

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.803 of 2009

IN

Civil Writ Jurisdiction Case No. 1559 of 1998

Alok Kumar Verma, son of Late Shri Shashi Kant Verma, presently residing at Road No.4, Sri Krishna Nagar, Patna – 800 0001 (Earlier residing at Shanti Villas, Nageshwar Colony, Boring Road, Patna, working as Assistant General Manager, Bihar State Financial Corporation, Frazer Road, Patna.

----- Appellant

Versus

1. The Bihar State Financial Corporation, Frazer Road, Patna through its Managing Director.
2. The Board of Directors, Bihar State Financial Corporation, Frazer Road, Patna through its Chairman.
3. The Managing Director, Bihar State Financial Corporation, Frazer Road, Patna.
4. Sri Ashok Kumar Singh, I.A.S., Managing Director, Bihar State Financial Corporation, Frazer Road, Patna

----- Respondents.

Appearance :

For the Appellant : Mr. Mr. Manik Vedsen, Advocate
Mr. Subhash Chandra Bose, Advocate
For the Respondent B.S.F.C.: Mr. Partha Sarthy, Advocate
Mr. Utsav Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 12-04-2016

The appellant, who is the unsuccessful writ petitioner, has filed this Intra-Court Appeal against judgment and order dated 18.04.2009 passed in C.W.J.C. No. 1559/1998.

2. The writ petitioner/appellant had challenged the order of his dismissal from service under the Bihar State Financial Corporation (hereinafter referred to



“Corporation”), a Corporation constituted under the State Financial Corporation’s Act, 1951. He was, at the relevant time, posted as Assistant General Manager. The Writ Court noticing facts and several rounds of litigation as between the parties virtually dismissed the writ petition, but observed that the punishment appears to be disproportionate, upon which, after dismissal of the writ petition, the punishment of dismissal was converted into compulsory retirement.

3. In appeal, on behalf of the writ petitioner/appellant, it is argued that in the facts and circumstances, the whole proceedings stood vitiated on account of bias, which writ petitioner/appellant had been raising times without number. His further submission would be, even assuming everything against the writ petitioner/appellant, it was not a case where the disciplinary authority could have held him guilty of misconduct, and lastly, even the punishment of compulsory retirement, in the facts and circumstances, was grossly disproportionate, especially because, the Corporation had no rules of pension and whatever could be paid was paid during the service period, and if that is cut-short by even compulsory retirement, everything is lost.

4. We have heard both the sides at length and



perused the record. It is no doubt that the writ petitioner/appellant has approached this Court against the Management and their actions times without number, but merely because he likes to assert his rights would not make him an indisciplined officer. It is not necessary that one has to always succeed to show that the litigation was *bonafide*, even in a lost litigation, the cause could have been *bonafide*, but we would not deal upon this, much and leave it. We would not illustrate fight between the appellant and the Management as a cat and mouse game as the learned Single Judge has given. We would concern ourselves, to decide the dispute on the facts which are on the record.

5. The writ petitioner/appellant was selected and appointed as Assistant Secretary, direct recruit, in Senior Officer Grade of the Corporation in the year 1974. Soon thereafter, he was promoted and posted as Deputy Secretary and later designated as Manager and then promoted to the post of Assistant General Manager. In 1982, he was posted as Branch Manager of the Ranchi Branch of the Corporation and Daltonganj was one of the offices under his area and this is of some importance.

6. It appears from 1992 onwards, the petitioner got involved in disputes with the Management of the

Corporation over salary and service condition of employees and he became a member and a office bearer of the officers and staff association. Then, started spate of the activities at the behest of the Management.

7. In 1993, disciplinary proceedings were started and he was put under suspension on charges of something that was done about 12 years back.

