

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No. 314 of 2023**

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Madhurendra Prasad son of Late Ramchandra Rawat, resident of Village-  
Koiriaya Tola, Sona Lal Gali, Raksaul, P.S.- Raksaul, District- East  
Champaran.

... .. Petitioner/s

Versus

1. Chairman cum Managing Director, Bihar State Power (Holding) Co. Ltd.  
having its office at Vidyut Bhawan, Bailey Road, Patna- 800001.
2. South Bihar Power Distribution Co. Ltd. through its Managing Director  
having its office at Vidyut Bhawan, Bailey Road, Patna- 800001.
3. Managing Director, South Bihar Power Distribution Co. Ltd. through its  
Managing Director having its office at Vidyut Bhawan, Bailey Road, Patna-  
800001.
4. General Manager (HR and Admn), South Bihar Power Distribution Co. Ltd.  
through its Managing Director having its office at Vidyut Bhawan, Bailey  
Road, Patna- 800001.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Umesh Prasad Singh, Sr. Adv.<br>Mr. Vaibhava Veer Shanker<br>Mr. Sameer Sawarn |
| For the Respondent/s | : | Mr. Dharmeshwar Mishra, Sr. Adv.<br>Mr. Indrajeet Bhushan                          |

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**

**JUDGMENT AND ORDER**

**C.A.V.**

**Date : 06-01-2026**

The present writ application has been filed for quashing the resolution, dated 12.08.2014, issued, by the General Manager (HR & Administration), South Bihar Power Distribution Company Limited, Patna, under Memo No. 1530, whereby departmental proceedings were initiated against the petitioner and for quashing the resolution/Order No. 664, dated 13.05.2016, by



which the punishment of withholding two annual increments with cumulative effect was imposed against the petitioner. The petitioner has further prayed for quashing resolution no. 267, dated 14.02.2017, whereby the earlier punishment was modified to the extent of withholding of one annual increment with non-cumulative effect, as well as for quashing the letter no. 647, dated 22.09.2022, whereby the petitioner was informed that his review application has been rejected.

2. The factual matrix of the case of the petitioner, in brief, is that he was initially appointed as Junior Electrical Engineer, vide Notification No. 1097, dated 12.11.1999, issued by the Joint Secretary, Bihar State Electricity Board (hereinafter referred as 'BSEB'). Subsequently, he was promoted to the post of Assistant Electrical Engineer on 17.09.2007. Thereafter, the petitioner was transferred from the Electric Supply Sub-Division, Katihar (Urban) to the Electric Supply Sub-Division, Rajgir with effect from 25.10.2012. Pursuant thereto, the petitioner joined at Rajgir as Assistant Electrical Engineer.

3. With the enactment of the Electricity Act, 2003, the Electricity (Supply) Act, 1948 stood repealed and by virtue of Section 172 thereof, the BSEB ceased to exist. In exercise of powers under Section 132 of the Electricity Act, 2003, the State



Government issued a Notification, dated 30.10.2012, restructuring the erstwhile BSEB into the Bihar State Power Holding Company Limited (in short, 'BSPHCL') and its four subsidiary companies, including the South Bihar Power Distribution Company Limited (in short, 'SBPDCL').

4. In terms of Section 133 of the Electricity Act, 2003, the services of all employees of the erstwhile BSEB were initially transferred to BSPHCL on the same terms and conditions and thereafter, in accordance with the said notification, employees were allocated to the respective subsidiary companies.

5. Clause 6 of the Notification deals with transfer of persons and Schedule F deals with detailed scheme including the terms and conditions for transfer of the employees in transmission, generation, distribution and common services. The petitioner, being posted at Rajgir, which is a distribution division, became an employee of the SBPDCL with effect from 01.11.2012.

6. The SBPDCL is governed by its Board of Directors, one of whom is the Managing Director (MD), who functions as the Chief Executive and Administrative Head of the Company and thereby became the employer of the petitioner in place of the BSEB. The field undertakings of the company are headed by the General Manager -cum- Chief Engineer.



