IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10133 of 2003

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1. Smt. Monaka Devi, wife of late Raj Kumar Singh, residing at Road No. 10 H in the H/O Shri Kashinath Yadav, Rajendra Nagar, Patna-16
2. Smt. Geeta Singh, wife of Sri Sanjay Kumar Singh, Resident of Gokul Path, Boring Road, Patna.
3. Amresh Kumar Singh, S/o late Raj Kumar Singh, residing at Road No. 10 H in the H/O Shri Kashinath Yadav, Rajendra Nagar, Patna-16
4. Mr. Mukesh Kumar, late Raj Kumar Singh, residing at Road No. 10 H in the H/O Shri Kashinath Yadav, Rajendra Nagar, Patna-16

.... Petitioner/s

Versus

1. Bihar State Financial Corporation through its Chairman, Fraser Road, Patna.
2. The Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.
3. The Manager (P & A), Bihar State Financial Corporation, Fraser Road, Patna.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Manik Vedsen, Sr. Advocate.
For the Respondent/s : Mr. Raju Giri, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

9 16-09-2015 Re.: I.A. No. 5465 of 2011

Heard learned counsel for the parties.

2. Having regard to the averments made in this application, the prayer made for substituting the original writ petitioner, Raj Kumar Singh, who is said to have died on 22.07.2011, is allowed.

3. That being so, the persons named in para no. 3 of this interlocutory application, namely, (1) Monaka Devi wife of Late Raj Kumar Singh (2) Smt. Geeta Singh, (3) Amresh Kumar Singh and (4) Mukesh Kumar are directed to be impleaded as

substituted petitioners.

4. Since, Vakalatnama has already been filed on behalf of them in this interlocutory application, this Court has proceeded to hear the learned counsels for the parties on merits.

Re. C.W.J.C. No. 10133 of 2003:

5. The prayer of the petitioner in this writ application reads as follows:

> *"1. i. A writ in the nature of Certiorari or any other writ or Order be issued quashing the Order of the Board of Directors of Bihar State Financial Corporation communicated to the petitioner vide Memo No. 851 dated 01.08.2003, whereby the Appeal of the Petitioner, against the Order imposing punishment upon him, was rejected (as contained in Annexure-9).*
> *ii. A writ in the nature of Certiorary or any other writ or Order be issued quashing the Office Order issued to the Petitioner vide Memo No. 2279 dated 10.11.2001 whereby the punishment of Compulsory Retirement was imposed upon him (as contained in Annexure-7).*
> *iii. A writ in the nature of Mandamus be issued commanding the Respondent authorities to reinstate the Petitioner in the service of the Corporation and pay to the Petitioner his back wages."*

6. As has been noted above, the original petitioner has already died and his heirs and legal representatives are pursuing this writ application in order to get the financial benefits, if the impugned order of compulsory retirement of the petitioner is set aside.

7. As a matter of fact, Mr. Manik Vedsen, learned counsel appearing on behalf of the petitioners, at the outset, has submitted that the original petitioner was aged about 54 years and

had already completed a period of more than 24 years of his service when he was visited with order of punishment dated 10.11.2001, which was affirmed in appeal by order dated 01.08.2003. According to Mr. Vedsen, it is worth for the impugned order of punishment dated 10.11.2001, the petitioner could have continued in service at least 58 years and, therefore, the impugned order is an implication of robbing of four years of service of the petitioner.

8. Assailing the two orders of punishment and its affirmance in appeal, Mr. Vedsen had, firstly, submitted that no inquiry was held and, in fact, no witness was examined, nor even any documentary evidence was exhibited in course of inquiry. He had gone to assail the impugned order of punishment by taking a plea that the same was not only bald but also perverse order. Finally, Mr. Vedsen has submitted that the impugned order visits the petitioner with an excessive punishment inasmuch as for such a misconduct, if any, the original petitioner, at best, could have been warned or censure.

9. Learned counsel for the petitioners, in this regard, has relied upon the judgment of the Apex Court in the case of ***State of Punjab and Ors. vs. Ram Singh*** reported in ***AIR 1992 SC 2188*** on the point that the charges against the original petitioner

even cannot be called to be misconduct. He has also relied upon the two unreported judgments of this Court, one being dated 01.10.2008 in CWJC No. 1276 of 2006 (***Jib Dhari Singh v s. Bihar State Financial Corporation & Ors.***) and the other being dated 19.09.2012 in CWJC No. 9955 of 2003 (***Arjun Prasad vs. Bihar State Financial Corporation & Ors.***).

