

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11619 of 1999

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1. Smt. Madhuri Devi Seth Wife of Mahabir Prasad alias Mahabir Sah
 2. Khusbhu Kumari daughter of Mahabir Prasad alias Mahabir Sah
- All are residents of village-Dumarasan, Police Station-Masarakh District-Saran.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Cooperative, Government of Bihar.
2. Bihar State Cooperative Land Development Bank through its Administrator, Budh Marg, Patna-1
3. Administrator, Bihar State Cooperative Land Development Bank, Budh Marg, Patna-1
4. Deputy Managing Director (Administration), Cooperative Land Development Bank, Budh Marg, Patna-1
5. Sri Atul Kumar Sinha, Conducting Officer, Bihar State Cooperative Land Development Bank, head Office, Patna
6. Sri Shivraj Ram, son of Mangani Ram, Field Officer, at present posted as Field Officer in Land Development Bank, Masarakh Branch, Masarakh, Distt. Saran
7. Sri Ambika Prasad Yadav, son of Sri Lakhan Yadav, posted as Field Officer at Masarakh Branch, presently posted at Marhora Branch, Distt-Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Advocate
With Mr. Basant Singh, Advocate

For the Respondent Nos2 to 4 :Mr. Rajesh Prasad Choudhary, Advocate

For the State :Mr. J.P. Karn, AAG-IV
With Mr. Ranjan Kumar AC to AAG-IV

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 08-07-2015

1. One Mahabir Prasad, who had filed the present writ application in the year 1999, died during its pendency and has been

substituted by his widow and his daughter to pursue this case.

2. The writ application has been filed seeking quashing of an order dated 02.09.1999 (Annexure-17) issued under the orders of the Administrator, Bihar State Cooperative Land Development Bank, Patna (hereinafter referred to as the Bank), imposing punishment of dismissal from service of the Bank upon the original petitioner (Mahabir Prasad). The petitioners have also sought for benefits consequential to quashing of the order of dismissal, in terms of arrears of salary etc, for the period during which the said Mahabir Prasad had to remain out of service, because of the said order.

3. From the facts asserted in the writ application, which are not in dispute at all, it would appear that the original petitioner was initially appointed as Field Supervisor in the Bank in the year 1972 and was initially posted at Dhaka Branch of the Bank in the District of East Champaran and thereafter to other places. By an order dated 25.08.1987 issued by the competent authority, the petitioner was transferred from Saraikela Branch to Masarakh Branch in the District of Chpara where he joined on 20.11.1987. By an order dated 03.02.1989, he was promoted to the rank of Field Officer, with effect from 27.05.1982.

4. In his capacity as Field Officer of Masarakh Branch of the Bank, he had recommended for grant of certain loans to the



farmers, which were granted by the Branch Manager of the Bank. He was subsequently, transferred to Pakridayal Branch in the District of East Champaran from Masarakh Branch on 16.12.1994. It also appears that certain loans granted to the farmers by Masarakh Branch on the recommendation of the petitioner during the period 1985 to 1988, were not being recovered. In order to expedite recovery of said loans, the petitioner was transferred back to Masarakh Branch. Apart from him, other persons were also working as Field Officers at Masarakh Branch who had also recommended for grant of loans to the farmers. These persons continued in the Branch till 1999. The original petitioner could not achieve, what was expected of him in the matter of recovery of loans advanced to the farmers. This led to initiation of a departmental proceeding with the issuance of charge-sheet dated 19.06.1997. The said charge-sheet has been brought on record by way of Annexure-13 to the present writ application which contains two charges. An enquiry officer was appointed to enquire into the allegations of misconduct.

5. The gist of the first charge against said Mahabir Prasad was that he was posted at Masarakh Branch vide order dated 23.11.1996 in order to make recovery of the loans advanced to the farmers during the period he was posted in the said Branch, from 1985 to 1988. It was alleged that in the opinion of the Bank, because of



lack of desired care in distribution of loans, recovery of loans was poor in the Branch which was 13.2% as on 30.06.1996. It was further alleged against him that despite his posting again in the said Branch in November, 1996 to expedite recovery of loans, it was noticed on the basis of scrutiny that he was not putting “desired” labour for increasing recovery of loans. It was further alleged that against total demand of Rs. 52.90 lacs only 1.45 lacs could be recovered which was only 2.7%, of the demand, against the target of 40% fixed by the Bank for recovery of loans. In the second charge, it was alleged against said Mahabir Prasad that for the financial year 1996-1997, no loan distribution could be done by the Branch where the petitioner was posted because recovery during the previous financial year 1995-1996, was less than 30%. Allegedly, because of indifference and carelessness on the part of the said Mahabir Prasad, expected improvement could not be made in recovery of the loans and, therefore, no loan distribution could be carried out in the financial year 1996-1997 which caused obstruction in distribution of loan in the financial year 1996-1997.