7. Prior to the posting of the petitioner at Rajgir on 25.10.2012, a tender for appointment of a franchisee for collection of electricity charges/bills from consumers was issued by the erstwhile BSEB. Pursuant thereto, M/s Mithilesh Enterprises was selected as the franchisee and a Letter of Intent, under Memo No. 3281, dated 28.08.2012, was issued by the Electrical Superintending Engineer, Biharsharif.

8. In terms of Clause 4 of the Letter of Intent, dated 28.08.2012, the Electrical Executive Engineer, Electric Supply Division, Rajgir, was designated as the Work Incharge for operation of the contract. Further, Clause 4.5 (B) of the agreement executed between the franchisee and the Electrical Superintending Engineer, Biharsharif, stipulated that the BSEB may, at any time during the subsistence of the agreement, authorize any person(s) to inspect, verify and audit the performance, records and accounts of the franchisee.

9. The contract with the said franchisee was for a period of three years. However, during the subsistence of the contract, the franchisee defaulted in depositing the amount collected from the consumers. Such irregularities came to light upon scrutiny of the accounts for the period from 01.10.2012 to 30.11.2013, which ultimately led to termination of the contract with the franchisee.



Subsequent audit of accounts conducted for the period from 01.08.2012 to 30.11.2013 further revealed that the franchisee, during the contract period as well as even after termination of the agreement, had collected money from consumers, but failed to deposit the same, thereby defalcating an amount exceeding to ₹28,15,898/-.

**10.** Subsequently, a committee was constituted by the Electrical Executive Engineer, Rajgir, vide office order, dated 13.01.2014 to examine the relevant records and for the first time, the petitioner was included as a member of the committee. Upon examination, the committee found a short deposit of ₹24,91,848/-. Acting in the capacity of a member of the committee, the petitioner forwarded the inspection report to the Electrical Executive Engineer, Rajgir, vide letter no. 30, dated 29.01.2014.

**11.** However, all of a sudden, on 12.08.2014, the General Manager (HR & Administration), SBPDCL, issued Memo No. 1530, dated 12.08.2014, initiating departmental proceeding against the petitioner on the allegation that there was reason to believe that the petitioner was *prima facie* guilty of gross misconduct and negligence of duty, as specified in the charge sheet. The petitioner was directed to submit his written statement of defence within fifteen days from the date of issuance of the said



memo. Sri Rishi Prasad, Chief Engineer, SBPDCL, was appointed as the Enquiry Officer to conduct the departmental proceeding.

**12.** After conclusion of the departmental proceeding, the Enquiry Officer submitted the enquiry report on 20.11.2014, wherein it has categorically been concluded that although five charges were levelled against the petitioner, no charge of financial embezzlement in collusion with the franchisee was proved against him. However, the petitioner was held guilty of negligence of duty and a second show-cause notice on 08.01.2015 was issued by the General Manager (HR & Administration), calling upon the petitioner to explain as to why he should not be punished.

**13.** In response to the second show-cause notice, the petitioner submitted a detailed reply on 09.06.2015, denying all the charges levelled against him. However, without properly considering the facts and circumstances of the case and in a mechanical manner, the General Manager (HR & Administration) imposed the punishment of withholding of two annual increments with cumulative effect, which was communicated to the petitioner, vide Memo No. 665 dated 13.05.2016.

**14.** Aggrieved by the punishment order, the petitioner preferred an appeal before the appellate authority, i.e. the Chairman -cum- Managing Director, BSPHCL, Patna. The



appellate authority, vide order, dated 05.02.2017 modified the punishment from withholding of two annual increments with cumulative effect to withholding of one increment with non-cumulative effect.

15. Aggrieved by the order, dated 05.02.2017, the petitioner preferred a review application on 13.05.2022 before the Chairman -cum- Managing Director, BSPHCL; however, the same was rejected by the competent authority on 14.02.2017 as not maintainable.

16. During the pendency of review application, the petitioner approached this Hon'ble Court by filing CWJC No. 12243 of 2022, which was disposed vide order, dated 30.09.2022, with liberty to the petitioner to assail the order passed in the review application by way of a fresh writ petition.