10. Mr. Raju Giri, learned counsel appearing on behalf of the Bihar State Financial Corporation Limited (hereinafter referred to as 'the Corporation'), having produced the original records of the departmental proceeding, has gone to explain that firstly, there is no flaw/error in the course of inquiry and secondly, the original petitioner cannot expect from this Court to make a judicial review on the merits of the charges. According to him, once the original petitioner had admitted his mistake on his part in some portion of the draft, in question, of the sale order, he can not be allowed to question the charges on account of its being not a misconduct or its being triable in nature requiring lessor punishment.

11. This Court, firstly, will go into the issue of the procedural flaw in the departmental inquiry, if any. From the order sheet, maintained by the inquiry officer, it appears that when a memo of charge dated 04.10.1999 was served on the petitioner, he

had appeared before the inquiry officer on 20.11.1999 and had referred to his application dated 01.11.1999 for allowing him to derive the original file of M/s Prabhu Nath Singh, Chapra for preparing his show cause reply.

12. Let it be noted that the subject matter of the charge of there being a draft prepared by the original petitioner, was in relation to the file of M/s Prabhu Nath Singh, Chapra. Such prayer of the petitioner was allowed by the inquiry officer by his order dated 20.11.1999 and in fact order sheet of the next date i.e. 10.12.1999 would bear it out that the original petitioner had already inspected the original file of M/s Prabhu Nath Singh, Chapra.

13. As a matter of fact, from the order sheet dated 10.12.1999, it would also be clear that after inspection of the file, photocopies of those documents were also supplied to him, as was also admitted by the original petitioner in his application dated 04.12.1999 wherein he had asked the inquiry officer to give him further time for filing his written statement of defence. Such prayer of the original petitioner was also allowed on 10.12.1999 and he was given time till 04.01.2000 to file his written statement of defence. The petitioner, however, did not file his written statement of defence on 04.01.2000 and yet again had developed a

plea of his being unable to draft his written statement of defence on account of non-availability of prescribing standard sale format.

14. His such request made in his application dated 03.01.2000, for supply of the documents, was also allowed as is evident from reading of the order sheet of the inquiry officer dated 04.01.2000 wherein it was also intimated by the inquiry officer that no further time will be granted to the petitioner for filing of the written statement of defence which he must do on or before 04.02.2000.

15. It is, however, a matter of record and also supported from the order sheet of the departmental proceeding that the original petitioner did not file his written statement of defence even by 04.02.2000 and the same was filed only on 30.08.2001. It is also true that initially the departmental proceeding, in the mean time, though fixed on four dates, namely, 04.01.2000, 04.02.2000, 17.02.2000 and 15.03.2000, had not made any progress on account of inquiry officer being busy in Assembly Election but the conduct of the petitioner in dealing the departmental proceeding becomes more clear when it has found that he was actually buying time in not even submitting his written statement of defence but in the manner explained above also.

16. In the background of these facts, the submission of

Mr. Vedsen that the original petitioner was not supplied any document which he was asking for and that he could not file written statement of defence in course of departmental proceeding, has to be only noted for its being rejected. So far request of the original petitioner for supply of the documents was immediately heeded to and, therefore, the aspect that the petitioner was prejudiced on account of non-supply of document has to be held to be the usual term of a delinquent in a departmental proceeding.

17. The aspect that no inquiry was held, is not correct and the departmental inquiry, being not a trial in a court, it has to proceed only by way of firstly the delinquent submitting the written statement of defence and thereafter the Presenting Officer placing the evidence, oral or documentary or both, before the inquiry officer. Here in this case, when the petitioner had submitted his written statement of defence, the inquiry had been conducted on 30.08.2001, as would be evident from the recording of proceeding of that date, which is quoted herein below:

> *"30.08.2001 Record has been put up today at 3 P.M .*
> *2. The proceedee Sri Raj Kumar Singh, A.O.S. is present. The Presenting Officer, Sri T.Ahmad A.M. is also present with concerned files and records. The proceedee has submitted his show cause also today through his letter dated 30.08.2001. During the hearing he ahs stated as under:-*
> *In respect of charge no. 1(a) he admits that 25% of B.O.S. has not been mentioned in the draft of sale order by him. However, he says that it has been incorporated by the then Dy. Manager, Sri Upendra Kumar. Regarding charge no. 1(b) he says that the rate of interest originally printed as 18% was changed to 17.5% by the then Dy. Manager, Sri Upendra Kumar and not by him. He further says that it has*

been later corrected as 18% by the A.G.M. himself. Regarding charge no. 1(c) he admits his mistake that the name of the purchaser Sri Ashutosh Kumar Singh has not been mentioned and in lieu, the name of Sri Prabhu Nath Singh, the original promoter has been mentioned. He further says that name of Sri Ashutosh Kumar Singh has been entered in the draft by the A.G.M. himself.

