

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14539 of 2024

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Shashi Kant Kumar Son of Ramesh Prasad, Resident of Village - Kisimiria,
P.O. - Mohiuddinpur, P.S. - Fatuha, District -Patna

... .. Petitioner/s

Versus

1. The South Bihar Power Distribution Co. Ltd. (SBPDCL), Vidyut Bhawan, Bailey Road, Patna through its Chairman-Cum-Managing Director(CMD).
2. The Chairman-Cum-Managing Director (CMD), Bihar State Power Holding Co. Ltd (BSPHCL), Vidyut Bhawan, Bailey Road, Patna.
3. The Deputy General Manager, Human Resources Department/Administration, South Bihar Power Distribution Co. Ltd. (SBPDCL), Vidyut Bhawan, Bailey Road, Patna.
4. The Land Acquisition Officer-Cum-Enquiry Officer, South Bihar Power Distribution Co. Ltd. (SBPDCL), Vidyut Bhawan, Bailey Road, Patna.
5. The Office of Lokayukta, Bihar through its Registrar, 4, Kautilya Marg, Patna- 1.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Brisketu Sharan Pandey, Adv.
For the SBPDCL	:	Mr. Kumar Priya Ranjan, Addl. SC, Mr. Sandeep Kumar, Adv., Mr. Sudarshan Bhardwaj, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 26-09-2024

The petitioner is an Assistant Electrical Engineer under the South Bihar Power Distribution Company Limited. In the year, 2013 he was posted at Arrah on the same post. During his tenure, it was his duty to inspect as to whether there was any theft of electricity. On inspection, he found a particular consumer stealing electricity and the petitioner filed a complaint in the jurisdictional



Police Station, on the basis of which an F.I.R. was drawn up under the penal provision of the Electricity Act.

2. Subsequently, the said complainant filed two complaints in the Department against the Assistant Electrical Engineer for initiating departmental action against him. Both the complaints were rejected on the ground that said complaints were filed to wreck vengeance against the petitioner, because of the fact that he lodged F.I.R. against him for theft of electricity.

3. Thereafter, he filed an application before the Lokayukta, Bihar against the petitioner. Lokayukta, Bihar passed an order on 31st August, 2017 directing the respondents to initiate a departmental proceeding against the petitioner and impose major penalty against him. On the basis of the said order, departmental proceeding was initiated.

4. In the departmental proceeding, some witnesses were examined by the Inquiry Officer, but the petitioner was not given opportunity to cross-examine the said witnesses. On the basis of practically an ex-parte proceeding, the petitioner was punished with withholding of two increments with cumulative effect. The petitioner preferred Statutory Appeal against the said order, which was also dismissed.



5. It is submitted by the learned Advocate on behalf of the petitioner that the Disciplinary Authority in his order held that the disciplinary proceeding was initiated only on the basis of the direction passed by the Lokayukta, Bihar. The petitioner was also punished on the recommendation of the Lokayukta.

6. It is held by this Court in ***Bipin Bihari Singh Vrs. The State of Bihar & Ors.*** Reported in ***2020 (3) P.L.J.R. 10*** that under the provision of ***Bihar Lokayukta Act, 2011***, the Lokayukta cannot direct any Government Department to initiate a departmental proceeding against the delinquent employee and to pass an order of major penalty.

7. In the said report, a Coordinate Bench of this Court held that in view of Section 27 read with Section 16 (1) of the Bihar Lokayukta Act, 2011, the Lokayukta can file a case before the Special Court and send a report to the competent authority to initiate disciplinary proceeding against the public servant only if the public servant is found to have commit an offence under Section 16 (1) of the Act, 1988. When there is no allegation of corrupt activities for any financial gain or other personal gain or lack of integrity against the petitioner, no such complain can be filed by the Lokayukta.



8. While dealing with the scope of Section 28 (A), 29 and 38 of the Bihar Lokayukta Act, 2011, it is decided by this Court in the said report that complaint of mal-administration against a public servant can be made by the Lokayukta in his report to the competent authority, but he cannot issue any direction to impose punishment against the said employee.

9. Learned Advocate on behalf of the State/respondents submits that under the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, there is a provision for review against the appellate order. The petitioner did not take the recourse of review. Therefore, he may be directed to file a review and exhaust the procedure laid down in the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

10. When this Court finds that the basis of the departmental proceeding is not lawful, the corollary of such finding is that the initiation of departmental proceeding is not maintainable. Therefore, failure on the part of the petitioner to file review does not dis-entitle him to have relief in the instant writ petition.

11. In the instant case, the Lokayukta directed the respondents to impose major penalty against the petitioner. The disciplinary proceeding and the punishment was only based upon



the report of the Lokayukta. Therefore, the impugned order of withholding two increments with cumulative effect, passed by the disciplinary authority and affirmed by the appellate authority, on the basis of the report of the Lokayukta can not stand.

12. Accordingly, the instant writ petition is allowed and the consequent order of punishment against the petitioner is quashed and set aside.

13. There shall be no order as to costs.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