17. Learned Senior Counsel appearing on behalf of the petitioner argued that the very initiation of the departmental proceeding against the petitioner is *ex facie* illegal, arbitrary and without jurisdiction. Drawing the attention of this Court to the Office Order, dated 11.03.2015, issued under the signature of Mr. Binod Kumar, General Manager (HR & Administration), it has been submitted that the said letter demonstrates that pursuant to the decision taken by the Board of Directors, the General Manager



(HR & Administration), SBPDCL, was authorized to exercise the powers in accordance with the delegation of powers schedule issued by BSPHCL, till the posting/appointment of the Executive Director (HR & Administration) in SBPDCL.

**18.** Therefore, the submission is that the said delegation of powers came into force from 11.03.2015; whereas the departmental proceeding was initiated against the petitioner on 12.08.2014. Thus, on the date of initiation of the departmental proceeding, the General Manager (HR & Administration), was not the appointing authority or the disciplinary authority of the petitioner.

**19.** Learned Senior Counsel further submits that in view of the statutory scheme governing the service conditions, the Managing Director, subject to delegation of powers by the Board of Directors of SBPDCL, was the competent appointing and disciplinary authority of the petitioner.

**20.** The attention was drawn to the resolution of the Board of Directors of the SBPDCL, notified vide Order No. 164, dated 26.06.2013, whereby the existing delegation of powers to award major and minor punishments to officers of the rank of Assistant Engineer/Electrical Engineer and equivalent was amended from General Manager -cum- Chief Engineer of the



concerned area/project and such powers were vested in the Managing Director/Executive Director (HR). The entire departmental proceeding, including issuance of the charge sheet, second show cause notice and the order of punishment, was undertaken by the General Manager (HR & Administration) without any authority under the law.

**21.** Referring to the provisions contained in Rule 16 of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (in short, '2005 Rules'), learned Senior Counsel contended that the appointing authority/disciplinary authority of the petitioner is the Managing Director, as such, the action of the General Manager (HR & Administration) regarding initiation of departmental proceeding against the petitioner was clearly untenable in the eyes of law.

**22.** The memo of charges issued against the petitioner was never approved by the appointing or disciplinary authority and the power was never delegated by the appointing or disciplinary authority to the General Manager (HR & Administration). Therefore, the very initiation of departmental proceeding is vitiated as illegal. He next submits that the charges levelled against the petitioner are wholly unsustainable on merits based on no evidence. The proceeding was initiated without taking any



explanation or show cause from the petitioner before initiation of the departmental proceeding and service of memo of charge.

**23.** It is an undisputed fact that the agreement with the BSPHCL and the franchisee and the Letter of Intent were executed much prior to the posting of the petitioner at Rajgir and under the express terms thereof, the Electrical Executive Engineer was designated as the Work In-Charge for the operation and supervision of the contract. The petitioner was never authorized, either under the agreement or by any office order to inspect, audit, verify accounts or supervise the collections made by the franchisee. The role of the petitioner arose at a later stage when he was included as a member of the committee constituted on 13.01.2014, after the defalcation had already taken place and his role was limited to forwarding the report of the committee to the competent authority. At no stage, any specific act of omission attributable to the petitioner was identified or proved showing the misconduct or negligence done by the petitioner nor was any such charge, supported by cogent documentary or oral evidence, was laid during the departmental proceedings.

**24.** Learned Senior Counsel for the petitioner relied on the decisions of the Supreme Court, in the cases of (i) **Union of India v. B.V Gopinath**, reported in **(2014) 1 SCC 351**; (ii) **State**



**of Tamil Nadu v. Pramod Kumar**, reported in **(2018) 17 SCC 677**; (iii) **Sunny Abraham v. Union of India**, reported in **(2021) 20 SCC 12**; (iv) **Hukumchand Shyam Lal v. Union of India (AIR 1976 SC 789)** and also on the decisions of this Court, in the cases of **Manikant Pathak v. The State of Bihar**, reported in **1997 (1) PLJR 664 (FB)**; and **Vijay Kumar Mathur v. SBPDCL**, reported in **2023 (2) PLJR 668**.