8. The writ petition was filed by the appellant bearing CWJC No. 4112/1993 which was disposed of with various observations. There being allegations against the Managing Director, this Court advised that the Board of Directors of the Corporation should exercise powers of the disciplinary authority and pass appropriate orders. At this time one Sri Ashok Kumar Singh, who is the respondent in the writ proceedings in this appeal and to whom notice have already been served, but had chosen not to appear, was appointed as Managing Director. He took up disciplinary proceedings and without any formal enquiry recommended to the Board of Directors for taking action against the writ petitioner/appellant, and consequently, on 24.06.1994, the Board of Directors of the Corporation decided to compulsorily retire the writ petitioner/appellant without any hearing or grant of opportunity to the writ



petitioner/appellant. Thus, the petitioner challenged this in C.W.J.C. No. 3862/1994 with specific allegations of *malafide* against Sri Ashok Kumar Singh, the Managing Director. We would not like to notice the acrimonious dispute as arose between the Managing Director and the writ petitioner/appellant, but, ultimately this writ petition was taken up and disposed of by judgment and order dated 08.02.1996, and the disciplinary proceedings including the punishment was set aside. It was observed that, should the Management decide to reinitiate those proceedings, then, from the date the petitioner is reinstated, he would be deemed to be under suspension till the conclusion of the departmental proceedings. It may be noted that prior to the order by the disciplinary authority the petitioner had been put under suspension, which order culminated in the order of compulsory retirement. The writ petitioner/appellant being aggrieved by this concept of deemed suspension in case proceedings were reinitiated, filed the Letters Patent Appeal being LPA No. 430/1996, which was disposed of on 14.08.1996, and the Division Bench deleted the portion with regard to deemed suspension. The effect of writ court judgment and the LPA Court judgment was that till disciplinary proceedings were reinitiated the writ

petitioner/appellant would be deemed to be reinstated. Why we are noticing this is that, petitioner has made grievance that notwithstanding the aforesaid, right from 1994, when he was first put under suspension, pending departmental proceedings, he was not paid anything not even subsistence allowance.

9. Upon the orders passed by the writ court and the Letters Patent Appeal, the matter ought to have been reconsidered by the Board of Directors, but the Managing Director, Ashok Kumar Singh, did not consult the Board of Directors but wrote to the government directly that they should depute an officer to the Corporation so that he may conduct enquiry against the writ petitioner/appellant in a disciplinary proceedings that were to be reinitiated, failing which the Corporation would have to pay huge amount of money to the petitioner.

10. We may clarify this because this is of some importance. The petitioner was suspended, not a single paisa was paid to him since 1994, and if disciplinary proceeding was not reinitiated, then, he would be deemed to be reinstated, as in the disciplinary proceedings there was no punishment left, thus the Corporation would be under obligation to pay full wages right from 1994 to 1996.





11. It may be noted, as it is not disputed, that an officer was deputed to the Corporation but effectually disciplinary proceedings could not be reinitiated and the officer so deputed went back. In the meantime, the petitioner was posted as Branch Manager, now in the year 1996, of Daltonganj Branch, a small Branch in remote area. The writ petitioner/appellant protested that he had been, almost 20 years back, Branch Manager of Ranchi region under which one of the offices was at Daltonganj. He was now of the rank of the Assistant General Manager at Patna. It would be humiliating for him to be posted as Branch Manager of Daltonganj, a post equivalent which he held almost 20 years back, but no heed was paid, and it was insisted that he go and join there. He was even relieved from present posting at Patna to join at Daltonganj. Writ petitioner/appellant protested, wrote to the Managing Director that, since 1994 he had not received a single paisa as remuneration not even subsistence allowance, he should be paid at least transfer /travelling allowance, so that he could go to the Daltonganj. It is unfortunate that even this amount was not paid to him. The result was that the writ petitioner/appellant was relieved from Patna Branch, but he could not go and join at Daltonganj. Now, another event



