

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.412 of 2008
IN
Civil Writ Jurisdiction Case No. 13813 of 2005

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1. The State of Bihar
 2. The Secretary, Cooperative Department, Government of Bihar, Secretariat, Patna
 3. The Registrar, Cooperative Societies, Bihar, Patna
 4. The Deputy Secretary-cum-Chief Vigilance Officer, Department of Cooperation, Government of Bihar, Patna

.... Respondents- Appellants

Versus

1. Sri Hem Chandra Singh (since deceased and substituted by the following)
 - (a) Sri Narendra Pratap
 - (b) Sri Naveen Pratap
 - (c) Sri Neti Pratap, sons of Late Sri Hem Chandra Singh, resident of South Bela Bagan, Deoghar, District- Deoghar
2. The Secretary, Bihar Public Service Commission, Bihar, Patna

.... Petitioners-Respondents

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Appearance :

For the Appellants : Mr. Piyush Lal (JC-AAG3)

For the Respondents : Mr. S.R. Sharma, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 06-05-2015

The State of Bihar filed this Appeal under Clause-10 of the Letters Patent, feeling aggrieved by the order dated 7.12.2007, passed by the Learned Single Judge in C.W.J.C. No.13813/05. The deceased 1st respondent (for short the respondent) filed the writ petition feeling aggrieved by the notification dated 15.1.1999, Annexure-1, through which he was dismissed from service as District Co-operative Officer-cum-

Managing Director, Central Cooperative Limited, Chapra. The Departmental Appeal filed against the order of dismissal was rejected on 25.1.2005. The same was brought under the purview of the writ petition by filing an I.A.

The facts in brief are that the respondent was initially appointed as Assistant Registrar, in the year 1974 in the Cooperative Department of State of Bihar, and thereafter, he was promoted District Cooperative Officer in the year 1992. In addition to that, he was also Director of Chapra Central Cooperative Bank at that time.

In 1995, the appellants initiated departmental proceedings against the respondent, and 9 charges were framed. The principal allegation was that the cash credit facilities were extended by the respondent during his tenure in an irregular manner. Other allegations were that he did not handle the funds properly, has disobeyed the orders of superiors and is guilty of dereliction of duty. The explanation submitted by the respondent was found not satisfactory. Therefore, an enquiry officer was appointed. In his report dated 19.11.1996, the enquiry officer found charge Nos.4, 8 and 9, one part of charge No.1 and one part of charge No.3, as proved and remaining, as not

proved. A copy of the report of the enquiry officer was furnished to the respondent and his remarks were called for. Ultimately, the order of dismissal was passed.

The respondent challenged the order of dismissal. He pleaded that the disciplinary authority did not take note of the fact that the charges found proved in the disciplinary enquiry were not grave at all, and that effective opportunity of being heard was not extended to him. The writ petition was opposed by the appellants. It was pleaded that the charges which were found proved are grave in nature and that the prescribed procedure was followed before the punishment was inflicted.

Learned Single Judge partly allowed the writ petition; (a) taking the view that the punishment of dismissal from service is disproportionate to the charges proved; (b) setting aside the order of punishment and remanding the matter to the disciplinary authority for fresh consideration, after giving opportunity to the respondent and (c) directing that the punishment that may be imposed after such remand shall not be more severe than of compulsory retirement.

The appellants contend that the respondent was given adequate opportunity at every level, so much



so, that he was represented by a counsel before the disciplinary authority after the copy of the enquiry was received, and that the same contention raised by the respondent in the previous writ petition was rejected. It is also pleaded that even if the order of remand is treated as proper, the learned Judge ought not to have imposed fetters on the discretion of the disciplinary authority.

We heard Shri Piyush Lal, learned counsel for the appellants, and Shri S.R. Sharma, learned counsel for the respondent in detail.

It has already been mentioned that during the pendency of the Appeal, the employee died and his legal heirs were brought on record. As many as 9 charges were framed against the respondent and out of them only 3 charges and parts of two other charges were held proved. We have also perused the report of the enquiry officer in detail. Out of the charges that are held proved, the most serious is the one wherein the allegation is that the concerned Bank borrowed a sum of Rs.1,70,00,000.00 on interest @ 16% *per annum*, and out of that amount, about a crore of rupees was disbursed as loans at a higher rate of interest and the remaining amount was spent in a manner that fetched lesser rate of interest. Another



allegation was that the respondent was instrumental in getting the loans disbursed even to persons who are otherwise unqualified. In a way, these two charges run against each other. The 1st allegation is that the remaining part of the borrowed amount ought to have been disbursed as loan, at a higher rate of interest and the other charge is that he advanced loans to the persons who are otherwise not entitled for that facility. Nowhere in the proceedings, it was alleged that any amount advanced by the respondent was not recovered or that he had wrongfully gained to him, any amount, either from the Bank or from the loanees. In all fairness, learned counsel for the State submitted that the other charges are not so serious as warranting any major punishment.

It is true that the High Court cannot sit in appeal against an order of punishment and apply its own yardstick to determine whether or not the punishment imposed by an authority was proportionate to the charges unless the facts and provisions of law are so clear. At the same time, the Court cannot remain oblivious to a situation where not only the employee is discontinued from service, but also the benefit of his entire service is denied to him, just on the basis of trivial and non-serious

allegations. Every lapse on the part of an employee cannot invite the harshest punishment.

The respondent was placed in a typical situation. On the one hand, he was expected to find loanees for disbursement so that the amount borrowed by the Bank fetches income in the form of interest and, on the other hand, he was accused of not applying the parameters of eligibility correctly. The Learned Single Judge has undertaken extensive discussion of the matter and has given disposal to the writ petition, as mentioned in the previous paragraphs.

The death of the employee during the Appeal would have its own impact upon the case. The remand becomes unworkable, if not redundant. The legal representatives cannot step into the shoes of the employee, in the course of disciplinary proceedings. We gave our deep consideration to the entire matter and are of the view that the punishment of compulsory retirement would meet the ends of justice and protect the interest of both the parties, particularly when the remand becomes unworkable.

Hence, we dispose of the Appeal by modifying the order passed in the writ petition to the effect that the

order of punishment dated 15.1.1999 shall be treated as one of the compulsory retirement, with effect from that date. The necessary benefits in that behalf shall be extended to the legal representatives of the employee, within a period of two months from today.

Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

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