**25.** Per contra, learned Senior Counsel appearing on behalf of the respondents submits that the writ petition is wholly misconceived and devoid of any merit. It has been argued that the departmental proceeding against the petitioner was initiated strictly in accordance with law on the basis of serious charges of negligence of duty, which resulted in substantial financial loss to the Company. The proceeding was initiated by the competent appointing -cum- disciplinary authority, i.e. the Managing Director, SBPDCL, vide Resolution No. 1529. dated 12.08.2014.

**26.** The Enquiry Officer was appointed to conduct the departmental proceeding. The petitioner was afforded full opportunity to participate in the enquiry and upon completion of the enquiry, the Enquiry Officer submitted a detailed report, dated 20.11.2014, wherein all five charges levelled against the petitioner were found proved on the basis of evidence on record. Pursuant to



the enquiry report, a second show cause notice was issued to the petitioner, calling upon him to explain as to why punishment should not be imposed. The petitioner submitted his reply, which was duly considered by the disciplinary authority. Since the petitioner failed to rebut the findings of the Enquiry Officer by any cogent explanation or documentary evidence, the disciplinary authority, after due application of mind, imposed the punishment of stoppage of two annual increments with cumulative effect by a reasoned order, dated 13.05.2016. The punishment imposed was proportionate to the gravity of misconduct established in the enquiry.

**27.** Learned Senior Counsel further submits that the petitioner availed the statutory remedy of appeal. The appellate authority, i.e., the Chairman -cum- Managing Director, BSPHCL, after affording the petitioner personal hearing and considering the entire record, passed a detailed and speaking order. Taking a balanced and lenient view of the subsequent conduct of the petitioner, the appellate authority modified the punishment to stoppage of one annual increment with non-cumulative effect, vide Resolution No. 267, dated 14.02.2017, thereby demonstrating fairness, reasonableness and judicious exercise of power.



**28.** Learned Senior Counsel further submits that prior to filing the present writ petition, the petitioner had already approached this Hon'ble Court by filing CWJC No. 12243 of 2022, wherein he had specifically undertaken to challenge only the order passed in the review application by filing a fresh writ petition. On the basis of such undertaking, the said writ petition was disposed of by order, dated 30.09.2022.

**29.** Accordingly, the petitioner had confined his grievance solely to the order passed in the review application and not to the earlier stages of the disciplinary proceeding. As such, the present writ application is not maintainable.

**30.** Learned Senior Counsel next argued that at no stage of the departmental enquiry nor during the appellate or review proceedings, did the petitioner raise any objection with regard to the competence or authority of the General Manager (HR & Administration). Having consciously participated in the proceedings at all stages without any protest or objection, the petitioner is now estopped from raising such technical objections at a belated stage. Accordingly, the writ petition is liable to be dismissed on this ground alone.



**31.** I have heard learned Senior Counsel for the parties and have gone through the material available on records, including the impugned orders.

**32.** Upon careful consideration of the pleadings, documents available on record and rival submissions advanced by the parties, this Court finds that the foundational issue in the present case is as to whether the departmental proceeding was initiated by the authority having jurisdiction?

**33.** From perusal of records, particularly the order, dated 26.06.2013, it appears that powers to award major and minor punishments to officers of the rank of Assistant Electrical Engineer stood vested in the Managing Director/Executive Director (HR). By the office order, dated 11.03.2015, the General Manager (HR & Administration) was authorized to exercise the powers as given in the schedule of delegation and was admittedly issued subsequent to initiation of the proceeding against the petitioner and was temporary in nature, subject to posting/appointment of Executive Director (HR). The impugned Memo No. 1530, dated 12.08.2014, initiating the departmental proceeding was started from service of memo of charge. The memo of charge was issued on 11.08.2014, under the signature of the General Manager (HR & Administration).



