

(2015) 04 PAT CK 0069

In the Patna High Court

Case No : LPA No. 778 of 2014 in CWJC No. 17405 of 2008 and LPA No. 155 of 2015 in CWJC No. 17405 of 2008

Hassan Muzahid and Others

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Citation : (2015) 4 PLJR 435

Hon'ble Judges : L. Narasimha Reddy, C.J. and Shivaji Pandey, J.

Bench : Division Bench

Advocate : Zaki Haider, for the Appellant; Vinay Kirti Singh and Anand Kumar Ojha, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, C.J.

I.A. No. 708 of 2015

1. This interlocutory application is filed with a prayer to condone one day's delay in filing the appeals stating that the said delay occurred on account of miscalculation of limitation. For the reasons stated in the application, the delay is condoned.

L.P.A. No. 778/2014 and L.P.A. No. 155/2015

2. These two appeals are preferred against the order dated 12th March, 2014 passed by the learned Single Judge in CWJC No. 17405 of 2014. LPA No. 778 of 2014 is preferred by the writ petitioner and the other LPA No. 155 of 2015 is preferred by the respondents therein.

3. For the sake of convenience, the parties are referred to, as arrayed in the writ petition.

4. The petitioner was employed as Clerk in the first respondent-Board.

Disciplinary proceedings were initiated against him alleging that he misappropriated the amount collected by him from the consumers. After the charge-sheet was issued, the petitioner submitted his explanation. Not satisfied with that, the Disciplinary Authority appointed an enquiry officer. In his report, the enquiry officer observed that all the charges are proved. Thereafter, a second show cause was issued to the petitioner. The Disciplinary Authority imposed the punishment of dismissal through his order dated 24.3.2001. Aggrieved by that, the petitioner preferred an appeal. The appeal was rejected challenging the same, a writ petition was filed and this Court remanded the matter to the Appellate Authority. Thereafter, the appeal was rejected for the second time. Stating that he was not communicated the order of the Appellate Authority, dated 24.3.2001, the petitioner approached this Court in the year 2008, by filing the writ petition. The order of dismissal was also challenged.

5. The principal ground urged by the petitioner was that the Disciplinary Authority did not take into account, any of the grounds pleaded by him in the explanation submitted to the second show cause notice, and that the order of dismissal is bereft of any reasons. These grounds weighed with the learned Single Judge and accordingly, he allowed the writ petition and has set aside the order of punishment. It was left open to the petitioner, to submit an explanation, and the Disciplinary Authority was directed to pass order afresh. The learned Single Judge further held that the petitioner shall not be entitled to back wages for a period of six years, even if the disciplinary proceedings are dropped against him. This was on the ground that there was delay in pursuing the remedy.

6. While the respondents challenged the order in so far as it has set aside the order of dismissal dated 24th March, 2001, the petitioner feels aggrieved by second part of the order.

7. Heard Sri Anand Kumar Ojha, learned counsel for the petitioner and Sri Tej Bahadur Singh, learned senior counsel for the respondents.

8. The petitioner was dismissed by the Disciplinary Authority, after conducting enquiry. The only flaw pointed out by the petitioner and the one that weighed with the learned Single Judge, is that the Disciplinary Authority did not furnish any reason in support of his conclusions. It needs hardly any mention that the issuance of second show cause has a definite purpose to serve and that is the only occasion, or avenue where the delinquent employee can make an attempt to convince the Disciplinary Authority that the findings by the Enquiry Officer are not correct. He can also impress upon the Disciplinary Authority that the proposed punishment need not be awarded and he can plead extenuating circumstances. Since, the order passed by the Disciplinary Authority was passed without taking into account, the grounds pleaded by the delinquent employee in his reply to the second show cause, it certainly turns to be defective. Time and again, the Hon''ble Supreme Court held that such exercise tends to be violative of one of the facets of the principles of natural justice, and the opportunity given to an employee would be reduced to empty formality. We, therefore, do not find

any basis to interfere with the view taken by the learned Single Judge in this behalf.

9. However, the direction issued to effect that the petitioner shall be reinstated in service, and thereafter, be placed under suspension, cannot be sustained in law. Since the order of punishment is not set aside on merits, the proceedings are just relegated to the stage of issuance of second show cause notice. Therefore, the petitioner shall be deemed to be under suspension, till the Disciplinary Authority passes a fresh order, as directed by the learned Single Judge.

10. Coming to the grievance of the petitioner about the denial of back wages, in the event of being exonerated of charges, on remand, we find that the learned Single Judge imposed that condition, as a price to be paid by the petitioner for filing the writ petition with considerable delay. In other words, the writ petition was liable to be dismissed, but for the indulgence shown to him by denying the back wages in the event of his being successful before the Disciplinary Authority. Therefore, the direction does not warrant interference.

11. Both the appeals are, accordingly, dismissed but with the modification that the petitioner shall be deemed to be under suspension, as a sequel to the setting aside the order of punishment. The Disciplinary Authority shall pass appropriate order and duly furnish reasons, within two months from today. Interlocutory applications, if any, shall stand disposed of. There shall be no order as to costs.