

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2050 of 2011

IN

Civil Writ Jurisdiction Case No. 11838 of 1997

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1. Bihar State Financial Corporation through its Chairman, Fraser Road, Patna.
 2. Sri Ashok Kumar Singh, Late Sukhdeo Singh, Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.
 3. Sri L.P. Karan, son of Bhup Narayan Lal Karn, Deputy Manager, Bihar State Financial Corporation, Fraser Road, Patna.
 4. Sri Ashok Kumar, Late Kameshwar Prasad Ambastha, General Manager, Bihar State Financial Corporation, Fraser Road, Patna.

.... Respondents/Appellants.

Versus

Vijay Kumar Singh Sri Shobhi Lal Verma Mohallah, Ravindra Sadan 3rd Floor,
Arya Kumar Road, Machua Toli, Patna-800004.

.... Writ Petitioner/Respondent.

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Appearance :

For the Appellants : Mr. Y.V. Giri, Sr. Adv.
Mr. Raju Giri, Adv.

For the Respondent : M/s Santosh Kumar, Syed Arshad Alam, Fakhruddin Ali
Ahmed, Anjum Perveen, Pankaj Kumar Jha and
Madhurendra Sharma, Advocates.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 06-02-2015

The present appeal has been filed by the
Bihar State Financial Corporation (a Corporation under the

- 2 -

State Financial Corporation Act, 1951). They are aggrieved by the judgment and order dated 15.04.2010, passed in C.W.J.C. No.3139 of 1997, which was heard analogous with C.W.J.C. No.11838 of 1997. Both the writ petitions were filed by the writ petitioner, who is the sole-respondent in this appeal.

2. Heard Mr. Raju Giri learned counsel for the Bihar State Financial Corporation (hereinafter referred to as the 'Corporation'), Mr. Santosh Kumar, learned counsel for the sole-respondent and with their consent this appeal is being disposed of at this stage itself.

3. To us the issue is short and simple. The writ petitioner/sole-respondent-Vijay Kumar Singh was an employee of the Corporation in the Assistant cadre. He was first proceeded departmentally for unauthorized leave and consequently demoted. This demotion was challenged by him in a writ petition before this Court, which was allowed. The Corporation took the matter in Intra-Court appeal, which was dismissed though not on merits. The Corporation reinstated the writ petitioner/sole-respondent then started the present set of events.

4. The writ petitioner alleges that due to

- 3 -

illness of his father he sought leave but not only leave was denied he was transferred out of Patna i.e. to Saharsa. Because of alleged critical illness of his father, he could not join. He kept seeking leave, which was either allegedly not responded or denied. In the meantime, for the two years i.e. 1994-95 and 1995-96 in his Annual Confidential Report (A.C.R.) adverse entries were made. They were communicated to him for his response. Instead of making a representation to the reviewing authority, he is alleged to have written a letter on 14.08.1997 not to the Officers of the Corporation but to the Industries Development Commissioner, Government of Bihar, Patna with copies marked to various persons including the Hon'ble President of India and others. We must note that the contents of the letter are highly derogatory and show a desperate man venting his feelings. Based on the said letter, the Management of the Corporation decided to initiate a departmental proceeding against the writ petitioner. A charge memo/charge-sheet was served on the petitioner/sole-respondent vide Memo No.1683 dated 26.09.1997 (Annexure-4 to this appeal). The charges were under two heads. Firstly, in relation to the said letter dated 14.08.1997 that the letter was derogatory, outrageous



- 4 -

and obnoxious exceeding all bounds of reasonableness and propriety which amounts to indiscipline and misconduct. The second charge was that though he was an Assistant in the Corporation he always addressed himself as an Assistant Office Superintendent (A.O.S.). The Inquiry Officer was appointed and he was asked to participate in the enquiry and defend himself.

5. On behalf of Corporation, it has been urged that adequate opportunity was given to him but on one ground or the other he refused to avail the same. He always had some excuse or the other. He refused to cooperate in any manner with the enquiry.

6. On the other hand, on behalf of the writ petitioner/sole-respondent before us, it is pointed out that the writ petitioner demanded the copy of the letter, which was basis of the substantive charge, being the letter dated 14.08.1997, allegedly written by the writ petitioner himself. It was not supplied to him. Under those circumstances without participation of the writ petitioner, the Inquiry Officer submitted his report, finding that the charges have been established. The Managing Director of the Corporation then issued the second show cause to the writ petitioner who again

- 5 -

demanded the copy of his letter and also copy of the enquiry report and some other documents. The enquiry report is dated 28.01.1998 and the petitioner's request letter is dated 03.03.1998.

7. It is not in dispute that by the Corporation's letter dated 09.03.1998 enquiry report and other documents including the letter dated 14.08.1997 were supplied to the writ petitioner. He continued to avoid giving any comprehensive reply and, ultimately, the Managing Director of the Corporation passed the order of punishment dated 03.04.1998 ordering his compulsory retirement. It is this that brought the writ petitioner to this Court.

