

Surendra Prasad Vs. Bihar State Electricity Board and ors.

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Court : Jharkhand

Decided On : Mar-02-2006

Reported in : [2006(2)JCR124(Jhr)]

Judge : S.J. Mukhopadhaya and; D.K. Sinha, JJ.

Appeal No. : LPA No. 639 of 2005

Appellant : Surendra Prasad

Respondent : Bihar State Electricity Board and ors.

Advocate for Def. : A.K. Jha and; R. Krishna, Advs.

Advocate for Pet/Ap. : S.B. Gadodia, Sr. Adv. and; Sumeet Kumar Gadodia, JC

Disposition : Appeal dismissed

Judgement :

ORDER

1. Petition at Flag 'L' (I.A. No. 2529 of 2005) has been filed for condoning the delay of 9 days in preferring the instant appeal.
2. Having heard the counsel for the parties and being satisfied with the grounds shown therein, delay of 9 days in preferring the appeal is condoned.
3. LA. No. 2529 of 2005 stands disposed of.

4. The appellant, who was in service of the then Bihar State Electricity Board (hereinafter to be referred as the Board) was placed under suspension by the successor Bihar State Electricity Board {hereinafter referred to be as the B.S.E.B.) by order No. 6/A LN/Gaya/1509/04-47, dated 4th January 2005 in contemplation of departmental proceeding. He challenged the order of suspension on the ground that the B.S.E.B. had no jurisdiction to pass the said order. The writ petition preferred by the appellant was rejected by the learned Single Judge as the order of suspension having been issued in contemplation of the departmental proceeding and not being a punishment.

5. According to the learned counsel for the appellant after creation of the Jharkhand State Electricity Board (hereinafter to be referred as the J.S.E.B.) his service along with 87 others were placed under the JSEB vide notification No, 1177, dated 31st December 2004. Thereafter, he gave charge of the post on 3rd January 2005, which was accepted by one Shri Ram Krishna Sharma, Junior Electrical Engineer, under the order of the Assistant Electrical Engineer (Controlling Officer). He thereafter, joined the JSEB headquarters at Ranchi on 4th January 2005. It was submitted that the service of the appellant having been placed under the JSEB, the BSEB had no jurisdiction to suspend him one day after his handing over the charge, by impugned order dated 4th January 2005.

6. In their counter affidavits, the respondents have enclosed copy of the notification No. 4 dated, 5th January 2005 issued by the BSEB to suggest that the notification No. 1177, dated 31st December 2004 by which the service of the appellant was placed under JSEB was modified and cancelled.

7. Counsel appearing on behalf of the appellant submitted that as the aforesaid notification No. 4, dated 5th January 2005 was never served on the appellant, the appellant could not challenge the same.

8. In the present appeal the question requires for determination is as to whether BSEB had jurisdiction to suspend the appellant on 4th January 2005 when the order of suspension has been issued.

9. From notification No. 1177, dated 31st December, 2004 it is evident that the notification was issued by the B.S.E.B., whereby services of the appellant and 87 others have been placed under JSEB. At paragraph 2 of the said notification it was specifically directed that the officers will be relieved on 15th, January 2005 (after noon) to join the JSEB. In the forwarding portion, at paragraph 2, the controlling officers were directed to take step for handing over and taking over the charge in the meantime, by 13th January 2005. From the aforesaid facts it will be evident that though it was ordered to take step for handing over and taking over the charge by 13th January 2005, but the officers could not have been relieved prior to 15th January 2005 i.e. the date as was fixed by the said notification.

10. In the present case, the appellant has enclosed a charge report to suggest that he had handed over the charge of the post on 3rd January 2005 to another person, which was to be done prior to 13th January 2005 in terms with paragraph 2 of the forwarding portion of the notification No. 1177, dated 31st December 2004. But there is nothing on the record to suggest that he was relieved by any authority, on or after 15th January 2005.

11. This apart while the appellant has enclosed the document to suggest that he has joined the JSEB but nothing is on the record to suggest that the JSEB has accepted his joining. In fact the JSEB could not have accepted the joining of any person prior to 15th January 2005, the date as was fixed by notification No. 1177, dated 31st December 2004. From the aforesaid facts, it will be evident that for all purposes the appellant was in the service of the BSEB as on 4th January 2005 when the order of suspension was issued and thereby the BSEB was competent to issue such order of suspension in contemplation of the departmental proceeding. Further, the notification No. 1177, dated 31st December 2004 having been issued by the BSEB, it was the BSEB which was empowered to modify or cancel the same and not the JSEB.

12. So far as Order No. 478, dated 28th July 2005 is concerned, the appellant cannot derive any benefit of the same even if his file was wrongly forwarded to other authority. This apart, from the documents annexed to the counter affidavit we find that there are serious allegations against the appellant and it has been alleged

that he had wrongly allowed adjustment of Rs. 10,00,000/- (Rs. Ten lakhs) in favour of one of the consumers of the Board and he had not given any utilisation certificate with regard to a sum of Rs. 20,26,000/- (Rs. twenty lakhs and twenty six thousand only), which was in his custody; without submitting such utilisation certificate, of the said amount he wanted to join the other Organisation i.e. JSEB. It further appears that the BSEB has already sought for explanation from appellant and forwarded it at his home address but as no body accepted the notice, the BSEB had to issue a notice in the daily newspaper 'prabhat khabar' on 25th February 2006 asking him to rejoin in the headquarters at Patna.

13. We find no ground made out to interfere with the impugned order of suspension, nor inclined to interfere with the order dated 18th August, 2005, passed by the learned Single Judge Cri WP (S) No. 3955 of 2005. There being no merit, the appeal is dismissed.

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