

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1251 of 2017

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Surendra Kumar S/o Sri Ram Vilash Prasad, resident of Mohalla- Godawari,
P.O.- Chand Chaura, P.S.- Rampur, Distt- Gaya.

... .. Petitioner/s

Versus

1. Bihar State Power Holding Company Limited.
2. Chairman-cum-Managing Director, Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bailey Road.
3. Director Human Resource/Administration, Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bailey Road.
4. Managing Director, North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
5. General Manager, Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
6. General Manager H.R/Adm., North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raju Giri, Sr. Adv. Mr. Harsh Vardhan, Adv. Mr. Samsher Prasad, Adv.
For the Respondent/s	:	Mr. Dharmeshwar Mishra, Sr. Adv. Mr. Sarwat Rafi, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

11 27-03-2025 Heard Mr. Raju Giri, Learned Senior Counsel with

Mr. Harsh Vardhan, Advocate for the petitioner and Mr.

Dharmeshwar Mishra, Learned Senior Counsel with Mr. Sarwat

Rafi, Advocate for the Bihar State Power Holding Company

Ltd.

2. The present writ application has been filed with the
following reliefs:-

A. For issuance of appropriate writ in



the nature of certiorari for quashing resolution no. 323 communicated by Deputy General Manager (HR/Adm.) by North Bihar Power Distribution Company Ltd vide memo no. 324 dated 11.02.2014 (Annexure-19) whereby the petitioner has been dismissed from the service of the company under rule 73(i)(A)(vii) of the Bihar State Electricity Board service Regulation read with rule 14(xi) of the Bihar Government servant (classification, control and appeal) Rules, 2005 with immediate effect.

B. For quashing the appellate order communicated by North Bihar Power Distribution Company Ltd. vide letter no. 1471 dated 22 24.09.2014 (Annexure-20) whereby the memo of appeal preferred by the petitioner against order of his dismissal has been rejected without considering afresh the grounds of defence taken before the disciplinary authority and in memo of appeal and without spelling reasons for not considering the same as sustainable.

C. For issuance of appropriate order/ direction to respondents to reinstate the petitioner in the service of the Bihar State Power (Holding) Company Ltd, with all consequential benefits.

D. For issuing order or direction to respondents to treat the idle period of petitioner on duty period from date of dismissed on duty for all purposes.

3. Learned senior counsel for the petitioner submits



that the petitioner was appointed in the post of Assistant Electrical Engineer (General Cadre) vide notification No.1074 dated 21.05.2009 *w.e.f.* 16.03.2009 and posted in Electric Supply Sub-division, Kalyanpur, Samastipur vide notification No.600 dated 05.06.2009. He further submits that during his tenure, the petitioner was posted as Assistant Electrical Engineer in Electric Supply Sub-division, Kalyanpur and one Harendra Rai who had been granted franchisee, deposited 12 applications along with application fee collected from the villagers for sanction of new service connection in the office of Electric Supply Sub-division, Kalyanpur, but subsequently, he has filed an application against the petitioner alleging that demand of illegal gratification. He further submits that the petitioner has been arrested from his resident at the instance of the said complaint made by Harendra Rai and his associates resulted into institution of vigilance P.S. Case No.025 of 2011 against the petitioner under section 7/13(2) read with section 13(1)(d) of the P.C. Act, 1988.

4. Learned senior counsel further submits that the petitioner was remanded in judicial custody and placed under suspension *w.e.f.* 29.04.2011 and subsequently after release, he has submitted his joining on 14.09.2011 vide order no.4396



dated 12.12.2011. He further submits that the petitioner was again suspended and departmental proceeding was drawn against the petitioner on the alleged charge of gross misconduct, negligence of duty as specified in the charge sheet vide order No.40 dated 09.01.2012. He further submits that the Enquiry Officer was appointed to conduct the departmental proceeding. He further submits that there were series of discrepancies made in the departmental proceeding, which he has specifically stated in different paragraphs of the writ petition. But the most important point on which he has put light in the present case that the appointment authority is the board as per his appointment letter, but the punishment order has been passed by Deputy General Manager (HR), who is sub-ordinate to the Board as mentioned in Annexure-19 contained in Memo No.324 dated 11.02.2014.

