

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11692 of 1998

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Sudhir Kumar Sinha, son of late Tarkeshwar Prasad Sinha, resident of Pankha Toli, P.S. Kazi Mohammadpur, Dist. Muzaffarpur, presently posted as Branch Manager (under suspension), Goroul Branch of Vaishali Kshetriya Gramin Bank, Vaishali.

.... Petitioner/s

Versus

1. The Vaishali Khetriya Gramin Bank through its Board of Directors, having its Head Office at Kalambag Road, Muzaffarpur.
2. The Chairman, Vaishali Kshetriya Gramin Bank, Kalambagh Road, Muzaffarpur.
3. Shri Rajeshwar Prasad, son of not known to the petitioner, the then Chairman-cum-Disciplinary authority, Vaishali Kshetriba Gramin Bank, presently posted as Chief Manager, Central Bank of India, Zonal Office, Block "B", Maurya Lok Complex, Dak Bunglow Road, Patna.
4. Shri Jagdish Chandra Choudhary, General Manager cum Enquiry Officer, Vaishali Kshetriya Gramin Bank, having its Head Office at Kalambagh Road, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Choudhary Shyam Nandan
 Mr. Chakrapani
 Mr. Sunil Kumar
For the Respondent/s : Mr. Ajay Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT
Date: 04-08-2015

Heard learned counsel for the parties.

2. This writ application was filed on 22.12.1998 and at that point of time the prayer of the petitioner had read as follows:-

"1(I) Issuance of an order, direction or writ in the nature of mandamus/direction to the respondent authorities of the Bank to keep the departmental proceeding so initiated against the petitioner in abeyance till the final disposal of the criminal case against the petitioner.

OR

In the alternative issuance of an order, direction or writ in the nature of mandamus directing the respondents to supply the documents as demanded by

the petitioner and then to proceed with the Departmental Proceeding against him in accordance with law.

- (II) *Issuance of an order, direction or writ in the nature of certiorari quashing memo No. 447 dated 12/16.10.95 whereby the respondent No.3 had confirmed the suspension of the petitioner with retrospective effect.*

OR

Issuance of an order, direction or writ in the nature of mandamus directing the respondent authorities to revoke the suspension of the petitioner as the petitioner has been placed under suspension with effect from 21.9.95.

- (III) *Issuance of an order, direction or appropriate declaration that the petitioner could never be put under suspension from on or before 14.12.96, i.e. date on which charge memo initiating departmental proceeding against him was issued"*

3. During pendency of this writ application, the respondent Vaishali Kshetriya Gramin Bank, now having been renamed as Uttar Bihar Gramin Bank, had passed a final order of punishment on 13.2.1999 dismissing the petitioner from service. These facts were taken note of in the order of this Court dated 29.6.1999 while admitting this writ application and the same read as follows:-

"Heard learned counsel for the parties.

The petitioner has two fold grievances. One is against the issuance of suspension order in an unauthorized manner and secondly against the impugned order of dismissal from service, which according to him, was passed against the principles of natural justice. This matter, therefore, has to be admitted.

But this Court finds that the suspension order was passed on 21.9.1995 whereas departmental proceeding was initiated on 10.12.1996. Therefore, the suspension order was issued much prior to initiation of the departmental proceeding.

In this case rules governing suspension does not permit an employee to be put under suspension where a departmental proceeding is contemplated. This has been held by this Court in the case of Dinesh Prasad Singh vs. State of Bihar & another vide Judgment dated 10.2.1983 in C.W.J.C. No. 4924 of 1982. The learned counsel for the petitioner submits that the said decision still holds good and the rule which was interpreted in that decision has not suffered any amendment since then. This position is not disputed by the learned counsel for the respondents.

In that view of the matter issuance of suspension order prior to issuance of charge-sheet is bad in law. Since the suspension order has been issued the petitioner has not been paid his full salary. However, full salary for the period 21.9.1995 till 10.12.1996 must be paid to the petitioner after deducting the amount of subsistence allowance within three months from the date of receipt of the copy of this order by respondent no.2.

The learned counsel for the respondent submits that the impugned order has been passed rightly and there is no question of quashing the dismissal order. On the other hand, the learned counsel for the petitioner submits that the departmental proceeding having been held in violation of the rules of natural justice, the impugned order is bad in law. The said controversy has to be decided.

This application will be heard.

Rule is made returnable within six months.

In the meantime the petitioner, without prejudice to this case, will file an appeal before the appellate authority within one month from today. If such appeal is filed within the said period the appellate authority will pass an appropriate order on the same without insisting on the period of limitation, if any.

The authority will be at liberty to pass order on the appeal without being prejudiced by this order. It is further made clear that if the order of the appellate authority goes against the petitioner he will be at liberty to challenge the same by filing an appropriate application in this proceeding.”

4. Thereafter, an appeal was filed by the Bank against that part of the aforesaid order assailing the direction of payment of full salary for the period of suspension. A Division Bench of this Court had dismissed the appeal of the Bank and had directed for payment of salary for that period and the order-sheet of this Court records that a sum of Rs. 61,533.48/- was paid to the petitioner through his counsel on 22.12.1999.

5. As noted above, the petitioner was given liberty to file an appeal while keeping this writ application pending. It is also not in doubt that the petitioner had filed an appeal against the order of punishment of dismissal from service and the appeal was also thereafter considered and dismissed vide order dated 4.1.2000.

6. When this case was taken up for hearing on 25.3.2015, a prayer was made for adjourning this case. Again a similar prayer was made when the case was listed for hearing on 23.6.2015. Then again on 29.6.2015, the case was listed for hearing and the same prayer was made and also allowed. On 6.7.2015, learned counsel for the petitioner had taken a plea that the appellate order was not served on him and, therefore, he wants four weeks time to file an application for challenging the order passed by the appellate authority. This case

was accordingly adjourned and fixed for hearing for today.

7. Today, again a similar prayer for adjourning this case was made which has now to be rejected for a simple reason that if an appellate order dated 4.1.2000 that has not been challenged by the petitioner in a period of more than last fifteen years, that writ application cannot be allowed to be kept pending ad infinitum. It is infact clear that the petitioner for whatsoever reason has lost interest in this case.

8. Thus once the appellate order dated 4.1.2000 affirming the order of dismissal of service of the petitioner dated 13.2.1999 has not been challenged by the petitioner and that the writ application has not been sought to be argued, this case has to be dismissed specially when this Court does not find any fatal procedure infirmity in the departmental enquiry and the consequential order of punishment dated 13.02.1999 passed by the disciplinary authority.

9. That being so, for the reasons mentioned above, this writ application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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