**34.** The provisions, contained under Rule 16 (1) of the 2005 Rules, prescribes that the Government or appointing authority or any authority to which the appointing authority is subordinate or any other authority empowered by the general or special order of the Government may institute a departmental proceeding against any Government servant.

**35.** The issue, as raised before this Court, has been elaborately dealt with by a Bench of this Court, in the case of **Uday Pratap Singh vs. The State of Bihar and Others**, reported in **2017 (4) PLJR 195**, wherein this Court, taking note of the relevant provisions of Rule 16 (1) of the 2005 Rules, has summarized that a disciplinary proceeding can only be initiated by an authority competent to do so.

**36.** Rule 2 (f) of the 2005 Rules, defines the appointing authority and *inter alia* under sub-Rule (iii) includes the authority which appointed the Government servant to such Service. The appointing authority would be the disciplinary authority, as per Rule 2 (j) of the 2005 Rules.

**37.** In the present case, the very decision to initiate the departmental proceeding against the petitioner was taken by the General Manager (HR & Administration). In paragraph 9 of the second supplementary counter affidavit, the respondents have



expressly admitted that the Managing Director is the Disciplinary Authority in respect of the petitioner. The memo of charge, the second show-cause notice and the final order imposing major punishment, have all been issued by the General Manager (HR & Administration). Though, it has been argued that the order appointing the Enquiry Officer was issued under the direction of the Managing Director, but the respondents have failed to place on record any resolution, notification, delegation order to show that the General Manager (HR & Administration) was authorized to exercise the powers of the appointing/disciplinary authority.

**38.** Admittedly, in the memo of charge, there is no indication that the same was served under the direction of the Managing Director, i.e. the Appointing Authority. The memo of charge does not bear any approval of the appointing/disciplinary authority, thereby clearly indicating that the memo of charge was issued without the approval of the competent authority.

**39.** In the case of **B. V. Gopinath** (supra), the Supreme Court has held that the charge sheet/charge memo having not been approved by the disciplinary authority would be non est in the eyes of law. The said proposition has been reiterated by the Supreme Court, in the cases of **Pramod Kumar, IPS** (supra) and **Sunny Abraham** (supra).



**40.** Having considered the aforesaid discussion, on facts as well as on law, in the opinion of this Court, the very initiation of the disciplinary proceeding by the authority other than the appointing authority without any delegation of power in his favour, it is difficult to accept the submission advanced on behalf of the respondents that the General Manager (HR & Administration) was the competent authority to initiate the departmental proceeding against the petitioner. This Court, therefore, accepts the contention of the petitioner that the impugned orders, having been issued by an authority lacking jurisdiction, are wholly without authority of law. The respondents have failed to bring on record any contemporaneous or prior document, resolution, notification or order to demonstrate that the Managing Director had lawfully delegated his disciplinary powers to the General Manager (HR & Administration).

**41.** The contention of the respondents that the issue of incompetence of the General Manager (HR & Administration) while initiating departmental proceeding was not raised by the petitioner during the departmental proceeding and also before the Appellate Authority cannot be accepted for the simple reason that point of jurisdiction goes to the root of the case and since it is the legal point, as such, can be raised at any stage of the proceeding.



42. In the circumstances, the very initiation of the departmental proceeding and all consequential actions stand vitiated.

43. Accordingly, Resolution No. 1530, dated 12.08.2014, initiating departmental proceeding against the petitioner, Resolution No. 664, dated 13.05.2016, imposing punishment of withholding two increments with cumulative effect, Resolution No. 267, dated 14.02.2017, modifying the punishment, and Communication Letter No. 647 dated 22.09.2022 rejecting the review application are hereby quashed.

44. The respondents are directed to pay the entire amount, if any, deducted in lieu of punishment awarded to the petitioner within a period of one month from today.

45. In the result, this writ application is allowed.

46. There shall be no order as to costs.

**(Anil Kumar Sinha, J.)**

Prabhakar Anand/-

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| AFR/NAFR          | AFR        |
| CAV DATE          | 31-10-2025 |
| Uploading Date    | 06-01-2026 |
| Transmission Date | N/A        |