6. After completing enquiry, the Inquiry Officer submitted his report holding charge no.1 to be partially proved and charge no.2 as not proved. The disciplinary authority thereafter, supplied to the said Mahabir Prasad, a copy of the enquiry report



seeking his comments on the findings recorded by the Inquiry Officer. He responded to the explanation sought by the disciplinary authority on the findings of the Inquiry Officer. The disciplinary authority, thereafter, passed the impugned order dated 02.09.1999 imposing upon the said Mahabir Prasad punishment of dismissal from Bank service. From the order of dismissal dated 02.09.1999, it appears that the disciplinary authority, as regards findings of the Inquiry Officer that charge no.1 could be only partially proved, on the basis of his own analysis, disagreeing with the findings of the Inquiry Officer, held that charge no.1 stood fully proved. As has been noted above, the Inquiry Officer has found charge no.2 not to have been proved against the original petitioner. The disciplinary authority, however, disagreeing with the findings of the Inquiry Officer, recorded his impugned order dated 02.09.1999 that the said charge also stood proved.

7. It must be indicated at this stage itself that the disciplinary authority had not issued to the petitioner any notice containing tentative notes of disagreement with the report of Inquiry Officer, which fact is not in dispute. The impugned order of dismissal has been challenged on the ground that without issuance of tentative notes of disagreement and giving the petitioner due opportunity of dealing with such notes of disagreement. The disciplinary authority



could not have held the petitioner guilty of both the charges, for the purpose of imposition of punishment. Non-supply of tentative notes of disagreement with the findings of the Inquiry Officer to the petitioner before reaching to the finding that both the charges against the original petitioner stood fully proved by the disciplinary authority amounts to violation of principles of natural justice, the petitioner contends. It is also the case of the petitioners' that no misconduct is made out on the basis of the charge framed against Mahabir Prasad warranting disciplinary action.

8. A counter affidavit has been filed on behalf of the respondent bank wherein, it has been stated in paragraph 7 that because of bad advancement of loan during the year 1985 to 1988, the percentage of recovery of loan became very low, as a result of which the NABARD, which was earlier providing refinance facility to the Bank, stopped the facility. In order to increase recovery of loans, the Bank's Management had decided to post the Branch Managers and District Managers to such places where they were posted during 1985-1988 so that the recovery of loans could be expedited. This was also done in order to provide the concerned officials an opportunity to rectify their faults in bad advancements of loans. It was in furtherance of that policy that by order dated 23.11.1996 the original petitioner and other 135 Field Officers of the Bank were re-posted to

their earlier places of postings.

9. Mr. Tej Bahadur Singh, learned senior counsel appearing on behalf of the petitioners, in support of his submission that no misconduct is made out on the basis of the allegations made in the charge-sheet has relied upon following Supreme Court decisions:-

(i) (1979) 2 SCC 14 (*Union of India and others vs. J. Ahmed*).

(ii) (1992) 4 SCC 54 (*State of Punjab vs. Ram Singh Ex-Constable*).

10. In support of his submission that it was incumbent upon the disciplinary authority to have issued to the original petitioner tentative notes of disagreement with the findings of the Inquiry Officer, in order to give him due opportunity to deal with such notes of disagreement, before reaching to the conclusion that the charges stood proved, he has relied upon following Supreme Court decisions:-

(i) (1998) 7 SCC 84 (*Punjab National Bank vs. Kunj Bihari Mishra*).

(ii) (2013) 7 SCC 251 (*S.P. Malhotra Vs. Punjab National Bank*).

11. He has also contended that persons similarly situated with similar charge have been left out whereas even on the same set of charge, the original petitioner, has been dismissed from service,



which action is discriminatory and in violation of Articles 14 and 16 of the Constitution of India. He has also submitted that the order of dismissal being illegal, the petitioners are also entitled for direction from this Court for payment of backwages, for the period during which said Mahabir Prasad had remained out of service, by virtue of illegal order of dismissal.

