. The BTS tower at Ramnagar where theft of electricity was detected is not a consumer of electricity and it had never applied for electrical connection. The BTS towers are supplied the electricity through 3-phase line, however, 3-phase low tension wire is texted about 300 meters away from the BTS tower at Ramnagar. The said BTS tower of Ramnagar was using the electricity from the domestic single phase line of the owner of the premises where the BTS tower is standing and the petitioner first detected the theft of electricity and informed the higher officials and after that raid was conducted in which he was also a member of the raiding team. Thereafter, the Joint Secretary of the Board (Respondent No. 3) by his letter no. 830 dated 17.04.2012 addressed to the petitioner and requesting the petitioner to submits his explanation within seven days as to why his contract to appointment be not terminated. The petitioner in response to the notice dated 17.04.2011 submitted his



detailed explanation and denied the allegations and the petitioner requested that the allegations are totally unfounded and has been levelled without referring to any record and proof and also requested that he should be exonerated of the allegations. All of a sudden, the petitioner had received a communication vide Memo No. 2000 dated 19.09.2012, the Resolution No. 1997 dated 19.09.2012 was communicated to the petitioner under the signature of the Joint Secretary of the Board by which the Board has taken resolution to terminate the services of the petitioner by cancelling contract of service.

5. Learned counsel for the petitioner also relied upon a judgement in the case of **Union Territory of Tripura and Another Vs. Gopal Chandra Dutta Choudhuri**, reported in **1962 SCC OnLine SC 115**.

6. Learned counsel for the Bihar State Electricity Board (hereinafter referred to as 'the Board') on the other hand referring the counter affidavit and submits that the petitioner has been given opportunity and the petitioner had submitted his reply which was found unsatisfactorily on the factual ground and the charges of connivance in theft of power and other lapses was found true so the authority has rightly terminated the petitioner.



7. Learned counsel for the Board submits that it is a settled law by the Hon'ble Apex Court in the case of State of Rajasthan Vs. B.K. Meena and Others, reported in 1996(6) SCC 417, that approach and objective in the criminal proceeding and departmental proceeding are altogether different as the standard of proof, mode of inquiry and the rules governing the inquiry are entirely distinct. In the departmental proceeding, the delinquent can be punished even he is absolved and acquitted of charges in the criminal proceeding. The departmental proceeding is conducted to enforce discipline in service and the consequences are based on preponderance of probabilities while criminal proceeding is based upon enforcing the Rule of Law by penalizing the offenders. The contractual service of the petitioner was terminated after due process of law and after giving adequate opportunity to him and subsequently his appeal against the termination order has also been rejected by the then Chairman, Bihar State Electricity Board vide order dated 24.08.2013 and the petitioner has never challenged the appellate order dated 24.08.2013 passed by the Chairman, Bihar State Electricity Board as yet.

8. Learned counsel for the Board has relied upon a judgment reported in the case of **Noida Entrepreneurs**



Association Vs. Noida and Others, reported in **(2007) 10 Supreme Court Cases 385** and referring the paragraph no. 15 which is as follows:-

*“15. The position in law relating to acquittal in a criminal case, its effect on departmental proceedings and reinstatement in service has been dealt with by this Court in **Union of India V. Bihari Lal Sidhana**. It was held in para 5 as follows:*

“5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension.



It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused or defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money.”



9. In view of the aforesaid, it appears that the Board has given an ample opportunity to the petitioner and after considering the reply of the show cause has passed the impugned order and the petitioner has never challenged the appellate order and after acquittal from the criminal cases the case of the petitioner was also considered and the Board has obtained a legal opinion from the learned Advocate General and after receiving the legal opinion from the learned Advocate General, the competent authority has decided not to take any decision on the petitioner’s application by which he requested the Chairman-cum-Managing Director of the Bihar State Power Holding Company to accept his joining and the same was communicated to the petitioner vide Memo No. 519 dated 28.11.2019.

10. There is no merit in the writ petition. It is, accordingly, dismissed.

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(Rajesh Kumar Verma, J)

AFR/NAFR	NAFR
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