

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14816 of 2015

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Rajendra Prasad, son of Late Shri Krishna Sao, resident of Chankya Nagar,
Kumhrar, P.S. Agamkuan, District- Patna

... .. Petitioner/s

Versus

1. The Bihar State Power Holding Company Limited through its Chief Managing Director, Vidyut Bhawan, Bailey Road, Patna.
2. The Managing Director, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
3. The General Manager (HR and Administration), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
4. The Deputy General Manager, (HR), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
5. The Deputy General Manager, Electric Supply Area, Bhagalpur.
6. The Deputy Director Personnel, Bhagalpur Area Board, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bajarangi Lal, Advocate
For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 22-06-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Bajarangi Lal, learned counsel for the petitioner and Mr. Vinay Kirti Singh, learned senior counsel appearing on behalf of the Bihar State Power Holding Company Limited.

3. The petitioner is aggrieved by the decision of the respondents as contained in Annexure-7 whereby the petitioner has been made to compulsorily retire vide



resolution dated 31.07.2013. He is further aggrieved by the decision of the Appellate Authority whereby the Appellate Authority after giving second show-cause notice has re-affirmed the decision of compulsory retirement of the petitioner.

4. Learned counsel appearing on behalf of the petitioner has drawn attention of this Court to Annexure-5 dated 29.03.2013 to demonstrate that the respondents have issued show-cause notice on definite charge of lapse. For ready reference, Annexure-5 is quoted below:-

"बिहार स्टेट पावर (होल्टिंग) कम्पनी लिमिटेड, पटना

निबंधित कार्यालय : विद्युत भवन, बेली रोड, पटना

पत्रांक III/सी0ए0बी0 – एलेग0 – 11008/13 736 /दिनांक 29/3/13

प्रेषक :- पी0 के0 गोविल
संयुक्त सचिव ।

सेवा में,

श्री राजेन्द्र प्रसाद
विद्युत कार्यपालक अभियंता,
विद्युत आपूर्ति प्रमंडल, लखीसराय ।

विषय :- स्पष्टीकरण ।

महाशय

निदेशानुसार, उपर्युक्त विषय के संबंध में कहना है कि दिनांक -05/03/2013 को मुख्य सचिवालय स्थित सभागार में मुख्य सचिव, बिहार की अध्यक्षता में बिजली वितरण की समस्या के संबंध में सभी जिलाधिकारियों, प्रभारी प्रधान सचिवों एवं बिहार स्टेट पावर (होल्टिंग) कम्पनी लिमिटेड के पदाधिकारियों के साथ हुई विडियों कॉन्फ्रेन्सिंग की कार्यवाही के दौरान यह पाया गया कि आपके द्वारा कम्पनी के निम्नांकित कार्यों में घोर लापरवाही एवं कर्तव्यहीनता बरती गई –

(क) विद्युत उर्जा चोरी को रोकने में विफलता

(ख) विद्युत उर्जा चोरी के विरुद्ध किए गए छापेमारी में कोई भी प्राथमिकी दर्ज नहीं किया जाना ।

अतः आपको निदेशित किया जाता है कि इस पत्र के निर्गत होने के 10 (दस) दिनों के अन्दर अपना उत्तर समर्पित करें कि आपके द्वारा बरती गयी उपर्युक्त कर्तव्यहीनता/लापरवाही के लिए क्यों नहीं आपके विरुद्ध समुचित



अनुशासनिक कार्रवाई की जाय? यदि आपका उत्तर निर्धारित अवधि में प्राप्त नहीं होता है तो यह समझा जायेगा कि आपको इस संबंध में कुछ नहीं कहना है तदनुसार, कम्पनी द्वारा समुचित अनुशासनिक कार्रवाई की जायेगी।

विश्वासभाजन

ह0/-

29/03/2013

(पी0के0गोविल)

संयुक्त सचिव

ज्ञापांक :- 736 / दिनांक 29/3/13

प्रतिलिपि - महाप्रबंधक-सह-मुख्य अभियंता, भागलपुर विद्युत आपूर्ति क्षेत्र, भागलपुर/विद्युत अधीक्षण अभियंता, विद्युत आपूर्ति अंचल, मुंगेर/लेखा पदाधिकारी, विद्युत आपूर्ति अंचल, मुंगेर को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

2. आपसे अनुरोध है कि श्री राजेन्द्र प्रसाद, वि0का0अ0, वि0 आ0 प्र0, लखीसराय को अपने स्तर से इस पत्र की प्रति यथाशीघ्र उपलब्ध कराने की कृपा की जाय। साथ ही इनके माह मार्च 2013 के 15(पन्द्रह) दिनों के वेतन का भुगतान स्थगित रखा जाय।

ह0/-

(पी0के0गोविल)

