

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16430 of 2008

Sudhanshu Shkehar Ghosh, son of Sri Nishi Chandra Ghosh, resident of Mohalla Naya Tola Bihari, Back of P.W.D. Inspection Bungalow Jamui ,P.O. P.S. and District Jamui

.... Petitioner/s

Versus

1. The Chairman, State Bank of India State Bank Bhawan, Madam Cama Road, Backway Reclamation, Mumbai 400021.
2. General manager Net work-II, State bank of India, Local head office, Patna
3. Deputy General Manger, State bank of India cum Appellate Authority, Zonal Office, Bhagalpur
4. Assistant General manager (operation)-cum-disciplinary Authority, State bank of India Zonal office, Bhagalpur
5. Mr. J.P. Yadav, Chief Manager Domestic Enquiry Section, State Bank of India Local head Office, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Devi Kant Jha

For the Respondent/s : Mr. Anshuman Singh

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 23-02-2015

Heard learned counsel for the petitioner and learned counsel, who has appeared on behalf of the Bank.

In the present writ petition petitioner has assailed an order contained in Annexure - 1 whereby the disciplinary authority while deciding to initiate departmental proceeding against the petitioner in terms of paragraph 3(d) of Bipartite Settlement dated : 10.4.2002 decided to put the petitioner under suspension with retrospective effect. From the record it appears that during the pendency of this petition final order of dismissal has already been passed and petitioner after dismissal has assailed the order of dismissal before the

Industrial Tribunal , Patna vide I.D. Case No. 4(C) of 2011.

Learned counsel for the petitioner submits that earlier the petitioner was dismissed from the Bank service on the ground that petitioner was held guilty in a criminal case and he was convicted and sentenced for a period of one year imprisonment. He submits that the order of conviction and sentence was assailed by the petitioner before the appellate court and appellate court i.e. Addl. Sessions Judge, 1st, Jamui by judgment dated 4th March, 2006 passed in Cr. Appeal No. 108 of 2003 quashed the order of conviction and sentence and discharged the petitioner. He submits that thereafter the Bank came out with Annexure - 1 whereby order of suspension was passed with retrospective effect. It has been argued that once the petitioner was already dismissed from service of the Bank, the Bank was not having any authority to put the petitioner under suspension since there was no relationship of master and servant between the petitioner and the Bank. On aforesaid point learned counsel for the petitioner has heavily relied on a judgment of this court reported in **2005(1) PLJR 519 (Ram Sarowar Pd. Singh vs. State of Bihar and Ors.)** as well as a judgment of the Apex Court reported in **AIR 1974 SUPREME COURT 1281 (H.L. Mehra v. Union of India and others)**.

On behalf of the Bank a counter affidavit has been filed



wherein it has been indicated that after issuance of Annexure - 1 to the writ petition the petitioner was finally dismissed from service by order dated 21.1.2009. In the subsequent proceeding the petitioner was held guilty. He was dismissed from service. It has been pointed out that against the final order of dismissal the petitioner has raised a dispute vide reference ID Case No. 4(C) of 2011 before the Industrial Tribunal and same is pending. Of- course during the pendency of the writ petition in pursuance of Annexure - 1 departmental enquiry was conducted and petitioner was finally dismissed from service, the petitioner has not assailed the order of dismissal in the present writ petition.

Learned counsel for the petitioner accepts that against the final order of dismissal matter is pending before the Industrial Tribunal, Patna. In the counter affidavit the Bank referring to certain provisions of Bi- partite settlement has justified the order of suspension.

Keeping in view the fact that after issuance of Annexure - 1 proceeding was initiated and final order has already been passed in the departmental proceeding and petitioner has been dismissed from service, in absence of prayer made by the petitioner for challenging the order of dismissal before this court, no purpose would be served in interfering with the order of suspension, which

was passed contemplating departmental proceeding. Since the said departmental proceeding has already come to an end and punishment order has already been passed, which is under challenge before the Tribunal the question of examining the order of suspension has now become irrelevant. In this case in view of earlier order supplementary counter affidavit has been filed and it has been indicated that during the period of suspension subsistence allowance has been paid after adjusting the loan amount. This statement was not disputed by the petitioner by way of filing any reply.

Keeping in view the fact that in the departmental proceeding final order has already been passed and said order of dismissal has not been assailed in the proceeding no purpose would be served in examining the correctness of order of suspension, i.e. Annexure - 1 to the writ petition, and as such, I do not find any ground to pass any positive order in favour of the petitioner. Accordingly, the writ petition stands disposed of with an indication that the learned Tribunal before whom the matter of dismissal is pending may not be prejudiced by this order since this Court has not recorded any observation on order of dismissal of the petitioner from service of the Bank.

(Rakesh Kumar, J)

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