5. Learned senior counsel further submits that charge memo has been issued by the competent authority, but final order has not been passed by the competent authority rather the said authority is sub-ordinate to the Board and according to him, the final order is a non-jurisdictional. In support of his argument, he relied on the provisions of Article 311(1) of the Constitution of India, according to which only the appointing



authority can remove the person from post as the service of the petitioner has been protected under the Constitution of India. He further submits that by virtue of the appointment and subsequently, issuance of charge memo, the right has been accrued to defend him and in this regard, the General Clauses Act, 1897 (Act 10, 1897) is in protection and favour of the petitioner, according to which only Board can remove the petitioner. Therefore, he submits that the original order of punishment as well as the appellate order both are not correct in the eye of law and treated to be non-jurisdictional.

6. Learned senior counsel for the Bihar State Power Holding Company Ltd. on the other hand submits that at the time of appointment, the Board was in existence, therefore, Board has appointed. He further submits that subsequently, when Board has been converted into company, then the highest authority of the company has taken a decision that in the disciplinary matter, the Deputy General Manager (HR) shall be the authorised person. He further submits that the Deputy General Manager (HR) being the authorised person of the company, has power to remove as the company has duly authorised him to take such decision.

7. Learned senior counsel further submits that final



order has been passed by the Chairman -cum-Managing Director and not by the Deputy General Manager (HR), and therefore, the said order is sustainable in the eye of law.

8. Upon hearing the parties particularly, on the point of jurisdiction, it transpires to this Court that the petitioner has protection under Article 311(1) of the Constitution of India which states as follows:-

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

and Section 6 of the General Clauses Act, 1897 which states as follows:-

6. Effect of repeal.- Where this Act, or any ³[Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or



suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

9. From the final order by which the services of the petitioner has been dismissed is annexed as Annexure-19 Memo No.324 dated 11.02.2014 has been passed by the Deputy General Manager (HR) whereas the order contained in Annexure-22 has been passed by the Chairman-cum- Managing Director is the order in appeal. Article 311(1) of the Constitution of India is very much clear that the appointing authority can only remove the person from his post.

10. Here in the present case, admittedly, the appointing authority for the petitioner, is the Board and



therefore, the removal authority shall be the same. By virtue of challenge of law or repeal of earlier provisions, the matter has always been guided by section 6 of the General Clauses Act which is very much clear about effect of appeal and it indicates that the time when right accrue in the person, shall continue for his protection also. Therefore, this Court is of the firm view that in such situation as like that in the present case, the removal of petitioner shall only be made by the competent authority, who is the Board and power of Board is vested in the Managing Director and not with the Deputy General Manager. Such power of appointment cannot be sanctioned to any sub-ordinate particularly, for the matter as like that of petitioner. As such, the contention of the respondent's counsel is hereby rejected, due to the reason that the final order has not been passed by the Chairman -cum-Managing Director as it is the appellate order and when the original order itself is bad in law, then appellate order shall automatically become bad in law.

11. In the light of the discussion above, the order passed by the Managing Director, Bihar State Power (Holding) Company Ltd. vide memo No.324 dated 11.02.2014 (Annexure-19) is hereby directed to be non-jurisdictional as well the order passed by the Appellate Authority vide Memo No.1471 dated



24.09.2014 (Annexure-22) also directed to be non-jurisdictional.

12. The Respondent Authorities are hereby directed to take a fresh decision within 90 days from the date of receiving of the order in the Office. If the said order shall not be passed afresh within the said period, then the petitioner shall be entitled to join his post and respondent authorities shall accept his joining with all his consequential benefits.

13. With the aforesaid directions and observations, the present writ application stands allowed.

(Dr. Anshuman, J.)

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