संयुक्त सचिव।

ज्ञापांक 736 / दिनांक 29/03/13

प्रतिलिपि - प्रशाखा पदाधिकारी, प्रशाखा - 1, बिहार स्टेट पावर (होल्टिंग) कम्पनी लिमिटेड, पटना के सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

2. आपसे अनुरोध है कि इस पत्र की प्रति संबंधित के निजी संचिका में रख देने की कृपा की जाए।

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(पी0के0गोविल)

संयुक्त सचिव।

5. The petitioner, thereafter was put under suspension vide Annexure-6 dated 04.04.2014 on the specific ground mentioned in Annexure-6 and his headquarters has been fixed as Electricity Supply Division, Sasaram during the period of suspension. Annexure-6 is quoted below for ready reference:-

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(सामान्य प्रशासन विभाग)

कार्यालय आदेश संख्या-.... [12017/2017](#) 1178 /वि0.... दिनांक 04/04/2013



श्री राजेन्द्र प्रसाद, विद्युत कार्यपालक अभियंता, विद्युत आपूर्ति प्रमण्डल, लखीसराय को कार्य के प्रति लापरवाही बरतने, अनुशासनहीनता एवं घोर कदाचार के प्रथमदृष्टया प्रमाणित आरोपों के लिए उनके विरुद्ध प्रारम्भ की जानेवाली विभागीय कार्यवाही पर बिना प्रतिकूल प्रभाव डाले तत्क्षण प्रभाव से निलंबित किया जाता है।

2. निलम्बन अवधि में श्री प्रसाद का मुख्यालय विद्युत आपूर्ति अंचल, सासाराम निर्धारित किया जाता है।

3. निलम्बन अवधि में श्री प्रसाद को नियमानुसार जीवन यापन भत्ता देय होगा।

आदेशानुसार,

ह0 / —

04 / 04 / 2013

(पी0के0गोविल)

संयुक्त सचिव”

6. Learned counsel appearing on behalf of the petitioner would submits that instead of establishing the charge for which he has been put under suspension for which show-cause has been issued vide Annexure-5 and the petitioner was put under suspension vide Annexure-6. The petitioner was made to compulsory retire on 31.07.2013 vide Annexure-7 in purported exercise of power and jurisdiction under Section 74(a) of the Bihar State Electricity Board Service Regulation, 1976 by giving three months notice and three months advance monthly payment. The petitioner, thereafter preferred an appeal and at the appellate stage, second show-cause reply was issued and thereafter the Appellate Authority dismissed the appeal and re-affirm the decision of compulsory retirement.



7. Learned counsel appearing on behalf of the petitioner would further submits that the order of compulsory retirement is a device to frustrate the right of an employee to fair trial in a departmental proceeding. In as much as, when the petitioner was put under suspension on 04.04.2013 on certain alleged charges, instead of establishing the charges, the respondent took a decision to compulsorily retire the petitioner. Such device is not in tune with the scheme of compulsory retirement under Section 74(a) of the Bihar State Electricity Board Service Regulation, 1976 which has been adopted by the respondents.

8. *Per contra*, Mr. Vinay Kirti Singh, learned senior counsel appearing on behalf of the Bihar State Power Holding Company would submits that petitioner was compulsory retired in public interest and at the appellate stage, the petitioner was given show-cause notice and thereafter the appellate authority affirmed the decision of compulsory retirement which does not warrant interference. He further submits that compulsory retirement is not a punishment. He refers to Annexure-F to the counter affidavit



to show that the petitioner who has become a deadwood has been made to compulsorily retire in public interest.

9. This Court is of the considered view that the aforesaid decision is totally misconceived; firstly, the order of compulsory retirement was issued without holding any enquiry and without asking for any explanation on the issue of compulsory retirement; secondly, the effect of not holding departmental proceeding cannot be cured at the appellate stage by simply issuing second show-cause notice. Such exercise to cover up the lapses of the original power exercised by the disciplinary authority suffers from the vice of non-compliance of the principles of natural justice and as such not sustainable in the eyes of law. The second show-cause notice is no substitute for the departmental proceeding when the petitioner was put under suspension vide Annexure-6.

10. In the result, the writ application is allowed and the respondents are directed to restore all the benefits to the petitioner as a regular employee up-to the age of superannuation i.e. January, 2021 and pay all the



consequential benefits accordingly after adjusting the amount already paid to the petitioner after compulsory retirement. In the event the consequential benefits are not paid to the petitioner within a period of three months from the date of receipt/production of a copy of this order, the petitioner would be entitled to the interest at the rate of 9 percent per *annum* from the date of filing of the writ petition till the date of actual payment.

11. With the aforesaid observation/direction, the writ petition stands allowed and disposed off.

(Anil Kumar Upadhyay, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30/06/2021

