IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8748 of 2014

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Rana Pratap Singh Son of Late Guru Dayal Singh resident of village - Uttar Badi Tola, P.S. Sursand, District - Sitamarhi

.... Petitioner/s

Versus

1. The Uttar Bihar Gramin Bank through its Chairman, Head Office, Kalambagh Chowk, Muzaffarpur
2. The Chairman - cum - Disciplinary Authority, Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur
3. The General Manager, Uttar Bihar Gramin Bank, Head Officer, Kalambagh Chowk, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Roy, Advocate.
Mr. Gyan Prakash, Advocate.
Mr. Sharwan Kumar, Advocate.

For the Respondent/s : Mr. Prabhakar Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

3 17-03-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:

> *"1. .... Direction/directions to the Respondents to make payment of Gratuity amount which has been withheld by the respondents without any rhyme or reason and also for passing a fresh order in the light of representation dated 30.01.2014 of the petitioner in which a representation he has clearly shown that utter discrimination has been mated out to him by the respondents."*

3. During the pendency of this writ application, on 10.03.2015, an interlocutory application has been filed by the petitioner for a further additional relief by way of seeking a direction upon the respondents to make payment of the amount of Earn Leave and Group Insurance to the petitioner.

4. As would be evident, the relief of the petitioner can

be classified into two categories. Firstly, with regard to a direction to the respondents to dispose of the representation of the petitioner dated 31.01.2014 and secondly, to hold and declare that the petitioner is entitled for payment of Gratuity as also the amount of Group Insurance and Leave Encashment.

5. As with regard to the disposal of the representation, this Court would find that the issue sought to be raised in the representation i.e. quantum of punishment which had already been followed by approving the order of dismissal of the petitioner in the writ application filed by him being C.W.J.C. No. 23383 of 2012 by a judgment dated 08.01.2014 wherein the award of quantum of punishment was also gone into by the learned single Judge in the following terms:

> *" Lastly, it was submitted that the punishment awarded against the petitioner is disproportionate to the charges proved against him. In the background of gravity of charges proved against the petitioner, the punishment of dismissal from service cannot be said to be disproportionate or incommensurate. Nothing less than dismissal from service was warranted in the factual background of the present case, and misconduct proved against the petitioner in view of the provisions contained in Regulations-2010.*
> *For the reasons recorded above, this application has to fail and it is accordingly dismissed, but there shall be no order to costs."*

6. These findings of the learned single Judge was made subject matter in appeal, L.P.A. No. 752 of 2013 and none of the findings of the learned single Judge, despite being assailed by the petitioner, was disturbed. As a matter of fact, the submission of learned counsel for the petitioner before the appellate court in the

matter of quantum of punishment, the only observation was that the law is well settled that the quantum of punishment is a matter primarily for the disciplinary authority to decide and it is not for the Court to substitute its views in the matter of quantum of punishment.

7. The submission of Mr. Rajeev Roy, learned counsel for the petitioner that the Bank was required to once again consider the quantum of punishment in view of the aforementioned observations of the Division Bench dismissing the appeal of the petitioner, also has to be only noted for its being rejected. The predicament for the authorities of the Bank in reconsidering the quantum of punishment was that such punishment was held to be apt and appropriate by the learned single Judge. The Division Bench also had not interfered the order of the learned single Judge even on the issue of quantum of punishment. If thereafter the petitioner had filed a representation raising the issue of quantum of punishment, the authorities of the Bank could not have reviewed their own order because the order of punishment had emerged with the judgment of this Court passed by the learned single Judge and also approved by the Division Bench.

8. In that view of the matter, this Court would find it difficult now to direct the authorities of the Bank to reconsider the

representation of the petitioner which has already been rejected. Such action of the Bank in fact will never be interfered by this Court specially when the parties are bound by the interparte judgment as recorded above.

9. That would leave this Court to decide the issue of payment of Gratuity.

10. The submission of Mr. Roy in this regard is that even if the order of punishment, by way of dismissal of the petitioner from the service of the Bank, was passed that did not authorize the Bank to even deny the petitioner to pay amount of Gratuity. Learned counsel for the Bank, however, has referred to specific provision in the service rule of the Bank wherein it has been clearly laid down that in case of an employee of the Bank, if he is inflicted to punishment of dismissal from service, he would not be entitled for payment of Gratuity. Thus, in view of the rules of the Bank, it will be difficult for this Court to direct for payment of Gratuity to the petitioner.

11. As with regard to the rest of the claim of the petitioner for payment of amount of Group Insurance and Leave Encashment, this Court can only observe that if the petitioner had contributed certain amount in the Group Insurance Scheme of the Bank such amount should be refunded to the petitioner, if no amount is recoverable from the petitioner, inasmuch as the learned

counsel for the Bank has submitted that though the petitioner may be eligible for amount of Group Insurance and Leave Encashment but then there is an order of recovery of amount of loss sustained by the Bank from the petitioner.

12. Since, that order of punishment also regarding recovery has become final, this Court can only say that any amount of Group Insurance and/or Leave Encashment payable to the petitioner, will be made only after adjusting the amount of loss sustained by the Bank in terms of the order of punishment.

13. In that view of the matter, this Court would also direct the Bank to examine the claim of the petitioner for grant of Leave Encashment and Group Insurance strictly as per its own service law but whatever decision has to be taken in this regard, must be taken within a period of four months from the date of receipt of a copy of this order.

14. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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