

Umda Devi and ors. Vs. the Bihar State Electricity Board and ors.

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Court : Patna

Decided On : Aug-12-2003

Judge : Chandramauli Kr. Prasad, J.

Acts : Service Law

Appeal No. : C.W.J.C. No. 3771 of 2000

Appellant : Umda Devi and ors.

Respondent : The Bihar State Electricity Board and ors.

Advocate for Def. : Dharmeshwar Mishra, Adv.

Advocate for Pet/Ap. : Namrata Mishra, Adv.

Disposition : Application allowed

Judgement :

Chandramauli Kr. Prasad, J.

1. This application has been filed for quashing the Resolution dated 6th of April, 1999 (Annexure-12) whereby one Ram Lakhan Sahi, an employee of Bihar State Electricity Board, has been inflicted with various penalties.

2. Petitioners are the heirs of said Ram Lakhan Sahi who was a Junior Engineer employed in the Bihar State Electricity Board, hereinafter referred to as 'the

Board'. By order dated 14-11-1984 (Annexure-4), he was put under suspension on account of submission of the charge sheet against him on 8-1-1983 in Jharia P.S. Case No. 36 of 1981 registered under Sections 409, 410, 414 and 120B of the Indian Penal Code. The order putting him under suspension made it clear that the same shall be without prejudice to the departmental proceeding to be initiated against him separately.

3. The employee was served with the charge sheet dated 28-11-1985 (Annexure-3). According to the charge while Ram Lakhan Sahi was posted as Junior Engineer in the Rural Electrification at Govindpur, one drum of aluminium wire was issued to him for rural electrification but on conspiracy with other persons, he sold the same. Further charge against the employee was of tampering the order to favour the consumer. The third charge pertains to failure to refund certain articles given to him. The enquiry officer, ultimately, submitted the report exonerating the employee from all the charges. The disciplinary authority disagreed with the finding of the enquiry officer and after recording the conclusive finding of guilt, gave show cause notice to the employee dated 1-12-1998 (Annexure-8) against the proposed punishment in the said show cause notice against the proposed punishment, the disciplinary authority had assigned the reasons for disagreement. The employee submitted his reply dated 15-12-1998. Before the disciplinary authority could pass the final order, the employee retired from service on attaining the age of superannuation on 31-1-1999. After the superannuation of the employee, the disciplinary authority, on consideration of his reply by the impugned order dated 6-4-1999 (Annexure-12), inflicted the following punishments:

(i) The employee's promotion shall be withheld for five years,

(ii) The order of suspension shall be entered in his Character Roll,

(iii) The employee shall not be entitled for any other amount other than the subsistence allowance paid to him for the period of suspension.

4. Mrs. Namrata Mishra appears on behalf of the petitioners whereas Mr. Dharmeshwar Mishra appears for the respondent-Board. Mrs. Mishra submits that the enquiry officer had exonerated the employee from all the charges but the

disciplinary authority has inflicted the punishment without giving to the employee the opportunity to satisfy the disciplinary authority that the finding recorded by the enquiry officer was just and proper. She submits that not affording the aforesaid opportunity, is in breach of the principles of natural justice and this itself vitiates the impugned order.

5. I find substance in her submission. I had the occasion to consider this question in the case of *Ranjan Kumar v. Nalanda Gramin Bank and Ors.*, 2003 (2) BLJR 1113 wherein I had held as follows:

'12. From the authorities of the Supreme Court and the decisions of this Court referred to above, it is evident that in case, the disciplinary authority disagrees with the findings of the enquiry officer, he has to record tentative reasons and communicate the same to the delinquent employee giving opportunity to him to satisfy that the findings recorded by the enquiry officer is just and proper. At this stage, the disciplinary authority cannot record a conclusive finding even after assigning the reasons and in case, he does so and gives opportunity to the delinquent employee to show cause only against the proposed punishment, same shall vitiate the order of punishment as in such a situation, the disciplinary authority had recorded the finding of guilt in disagreement with the conclusion of the enquiry officer without giving opportunity to the delinquent employee. In my opinion, mere recording of reasons of disagreement does not satisfy the requirement of principle of natural justice but the principle of natural justice demands that before recording the finding of guilt in disagreement with the opinion of the enquiry officer, opportunity must be given to the delinquent employee. Here, in the present case, the disciplinary authority had stepped into the second stage of asking show cause against the purposed punishment without taking the first step of giving opportunity to the delinquent employee to satisfy that the finding of the enquiry officer is correct.'

14. In the result, the orders of the disciplinary authority and the appellate authority are quashed and the writ application is allowed with the aforesaid observation. No costs.' Mr. Mishra, however, appearing on behalf of the respondent-Board submits that the employee was given opportunity against the proposed punishment and

that satisfies the requirement of principle of natural justice.

6. Having appreciated the rival submissions, I find force in the submission of Mrs. Mishra. As stated earlier, the employee was exonerated from all the charges by the enquiry officer. The disciplinary authority considered the report of the enquiry officer, disagreed with the same and recorded the conclusive finding holding the employee guilty of misconduct and only thereafter, gave the employee the opportunity against the proposed punishment. This is clearly in breach of the principle of natural justice. The view which I have taken finds support from the judgment of this Court in the case of Ranjan Kumar (supra).

7. Mrs. Mishra then contends that the employee superannuated from service on 31-1-1999 and hence, the relationship between the employee and the employer severed and as such, no punishment as provided under the Conduct and Discipline Rules, could have been inflicted on the employee. She points out that the punishment of withholding of promotion for five years and other punishment can be imposed only when the employee is in service. The fact that the employee superannuated from service on 31-1-1999, has not been disputed by Mr. Mishra. I find substance in the submission of Mrs. Mishra. In my opinion, only those punishments can be imposed on an employee which are provided in the Conduct and Discipline Rules and not under the Rules which will apply after the retirement of the employee. This also renders the impugned order illegal in the eye of law.

8. In normal circumstances, I would not have set aside the order and given opportunity to the respondents to proceed against the employee from the stage subsequent to the submissions of the enquiry report but in the present case, I am not inclined to charter that course. The employee died on 26th of April, 1999 and, therefore, in my opinion, no useful purpose shall be served by allowing the respondents to proceed in the matter from the stage subsequent to the submission of the enquiry report. Respondent shall pass order only as to whether the employee shall be entitled for any benefit other than the subsistence allowance for the period of suspension.

9. In the result, this writ application is allowed, resolution dated 6-4-1999 (Annexure-12) is quashed with the observation aforesaid. No costs.

