

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1321 of 2014
IN
Civil Writ Jurisdiction Case No. 13786 of 2012

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1. Narendra Kumar Singh Son of Late Bishun Deo Singh at present resident of -Paharpur Hawelli Kharagpur, Police Station- Kharagpur Distt.- Munger.

.... **Appellant**

Versus

1. The State of Bihar
2. Bihar Kshetriya Gramin Bank, Head Office-Bhagat Singh Chowk, Munger, Distt.- Munger through Board of Directors
3. Chairman, Bihar Kshetriya Gramin Bank, Head Office- Bhagat Singh Chowk, Munger, Distt.- Munger, Bihar
4. Sri Jawed Wahab, Enquiry Officer, Bihar Kshetriya Gramin Bank, Regional Office, Lakhisarai

.... **Respondents**

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Appearance :

For the Appellant : Mr. Rajesh Kumar Singh, Advocate
Mr. Ranvijay Narain Singh, Advocate
Mr. Rana Pratap Singh, advocate
For the Respondents : Mr. Nawal Kishore Singh, S.C. 2
Mr. Kamlesh Prasad, AC to SC 2

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE I. A. ANSARI

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 16-01-2015

While the appellant, Narendra Kumar Singh, had been working as the Mananger, Regional Office, Bihar Kshetriya Gramin Bank, Munger (hereinafter referred to as 'the respondent Bank'), he was served with a *charge sheet*, issued under the signature of respondent No. 3, namely, Chairman, Bihar Kshetriya Gramin Bank, Munger.

The charge, in substance, against the appellant was that the appellant had furnished false date of birth and produced a tempered birth certificate in this regard, while seeking appointment in the respondent Bank.

Denying the allegations so levelled against him, the appellant replied to the notice to show cause against the charge. In his reply to the notice to show cause, the appellant pointed out that his date of birth is in tune with the certificate, which has been issued by the Bihar School Examination Board, Patna.

Not being satisfied with the reply to the show cause notice, the disciplinary authority initiated a departmental proceeding against the appellant. The Enquiry Officer, on perusal of the records, including the reports of Bihar School Examination Board, Patna, and the School, wherein the appellant had studied, held the appellant guilty of the charge levelled against him. With this finding, the enquiry report, dated 09.08.2011, was submitted to the disciplinary authority, who, in turn, forwarded a copy of the said enquiry report to the appellant for his comments and the appellant replied thereto by his letter, dated 23.08.2011. Accepting the enquiry report, the disciplinary authority issued another notice, dated 14.09.2011, directing the appellant to give his response to the quantum of punishment. Pursuant to the



notice, dated 14.09.2011, the appellant himself attended the hearing before the disciplinary authority on 26.09.2011 and made oral submissions, which were recorded in the form of proceedings, duly authenticated by the appellant. In his oral submissions, the appellant submitted to the effect that he had submitted the certificate, which he had received from the Bihar School Examination Board, Patna, and if the respondent Bank considered that his year of birth was 1952, he be allowed to work till the age of 60 years treating his year of birth as 1952. The disciplinary authority did not agree with the submission so made by the appellant and passed an order, on 30.09.2011, imposing, on the appellant, penalty of dismissal from service.

As the departmental appeal, preferred by the appellant, failed to yield any result in favour of the appellant, the appellant approached this Court with a writ petition, made under Article 226 of the Constitution of India, which gave rise to CWJC No. 13786 of 2012.

By order, dated 09.07.2014, as the writ petition has been dismissed, the appellant is, in appeal, before us.

We have heard Mr. Rajesh Kumar Singh, learned Counsel, for the appellant, and Mr. Nawal Kishore Singh, learned Standing Counsel No. 2, appearing on behalf of the State respondent.

So far as the respondent Bank is concerned, none has appeared on their behalf despite notice by publication of the name of the learned Counsel for the respondent Bank in the cause list.

While considering the present appeal, what may be noted is that there are two specific challenges posed to the enquiry report, which was submitted to the disciplinary authority, and the consequential order of penalty, which was passed against the appellant.

The first challenge to the enquiry report is that in terms of Regulation 41 of the Bihar Kshetriya Gramin Bank (Officers and Employees) Service Regulation, 2010 (hereinafter referred to as 'the 2010 Regulations'), the Enquiry Officer, in a case of disciplinary proceeding, has to be higher in scale to the officer or employee against whom the proceeding is instituted to conduct the enquiry.

Regulation 41 of the 2010 Regulations reads as under:

"41. Delegation of the power to enquire.- The Competent Authority may, by general or special order in writing, delegate to,-

(i) An officer who is in a higher scale to the officer against whom the proceeding is instituted, in the case of officer;

(ii) An officer, in case of employee, to conduct the enquiry under regulation 39.

Provided that the Competent Authority may, at his discretion, nominate any officer working in the Bank, including those on deputation from other institutions or any public servant who is in a higher scale to the officer or employee against whom the proceeding is instituted, to conduct the enquiry."

From a bare reading of Regulation 41 of the 2010 Regulations, it is transparent that the competent authority may delegate power to conduct the enquiry to an officer, who is in a higher scale to the officer against whom the proceeding is instituted. The competent authority may also nominate, to conduct the enquiry, any officer working in the Bank, including those, who are on deputation from other institutions or any public servant, who is in a higher scale to the officer or employee against whom the proceeding is instituted.

In the backdrop of what has been indicated above, it becomes more than abundantly clear that the enquiry was conducted by a person, who was not, in terms of Regulation 41 of the 2010 Regulations, competent to hold the enquiry inasmuch as the Enquiry Officer, in the present case, fell in the same scale which was the scale of the appellant too. Consequently, the findings rendered by the enquiry report, acceptance thereof by the disciplinary authority and the

punishment imposed, in consequence thereof, are wholly without jurisdiction and must be treated as *non est* in law.

Coupled with the above, we cannot also ignore the fact that no witness was examined at the enquiry and it is the Enquiry Officer who, on the basis of the materials available, which were not proved by anyone, relied upon the same and came to hold that the appellant was guilty of the charge levelled against him. The findings so reached, without any materials having been proved in the proceeding of the enquiry by any competent witness, are nothing, but perverse and wholly illegal.

Because of what has been discussed and pointed out above, we find that the whole enquiry held against the appellant was without jurisdiction and void and, in consequence thereof, the enquiry report and also the penalty imposed cannot be sustained and ought to have been interfered with in exercise of this Court's extra ordinary jurisdiction under Article 226 of the Constitution of India.

In the result and for the foregoing reasons, this appeal succeeds. The order, under appeal, dated 09.07.2014, is hereby set aside. We also set aside and quash the impugned enquiry report, dated 09.08.2011, and the impugned order, dated 30.09.2011, imposing, on the appellant, penalty of dismissal from service.

In terms of the above observations and directions, this appeal shall stand disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy, CJ.)

(I. A. Ansari, J.)

Prabhakar Anand/-
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