comes in this. Knowing this situation fully well, the Managing Director then asked him to go and depose as a Corporation's witness in a pending Title Suit at Kishanganj. This makes one fact clear i.e. the Corporation was fully aware that the writ petitioner/appellant was still at Patna and had not joined Daltonganj. Again, petitioner asked to be paid travelling allowance as he was not getting any remuneration from the Corporation. It is said that on 05.12.1996, a cheque was issued in his favour to depose in Title Suit at Kishanganj. Clearly no one could be expected to encash the cheque and move to Kishanganj and be there on 06.12.1996. Upon this, the Managing Director, Ashok Kumar Singh, then initiated a fresh proceeding. The liberty granted in the earlier writ proceedings was not followed up and fresh proceedings were initiated with three charges. First, disobedience of the orders of transfer dated 25.04.1996 to Daltonganj, being on unauthorized absence from duty from 02.05.1996, the date he was suo motu relieved to join the transferred place till date, and disobeying the instructions to attend the Court at Kishanganj on 06.12.1996. These proceedings were sought to be initiated on or about 05.09.1997. Writ petitioner/appellant again complained about no remuneration being paid at all.



Ultimately, there were round of correspondences, newspaper notices and repeated demand for payment, but none was responded by the Managing Director. There was a lot of dispute between the writ petitioner/appellant and the Managing Director. Serious allegations were levelled against the Managing Director of financial impropriety. Ultimately, the writ petitioner/appellant challenged these proceedings before this Court and sought to move applications for stay. Before the applications could be done, the Managing Director went away as an election observer to another State, but on his return immediately notwithstanding that he had been informed that the stay petition would be considered by the High Court, on 14.04.1998, which was statutory notified holiday, the Managing Director abrogated to himself in the position of disciplinary authority and passed an order dismissing the writ petitioner/appellant, so that no effective order could be obtained in the stay application which was to be heard by the High Court on the date fixed i.e. on 15.04.1998. Various reasons were ascribed. Why this great hurry? We would not like to go into this.

12. From the facts aforesaid, it could be seen that the right from 1994, he was hardly paid any



remuneration, in fact, after the initial order of compulsory retirement, he was paid nothing till his dismissal order, as aforesaid, which was passed in 1998. To expect from an employee to cooperate in disciplinary proceedings without being paid even the subsistence allowance cannot be countenanced. Further the manner in which the writ petitioner/appellant was being proceeded against, as noticed above, would legitimately raise question of bias based on prejudice. Repeatedly, petitioner kept protesting the manner in which the then Managing Director, Ashok Kumar Singh, had single him out and was making inconvenient for him to work. First, when this Court, in the earlier writ petition, set aside the order of compulsory retirement, the Managing Director, on record, has written to the State that a person be deputed to conduct the enquiry, that in not doing so would entail heavy injury for the Corporation, meaning thereby, the Corporation would then have to give remuneration due to the petitioner. Notwithstanding the fact that no such enquiry was reinitiated, no remuneration was paid to the writ petitioner/appellant, when petitioner demanded remuneration he was transferred as Branch Manager of a small Branch at Daltonganj, which is a very small office, which writ petitioner/appellant was Incharge of the Ranchi



Office nearly 20 years back. Even though, it may be permissible to do so, it was a cause of humiliation. Then, notwithstanding that the writ petitioner/appellant was demanding payments and demanding transfer/travelling allowance to enable him to join at Daltonganj, not having been paid any remuneration for over 2 years, he was not paid a single paisa. To further compound the situation, he was unilaterally relieved from Patna and forced to join at Daltonganj and he not having joined Daltonganj, a disciplinary proceeding was initiated for this, but, he was then alleged to be absent without permission and in this status he was then directed to depose on behalf of the Corporation in a Title Suit at Kishanganj, payment whereof was tendered to him by cheque only on the last date, knowing fully well that for over two years he was not in receipt of any payment whatsoever. Having failed to go to Kishanganj, this again alleged as a charge against him. All this was being done at the behest of and within the knowledge of Managing Director, Ashok Kumar Singh. It is on the basis of this that petitioner wrote that, the Officer, a Managing Director, being biased, should not hear the matter in disciplinary proceeding.

13. We may also note that this is the reason



why even earlier, while allowing the writ petition on 23.03.1994 being C.W.J.C. No. 4112/1993, this Court had directed that the Board of Directors of the Corporation and not the Managing Director should act as disciplinary authority.