Regarding charge no. 2, he says that mistake done by him has not been intentional and he has never disobeyed any order or shown carelessness in discharging of his duty.

Regarding charge no. 3 he denied that he kept the attendance register on 2.6.99 in a secret place. He further says that after marking the attendance along with Sri B.Paswan, Clerk he kept the register on the rack and went down stair to have a cup of tea. He denies having any knowledge about the missing of the attendance register. The proceedee further informed that his salary for 2.6.1999 hs not been paid.

The proceedee further says that he has nothing to say more in this regard.

3. The following witnesses have also been examined:

(i) Sri A.K.Pandey, Typist; and

(ii) Sri Sheoji Dubey, Peon.

Sri A.K.Pandey, Typist says that he did not find the attendance register on 2.6.99 on the rack or the table. Later a search was made for the register and finally it was found kept in an almirah. Thereafter, he marked his attendance in the attendance register. Subsequently he was called by the A.G.M.(Zone-1). He says that the A.G.M. instructed him to mark his attendance on a separate sheet of paper also as non-availability of attendance register had already been reported by him (AGM) to the O.S.D. Hence on the instruction of A.G.M. he marked his attendance in a sheet of paper also on 2.6.99.

Sri Sheoji Dubey, Peon says that he did not find the attendance register on 2.6.99 either on the table or on the rack. He reported the matter to the A.G.M.(Zone-I). A.G.M informed the O.S.D. about the missing of the attendance register. On the instruction of A.G.M.(Zone-I) he marked his attendance on 2.6.99 on a separate sheet of paper.

4. The Presenting Officer says that as regards incorporation of rate of interest as 17.5%, it cannot be said accurately as to who made it as there are several cuttings over it.

5. The proceedee and the Presenting Officer both agreed that the hearing stands concluded today. Accordingly the hearing has been concluded today.

Sd/-
(L.P.Karn)
Conducting Officer"

18. From the reading of the aforesaid order dated 30.08.2001, it will go to show that the inquiry officer had followed

the principles of natural justice and had allowed the effective opportunity to the original petitioner to defend himself.

19. Then, what is the requirement of an inquiry? As a matter of fact, on that day, two witnesses were also examined in support of the charges which were capable of being proved only by way of oral evidence read with documentary evidence because rest of the charges were capable of being proved only by way of documentary evidence, which was led by the inquiry officer.

20. The super technical aspect now being sought to be developed before this Court that those documents were not exhibited by the maker of the documents, in fact, will make the departmental proceeding a regular trial before the court.

21. By now, it is well settled that law of evidence has not to be applied in departmental proceeding where the documents have to be firstly laid before the inquiry officer in presence of the delinquent and also after affording copy of those documents, it is open for the delinquent to question the correctness of any document and, if any, document is disputed by the delinquent then and then only the department or the organization becomes liable for bringing the maker of the document to authenticate the documents. Proving by way of exhibit is not the requirement of the departmental proceeding and, therefore, this Court would not

find any flaw in the procedure adopted in the departmental inquiry of the original petitioner.

22. This Court, therefore, will have no difficulty in coming to the conclusion that there was no procedural infirmity in the departmental inquiry of the original petitioner.

23. Having thus held so, this Court was not even required to come into the merits of the charges because of now, it is well settled that the exercise of power under Article 226 of the Constitution of India cannot be made on the merits of the charges. Sufficiency of evidence or whether there were some evidence as against the persons or there being no evidence, has always been a touch stone to exercise the power under Article 226 of the Constitution of India.

24. The present case is not one, where it can not be said that whether there was no evidence at all in support of the charges. This Court, therefore, would find it difficult now to go for assessment of the evidence as to whether the petitioner, in respect of charge no. 3, could have been held guilty for hiding attendance register or whether the petitioner, in respect of charge no. 1, could be held guilty for making some correction in the draft with a mala fide intention or otherwise. The facts remained that some evidence was on record and the inquiry officer's finding in respect of them

cannot be called to be perverse.