8. Upon notice being issued in the writ proceedings, the Corporation filed its counter affidavit contending that there was neither violation of principles of natural justice nor any impropriety. The matter was taken up and finally heard. The learned Single Judge held in favour of the writ petitioner, as against the Corporation, primarily on two grounds. Firstly, there was denial of natural justice by non-supply of the letter dated 14.08.1997 of the writ petitioner as sought by the writ petitioner himself in the departmental proceedings. This in view of the learned Single

- 6 -



Judge was fatal to the proceedings. The learned Single Judge was also persuaded to hold that there appeared to be a verbal observation of the Court made on 05.12.1997 during hearing of the interlocutory application, being I.A. No.7153 of 1997 in C.W.J.C. No.3139 of 1997 (Annexure-8 to L.P.A.) to keep the proceedings in abeyance and proceed only after granting opportunity to the writ petitioner before passing the final orders but notwithstanding the aforesaid the proceedings proceeded and was concluded.

9. Mr. Raju Giri, learned counsel for the Corporation submits that if the facts are seen in their totality and in the correct perspective there was no denial of natural justice much less as held by the learned Single Judge. He then pointed out that one has to proceed on the basis of the order which was recorded in the proceeding and not on impression of some verbal directions issued de hors the records with reference to the relevant orders. It is also pointed out that in fact I.A. No.7153 of 1997 as filed in C.W.J.C. No.3139 of 1997 (Annexure-8 to the L.P.A.) was allowed to be withdrawn and ordered to be dismissed on 05.12.1997 to enable the writ petitioner to file an independent writ petition. There is no order of stay of proceedings. Thus,

- 7 -

the learned Single Judge erred in proceeding to take note of an oral observation in a Court proceeding which is not borne out from the records. He thus submits that there is no infirmity in the order of the Corporation in compulsorily retiring the writ petitioner. Rather he was favoured by not being dismissed.

10. On the other hand, Mr. Santosh Kumar, learned counsel for the writ petitioner/sole-respondent before us, submits that the gravamen of charge as against the writ petitioner was an alleged letter written by him on 14.08.1997. Petitioner had a right to see that the letter to be in a position to challenge its contents or its authenticity. That right having been denied by non-supply of the letter in course of the enquiry would be a violation of principles of natural justice vitiating the enquiry report. The denial of making available the letter itself a prejudice writ large wrongly resulting in the punishment. He then submits with reference to the case of **Ram Kishan versus Union of India and others** since reported in (1995) 6 Supreme Court Cases 157 that even if the letter is said to have been written by the writ petitioner, the Corporation, being the instrumentality of the State governed by Article-14 of the Constitution, should have seen

- 8 -

the attending circumstances and the situation under which the letter was written and if those circumstances were looked into then the extreme punishment of compulsorily retiring a person who had five years more to serve was a punishment grossly disproportionate. These are the rival submissions.

11. First on the aspect of natural justice. In the case of **S.L. Kapoor Vs. Jagmohan** since reported in **AIR 1981 Supreme Court 136** various facets for invocation of natural justice and consequence as to failure to adhere to the principles of natural justice had been discussed. One of the questions that arose was whether a person has to necessarily show prejudice caused by denial of natural justice. The Apex Court held that the denial of natural justice itself was a prejudice. Then, the Apex Court held that even where compliance of principles of natural justice was not so provided by the statute unless it was so specifically excluded by the statute it has to be read in all statutes where rights of parties are to be prejudicially affected. Natural justice is contained as part of non-arbitrary action and its violation would be violative of Article-14 of the Constitution. At the same time, we must remember that natural justice is not like a bull in a china shop. In the end, what are the limits of natural

- 9 -

justice and what would be the effect of denial thereof would depend on the facts and circumstances of the case. There cannot be any water tight situation.

12. In the present case, it is submitted on line of the judgment of the learned Single Judge that the writ petitioner had demanded copy of the letter which he was supposed to have written on 14.08.1997 and on basis of which the entire controversy started. He was denied that letter and thus there was denial of principles of natural justice causing him prejudice. He was denied the right to examine the letter and consequently denied the right to challenge the authenticity or its contents. The submission on fact is correct though conclusion we are unable to accept.

13. Mr. Raju Giri, learned counsel for the Corporation has shown us pleadings in the writ petition of the writ petitioner himself. We may quote paragraphs-35, 36, 37 and 38 of the writ petition as filed by the writ petitioner himself.

“35. That during the pendency of the present writ application the Annexure-1 and 1/1 was issued on the same day.

36. That the said entry was communicated to petitioner for the comments by letter

- 10 -

dated 8.8.97.

37. That the petitioner replied by writing to the Industrial Development Commissioner, Bihar through respondent no.5 i.e. through proper channel by which he brought to the knowledge of the I.D.C. the act of grave misconduct by respondent no.2.