12. Mr. Rajesh Prasad Choudhary, learned counsel appearing on behalf of the respondent Bank, on the other hand, resisted the relief sought for on behalf of the petitioner and has contended that conduct of an employee of the Bank needs to be assessed on a different footing than employees of other organization inasmuch as, Bank Officers have higher responsibilities to discharge with utmost care and responsibility. He has contended that on the basis of recommendations made by the concerned employee Mahabir Prasad, the loans were advanced to the farmers in the years 1986-1988, which could not be recovered subsequently. He was, therefore, sent back to his earlier place of posting as he would have been in know of location of the loanees which were advanced to the farmers. Despite the fact that such opportunity was given to the petitioner, he failed to achieve the minimum target of 40% for recovery of loans. He has contended that due to non recovery of loans, the Bank had to incur heavy loss inasmuch as, fresh disbursement of loan could not be



made for the subsequent years 1996-1997 because the NABARD refused to refinance the Bank. On a query having been made by the Court as to what act was expected of the original petitioner to ensure recovery of loans after his reposting, learned counsel for the Bank has submitted that he could have persuaded the loanee for repayment of loans, but he failed. He has contended that such failure on the part of Bank Officer amounts to misconduct as has been held by Supreme Court in case of *State Bank of India and others vs. T.J. Paul reported in (1999) 4 SCC 759*.

13. He has submitted that in the facts and circumstances of the case, the decision of the disciplinary authority to impose punishment upon the Bank Officer requires no interference and that the punishment of dismissal from service cannot be said to be shockingly disproportionate to prove misconduct.

14. Upon perusal of the charge-sheet, I find substance in the submission made on behalf of the petitioners that the contents of the said charge do not per se constitute misconduct. The term misconduct has been dealt with by the Supreme Court in case of *Union of India vs. J Ahmed reported in (1979) 2 SCC 286*, paragraph 9 of which reads thus:

“9. It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty.”

15. The Supreme Court held in the said judgment that the term misconduct for the purpose of taking disciplinary action against an employee must be a misconduct, arising out of ill motive. Acts of negligence, errors of judgment or innocent mistake do not constitute such misconduct.

16. The law laid down by the Supreme Court in case of ***Inspector Prem Chand vs. Government of NCT of Delhi and others reported in (2007) 4 SCC 566*** lays down succinctly the legal position as to what act of a Government Servant would constitute a misconduct. In that case, the appellant before the Supreme Court was posted in Anti Corruption Branch of Delhi Police. Allegedly, in course of raid conducted by the police in a case of demand of illegal gratification, he had failed to seize tainted money. The non-seizure of tainted money was deprecated by the Criminal Court. A departmental proceeding was accordingly, initiated against him. The Supreme Court held that since the Department failed to prove any ill motive to the said Officer, no misconduct can be said to have been committed by him. The Supreme Court took note of previous decision on this point in the said case of ***Inspector Prem Chand Vs. Govt. of NCT of Delhi and others (supra)***, paragraphs 10 to 15 are reproduced hereinbelow:-

“Before advertng to the question.....

In State of Punjab Vs. Ram Singh, Ex-

Constable 1 it was stated : (SCC pp.57-58, para 5)

“5. Misconduct has been defined in Black’s Law Dictionary, 6th Edn. At p.999, thus:

‘A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour; its synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but no negligence or carelessness.’

Misconduct in office has been defined as:

‘Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.’”

11. In P. Ramanatha Aiyar’s Law Lexicon, 1st Edn., at p. 3027, the term “misconduct” has been defined as under:

“The term ‘misconduct’ implies a wrongful intention, and not a mere error of judgment.

The word ‘misconduct’ is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. ‘Misconduct’ literally means wrong conduct or improper conduct.”

(See also Bharat Petroleum Corpn. Ltd. V. T.K. Raju 2.)

12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules,1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of

his duties in service, which was willful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In Union of India V. J. Ahmed 3 whereupon Mr. Sharan himself has placed reliance, this Court held so stating: (SCC pp. 292-93, para 11)

“11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pierce v. Foster 4). A disregard of an essential condition of the contract of service may constitute misconduct (see Laws v. London Chronicle (Indicator Newspapers 5). This view was adopted in Shardaprasad Onkarprasad Tiwari v. Divisional Supdt., Central Rly., Nagpur Division, Nagpur 6 and Satubha K. Vaghela V Mossa Raza 7. The High Court has noted the definition of misconduct in Stroud’s Judicial Dictionary which runs as under:

‘Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.’”

