

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8184 of 2000

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Champan Kshetriya Gramin Bank, Head Office, Station Road, Motihari,
District East Champaran, through its Chairman.

.... Petitioner/s

Versus

1. Union of India.
2. The Presiding Officer, Industrial Tribunal, Bailey Road, Patna.
3. The Regional Labour Commissioner ©,Patna, Bihar.
4. The Champan Kshetriya Gramin Bank Workers Organization, East
Champaran,
through its General Secretary.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. AJAY KUMAR SINHA, Adv.

For the Respondent/s : Mr. R.N.Mukhopadhaya, Adv.
Mr. Nazir Ansari, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 23-03-2015

Heard counsel for the petitioner and the respondents.

In this case, petitioner is challenging the award in Reference
Case No. 3© of 1999 by which the Industrial Tribunal has directed the
petitioner to pay full salary to the petitioner from 18th October 1998 as
subsistence allowance and to reinstate him in service if the departmental
proceeding is not completed within three months and also for payment of
NIT arrears payable to the petitioner which has been withheld by the Bank.

The petitioner was/is an employee of respondent Bank and
for certain period, he was posted in Nawadah Branch on 27th July 1992 when
the Chairman received unanimous letter regarding defalcation of heavy
amount which compelled him to constitute a team of auditor for its
verification and it transpired that huge amount of Bank has been defalcated in
the Nawadah Branch of the Bank from 3rd May 1990 i.e. more than three

years before the petitioner joined and it was also found that the petitioner and Sri A.L.Sah, Manager of the Bank were involved in such defalcation.

On the basis of audit report, petitioner was put under suspension which led to raising an industrial dispute and the Government of India in exercise of power under section 19(i)(d) of the Industrial Dispute Act 1947 referred the matter for adjudication before the Industrial Tribunal, Patna with the following reference:

“Whether the suspension of Sri A.K.Nandan w.e.f. 13th October 1996 and issue of charge sheet on 13th July 1997 after expiry of 10 months, without giving him an opportunity to explain the case and non-payment of subsistence allowance, medical leave and NIT arrears, during the period of suspension is legal and justified ? If not to what relief the said workman is entitled ?”

Parties have filed their respective written statement and rejoinders. The Tribunal has arrived to a conclusion that the order of suspension cannot be held to be illegal and the Tribunal also arrived to the conclusion that there was no need for issuance of show cause before putting the workman under suspension. The Tribunal has recorded :

“As we have already examined the Audit report did cast serious doubt in the integrity of the workman and hence, it cannot be said that his suspension or subsequent initiation of departmental proceeding is tainted with mala fide intention”.

The Tribunal further held:

“But it is well settled principle of law that a workman can very well be suspended and departmental proceeding be

initiated without obtaining explanation. An explanation is normally obtained from a workman where a preliminary enquiry is thought necessary before suspending the workman or before initiation of departmental proceeding. But in the present case there existed sufficient ground with regard to the integrity of the workman. The suspension and initiation of departmental proceeding without obtaining any explanation appears justified”.

The Tribunal further held :

“But in the present case the Management has unsatisfactorily explained the delay. The workman was suspended on receipt of interim Audit report. The charges could not have been issued before submission of final Audit report Ext.m/7 and M/8 show that during the audit period the public transactions had been suspended at the Branch.”

The Tribunal further held:

It was quite natural to take some time in preparing the charge sheet. But I find that there is no satisfactory explanation why the Departmental proceeding has not been completed till now though the charges were framed as early as on 18th July 1997. It is true that suspension order should ordinarily be revoked where the departmental proceeding is not completed within reasonable time, but in the present case, I agree with the view of the Management that the workman cannot be allowed to join the duties in the Bank until the charges, which primarily relate to question of his integrity, are cleared”.

The Tribunal also held:

“It is not disputed that the workman is receiving subsistence allowance as per the said provision of revise Regulation. The claim of the workman for payment of full pay and allowances after the expiry of one year of his suspension is based upon the aforesaid bipartite settlement dated 3rd September 1933 but it has not been shown to me that the said settlement is applicable to this workman.”

After the aforesaid discussion, the Tribunal has recorded as follows:

“I have already mentioned on this ground the suspension of the workman cannot be revoked until completion of the departmental enquiry but the Management can very well be directed to pay the full pay and allowances to the workman after two years of his suspension as subsistence allowance until the conclusion of the departmental enquiry”.

This finding has been attached in the present case.

It appears that the Tribunal found the suspension order correct and the Bank has also explained the cause for delay in issuance of charge-sheet and thereafter such direction recorded by the Bank is completely dehors to the facts and circumstances of the case.

This Court feels that this order of the Tribunal giving direction to pay full pay as subsistence allowance is completely against the service rule which does not entitle the workman to get full salary by way of subsistence allowance and this Court is of the view that this part is not sustainable and is quashed accordingly.

Further challenge is against the last paragraph of the award where the Tribunal has directed to complete the departmental enquiry within three months, in failure the workman will be entitled to join his post. It appears that serious allegation has been leveled against the petitioner. In such a situation, this direction of the Tribunal is uncalled for and requires interference by this Court. This direction is not sustainable and is hereby quashed.

With the above direction/observation, this petition is allowed.

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(Shivaji Pandey, J)