25. The reliance placed by Mr. Vedsen, learned counsel for the petitioners on the judgment of ***Ram Singh*** (supra) will have hardly any application to the facts of this case because Ram Singh was a Constable who was found to be in a drunken condition and he was subjected to a departmental proceeding on the charge of drinking heavy alcohol being uncontrollable while on duty and the Apex Court had held that even on such behaviour of the Constable amounted to misconduct of the grievous nature and, therefore, imposing penalty of dismissal from service was justified. Thus, whatever was said about the delinquent was of misconduct, is not the ratio of the judgment and, in fact, it cannot be a case of the original petitioner herein that when he had admitted that he had made the sale order to go to the original promoter instead of purchaser. As was admitted by him in his written statement of defence that he had not committed the misconduct. A slip of pen, negligence and misconduct will have very little variation and, in fact, it will be the impact of such negligence or a slip of pen or the misconduct committed, which will have bearing on the outcome of the departmental proceeding.

26. Here, in this case, firstly, the original petitioner, being the concerned Assistant who had to prepare a draft as per

the sale order on the basis of which the sale order could be made in favour of purchaser, was not only found to be prepared in a faulty manner but also to be sent to a person who was not the purchaser but the original promoter. This Court cannot lose sight of the fact that the original promoter was required to retain the premises and the mortgaged assets were subject matter of the auction sale and, therefore, if the original petitioner had, intentionally or otherwise, proposed to make a draft for its being sent to the original promoter in place of purchaser, he could come out to show that there was no deliberate mistake on his part and that should have been taken to be a very casual or a slip of pen.

27. Considering all these aspects, this Court will be satisfied that the charges against the petitioner had stood proved. As noted above, sufficiency of evidence can never be the scope of Article 226 of the Constitution of India and, therefore, the only question, which now this Court will have to answer for the heirs and legal representatives of the original petitioner, is as with regard to quantum of punishment.

28. By now, it is well settled that this Court normally would not like to transgress into the jurisdiction of the disciplinary authority who has been empowered to quantify the punishment in

respect of a misconduct proved in a departmental proceeding. It is only in rare and exceptional cases where the punishment is shocking to the conscience that this Court has interfered in such punishment.

29. The present punishment, which was inflicted on the original petitioner way back in the year **2001,** in course of, now being made subject matter of judicial review in 2015. This Court cannot lose track of the subsequent events, the original petitioner even otherwise could have retired from service in the year 2007. This writ application was filed in the year 2003 by the original petitioner having been described his age to be 54 years. The petitioner, therefore, had already undergone the consequence of the compulsory retirement, which, in view of the service conditions of the Corporation, does not amount to denial of monthly pension inasmuch as the services in Corporation is not pensionable.

30. As a matter of fact, the original petitioner, on account of being inflicted the order of punishment of compulsory retirement, has stood deprived of the salary of the period of four years or the benefit of length of service for the purpose of his gratuity. The original petitioner, however, must have been paid the amount to which an employee of the Corporation becomes

entitled on account of retirement even by way of compulsory retirement because the retirement benefits as payable by the Corporation cannot be withheld on account of order of compulsory retirement.

31. It is here that the compassion should be given by the Court and as the legal heirs and representatives of the original petitioner would stand deprived of amount of salary of the original petitioner for a period of almost four years, apart from the reduced payment of gratuity on account of taking away of four years service, this Court, keeping in view that either of the two charges were not so grave specially when this Court is being now informed that no financial loss was caused to the Corporation on account of the alleged misconduct committed by the original petitioner, would remit the matter back on the issue of quantum of punishment.

32. In other words, the Managing Director of the Corporation, being the controlling authority, should examine as to whether for the misconduct found to be proved against the original petitioner in course of inquiry, can there be a lessor punishment inflicted on the original petitioner only for the purpose of giving some monetary relief. This Court will not go to say anything more about the punishment, but then it would fail in its duty that even if

the salary of the original petitioner, on account of his not remaining working after the order of compulsory retirement, may be withheld, but even the order of compulsory retirement of the original petitioner is otherwise found to be not justified/sustainable in keeping in view the gravity of the misconduct, the length of service added to his normal date of retirement may enable the substituted petitioners to get some higher amount of gratuity which is not only other retirement benefit admissible to the employees of the Corporation apart from the provident fund.

33. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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