13. The Tribunal opined that the acts of omission on the part of the appellant were not a mere error of judgment. On what premise the said opinion was arrived at is not clear. We have noticed hereinbefore that the Appellate Authority, namely, the Commissioner of Police, Delhi, while passing the order dated 29.8.2003 categorically held that the appellant being a raiding officer should have seized the tainted money as case property. In a given case, what should have been done, is a matter which

would depend on the facts and circumstances of each case. No hard and fast rule can be laid down therefor.

14. The criminal court admittedly did not pass any adverse remarks against the appellant. Some adverse remarks were passed against the investigating Officer, who examined himself as PW 4 as he had handed over the tainted money to the complainant PW2.

15. A finding of fact was arrived at that the accused did not make demand of any amount from the complainant and thus no case has been made out against him. This Court in *Zunjarrao Bhikaji Nagarkar V Union of India* 8 has categorically held: (SCC p.430, para 42)

“42. Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely, because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.”

17. In ***Ravi Yashwant Bhoir Vs. District Collector, Raigad and others reported in (2012) 4 SCC 407***, the Supreme Court held that the expression misconduct has to be understood as transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, willful in character.

18. In case of ***KSRTC Vs. T. Shree Rama Reddy***

reported in (2008) 17 SCC 684, altering marks earlier awarded to a candidate in interview by the Member of the recruitment Committee was held not to be a misconduct in the absence of any material to show that alteration of mark was due to extraneous consideration or there was any corrupt motive.

19. Coming to the present case, the allegation against the said Mahabir Prasad was that he did not give desired results in the matter of recovery of loans, which were advanced to the farmers during the period 1985-1988, for which he was re-posted in the year 1996. There is no specific allegation in charge that the recommendations made by the petitioner for grant of loans were bad or improper or without following the norms laid down by the Bank. The charge does not contain any specific allegation that the petitioner was required to do a particular act which he omitted to do. There is no allegation of any ill motive against the deceased employee, willful in character to constitute misconduct for the purpose departmental action. In my opinion, not only that charge no.2 does not constitute a misconduct warranting disciplinary action, the said charge is absolutely vague, inasmuch as, it does not refer to any specific act or omission on the part of the deceased employee.

20. The order of the disciplinary authority imposing punishment upon the deceased employee, in my opinion, is not

sustainable on this ground alone.

21. I also find substance in the submission that there has been violation of principles of the natural justice in course of departmental proceeding inasmuch as, it was obligatory upon the disciplinary authority to have issued to the petitioner the tentative notes of disagreement on the findings recorded by the Inquiry Officer, if he intended to disagree with such findings for the purpose of holding the employee guilty of the charge and for the purpose of imposing punishment upon him.

22. Learned senior counsel appearing on behalf of the petitioners has rightly placed reliance upon the Supreme Court decisions in case of *Kunj Bihari Misra (supra)* and *S.P. Malhotra (supra)*.

23. Learned counsel appearing on behalf of the Bank has relied upon the Supreme Court decision in case of *State Bank of India Vs. T.J. Paul reported in (1999) 4 SCC 759* in support of his submission that because of petitioner's negligence, Bank suffered huge loss and, therefore, the fault on the part of the petitioner to achieve the target of recovery of loan amount, constitutes misconduct. The facts of the said decision of the Supreme Court were entirely different. The Bank Officer in that case was charged for not taking adequate security and prior approval or ratification from the superior

authority before advancing loans, which was found to be contrary to the departmental instructions. Such is not the situation in the present case. The Supreme Court decision in case of State Bank of India Vs. T.J. Paul (supra) has no application in the facts and circumstances of the present case.

24. For the reasons noted above, I am of the view that the impugned order dated 02.09.1999 imposing punishment of dismissal on Mahabir Prasad, the deceased passed by the Administrator, Bihar State Cooperative Development Bank, Patna deserves to be set aside. The said order dated 02.09.1999 is accordingly, quashed.

25. Since I have held that the charges in the departmental proceeding, framed against the deceased employee, do not constitute misconduct and are vague, I am of the view that the order of dismissal is wholly arbitrary and illegal and, therefore, the petitioners shall be entitled to all consequential benefits including the arrears of salary for the period during which the deceased employee remained out of service because of the said illegal order of dismissal. The respondents shall treat and proceed as if no punishment of dismissal was ever imposed upon the deceased employee Mahabir Prasad.

26. This application is accordingly, allowed.

27. There shall, however, be no order as to costs.

ArunKumar/-

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(Chakradhari Sharan Singh, J)