14. But, notwithstanding the aforesaid, once again, the present departmental proceeding was initiated by the Managing Director, Sri Ashok Kumar Singh, without there being any formal enquiry, without the allegations in the departmental proceeding being proved, without any witnesses being examined and without any document being proved, only explanation was called for from the petitioner, and then, after the Managing Director returned from election duty, on a notified holiday i.e. 14.04.1998 (Ambedkar Jayanti), he himself passed the order of dismissal, that was the subject matter of challenge in the writ petition, from this, the appeal arises.

15. In view of the facts noted above, we are of the considered view that it was appropriate for the Managing Director to have de-associated himself with the disciplinary proceeding especially when in the earlier round of litigation this court had itself observed that the power of disciplinary authority in the facts of the case should be



exercised by the Board of Directors and not the Managing Director himself. Apart from this, the manner in which these proceedings were conducted, even if, the writ petitioner/appellant was not cooperating, is not the procedure required to be followed. What was the hurry in not following the normal procedure in departmental proceedings as in any departmental proceeding? Why the order was passed on holiday though the petitioner had given reasons? Why this was necessarily to be done? Even though there is no rebuttal thereof, the Managing Director was completing his term and was likely to be transferred. We have no manner of doubt that the writ petitioner/appellant was unfairly dealt with and the procedure was not fair.

16. Apart from this, in our view, the three charges are not really made. The first charge is not obeying transfer orders, the circumstances, we have detailed about, in such situation to hold that there was disobedience of binding orders would not be correct. The authorities arranged payment as they were bound to. They could have alleged disobedience, but on one hand the authorities ignored their liability to pay and then seeking to enforce discipline by obedience is a contradiction in terms of which the writ petitioner/appellant had a bonafide if not reasonable



explanation which could not have been brushed aside. Then, similar is the situation with regard to not obeying orders in respect of going to Kishanganj for deposing as Corporation witness in a suit. Again, as noticed above, payments were either being effectively denied or made most inconvenient for the petitioner, to obeying the orders. The third, being absent without permission by virtue of not joining Daltonganj was equally similar as the writ petitioner/appellant was again denied any payments.

17. Thus, we find that the charges itself, in the facts, would not stand as proved, so as to attract penalty, even if, by any stretch of imagination, if we held technically, that the conduct amounts to indiscipline. We are clear that it did not attract the extreme punishment of either dismissal or what was changed later to compulsory retirement. The writ petitioner/appellant still had a career of about 12 years left. To cut short the 12 years career is not a small punishment and that too for such alleged dereliction. We think that was not proper.

18. Accordingly, in view of the facts taken in entirety, as noted above, we have to say that the disciplinary proceedings itself stood vitiated, accordingly, the order of learned Single Judge cannot be sustained. The appeal has to



be allowed. But, now the question is, what are reliefs, which writ petitioner/appellant is entitled. Firstly, having noticed the facts aforesaid, we would fail in our duty if we do not direct the Corporation to pay full remuneration to the writ petitioner/appellant for the period from 02.04.1993 up to 14.04.1998, because, undisputedly for the period aforesaid, there is no order of any authority muchless disciplinary authority depriving him of his remuneration. Of course, adjustments have to be made for any amount which was paid during the period as remuneration for that period, if any. Then, as we have set aside the disciplinary proceedings and the order of dismissal, the Corporation itself having substituted it by compulsory retirement which we have set aside, ordinarily, he would be deemed to be in service from 14.04.1998 up to his normal date of superannuation which would be in the year 2010. But, the fact remains that, for these 12 years the writ petitioner/appellant did not serve the institution in any manner. He is not entirely to be blamed. We do not agree to the submission of learned counsel for the appellant that he was willing to work but he was kept out by the Corporation by virtue of order of dismissal which was later converted to compulsory retirement, and as such, he should be entitled to full remuneration. We are of the view

that writ petitioner/appellant, to some extent, was responsible for bringing the situation upon himself.

19. In such view of the matter, we would direct the Corporation to pay 50% of full remuneration that would be due to him for the period between 14.04.1998 up to his natural date of superannuation. This payment be made by the Corporation to the writ petitioner/appellant within three months from today.

20. With this observation and direction, this appeal stands disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/A.F.R.

U			
---	--	--	--