38. That the copies of the same were also sent to various other persons.”

14. From the aforesaid, it is clear that he does not deny that the adverse entries were sent to him for his response. He admits that he did not respond to the authorities of the Corporation rather he wrote a letter to the Industries Development Commissioner, Bihar and copies of the same was sent to various other persons. It is this very letter in controversy being letter dated 14.08.1997. He has not annexed the said letter to his writ petition to show that it was any letter different from what he had written because as per his own case after the enquiry was concluded when he again demanded the letter he was given the letter. Thus, what he wrote and what was the basis for the proceedings were both with him when he filed the writ petition. Yet at no stage either before the authorities having received the letter or

- 11 -

before this Court did he even suggest, much less state, that either the letter with the authorities was not what he wrote or the contents were not what he wrote? He was the author of the letter and this was within his knowledge. There was and is no denial of the letter or its contents even today. If the letter had any role to play then even before this Court he could have denied it. Had he been supplied the letter in course of enquiry the result of enquiry would not be otherwise. In the appellate proceedings also he has not challenged the correctness or otherwise of the letter which formed the basis of the charge. Thus, denial of the letter to him, the contents of which he does not challenge and which is his own letter, at the stage of enquiry is of no or little consequence. Even when he had received the same before the punishment order was made, he did respond to the disciplinary authority by his letter dated 31.03.1998, which was Annexure-18 to the writ petition itself and appended by the writ petitioner himself. He made no complaint about the letter or the contents thereof or its authenticity. Now to plead violation of principles of natural justice, merely for the sake of argument, cannot be permitted. Natural justice is to protect a party from injustice. Here what injustice did the writ petitioner suffers. The answer is none



- 12 -



because he was the author of the letter which formed the basis of the charge. He at no stage either before the authorities or before the disciplinary authority or before the learned Single Judge or before this Division Bench in Intra-Court appeal has challenged the contents or the authenticity of the letter in question rather, as noted above, has admitted it to be his letter. If that be so then the hyper technical view taken by the learned Single Judge that non-supply thereof was in violation of natural justice vitiating the departmental proceeding cannot stand. The principles of law have to be applied to the facts of the case. The principles are not to be applied in vacuum. In fact, if the facts noted above are seen, we do not think that any person would be reasonably persuaded to hold that there was natural justice denied to the writ petitioner. We thus constrained to hold that the learned Single Judge was in error in this regard. Therefore, on this count, the writ petition could not have been allowed nor the order of the disciplinary authority set aside.

15. Mr. Santosh Kumar, learned counsel for the writ petitioner/sole-respondent, makes another submission with reference to the decision in the case of **Ram Kishan (supra)**. He points out that one must loose sight of the fact

- 13 -



which led to the writ petitioner being frustrated if not disgusted which forced him to write this letter. His father was sick and he had sought leave. There is no finding anywhere that this was a lame excuse made by him. Instead of granting leave, while he was at Patna, he was transferred to Saharsa long distance away making it inconvenient for him. This forced him out of paternal love to disregard his work. That proceeded in departmental proceedings in which he was wrongly punished and demoted. That order was set aside by this Court. Ultimately, as a consequence of this absence apart from demotion, there were adverse entries written in his A.C.R. It is pushed in this situation that he retaliated. Mr. Santosh Kumar, learned counsel for the sole-respondent submits with all humility that there is no justification for such outburst but the circumstances have to be taken into account at least when the matter of punishment comes. The retaliating outburst of the writ petitioner was because of the circumstances he was pushed into though it cannot be justified. In other words, if the circumstances are seen then though the writ petitioner was wrong in writing the letter, the punishment should not be the extreme punishment.

16. On the other hand, Mr. Raju Giri,

- 14 -



learned counsel for the Corporation submits that once the delinquency is proved then the disciplinary authority has the discretion to pass final orders. In our view, the discretion conferred on a disciplinary authority has to be exercised in a manner appropriate to the fact and the situation. It is incumbent upon the disciplinary authority to see the antecedent facts while deciding the matter of punishment. It is not to exonerate him that those facts have to be taken into account because the disciplinary authority had agreed to the enquiry report and the officer has already been found guilty. Once an officer is found guilty does not give a free hand to the disciplinary authority to give any punishment that he feels like. There is a choice. The moment there is a choice, there is discretion. The moment there is discretion, it has to be guided by relevant considerations appropriate to the facts of the case.

17. In our view, in the facts noted above, the punishment as awarded to the writ petitioner/sole-respondent is grossly disproportionate. We would not like to go to the history of this branch of law. These principles are now well settled. The petitioner was compulsorily retired in 1998. He in normal course would have superannuated in

- 15 -

2003. We are now in 2015. There is no pension scheme. Therefore, there is no possibility of reinstating the writ petitioner/sole-respondent. Instead of setting aside the order of punishment awarded by the disciplinary authority, we would modify the same by holding that the order of the disciplinary authority though set aside, reinstatement would not follow as a matter of course because that is the discretion of the Court. In the facts aforesaid, the writ petitioner/sole-respondent would be entitled to only 50% of the remuneration for the period he was not in service i.e. from 1998 to 2003. This punishment would meet the ends of justice.

18. With this modification, this appeal is disposed of.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

Trivedi/AFR

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