IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3731 of 2014

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Rajani Kant Mishra, Son of Late Suryakant Mishra, Resident of Village- Bhavanipur, P.S.- Sakri, District- Madhubani

.... Petitioner

Versus

1. The Uttar Bihar Gramin Bank, through its Chairman, the Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur
2. The Chairman, Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur
3. The Regional Manager, Uttar Bihar Gramin Bank, Regional Office- Langada Chowk, Jhanjharpur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Advocate
Mrs. Shally Kumari, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 17-05-2016

Heard learned counsel for the petitioner and the respondents.

2. The petitioner prays for quashing of the order, dated 14.09.2012, issued under the signature of respondent no.3 (Regional Manager, Uttar Bihar Gramin Bank).

3. The issue involved in this case would only reflect that the Officers & Employees Service Regulation, 2010 framed by Uttar Bihar Gramin Bank under Rule 30 of Regional Rural Bank Rule, 1976 require much change to cover such issues, which has not been taken care of, in the Regulation.

4. For instance, no mechanism has been provided in the

Regulation, as to how the Bank would proceed against a retired employee, if acts of omission and commission come to light only after his or her retirement. However, regulation provides mechanism for action against employee or officer, if proceeding has been started prior to his or her retirement.

5. The issue is whether Regulation provides mechanism for action against an employee/officer, if no proceeding has been started either for inflicting minor or major punishment, prior to retirement.

6. The penal provision is contained in Regulation 39 of Regulation, 2010. The provision deals with categories of minor and major punishments and the manner in which due amount can be recovered, if fiscal punishment is provided. Rule 39 (vi) provides that recovery can be made from emoluments or such other amount as may be due to him. However, such amount can be recovered only, if a proceeding has been started against the employee prior to his/her retirement. Regulation 45, which is relevant in the context is quoted herein below:

> “45. Disciplinary proceedings after retirement.- (1) An officer or employee who is under suspension on a charge of misconduct and who attains the age of superannuation, shall be deemed to be in service even after the age of superannuation for the

specific purpose of continuation and conclusion of the disciplinary proceedings and issue of final orders thereon.

(2) The officer or employee who is under suspension shall not be eligible for any subsistence allowance for the period beyond the date of superannuation.

(3) The officer or employee against whom disciplinary proceeding has been initiated shall cease to be in service on the date of superannuation but the disciplinary proceeding shall continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof.

(4) The officer or employee against whom disciplinary proceedings has been initiated shall not receive any pay and/or allowances after the date of superannuation and also not be entitled for the payment of retirement benefits till the proceeding is completed and final order is passed thereon except his own contribution to Contributory Provident Fund (CPF).

Explanation: For the purposes of this regulation, the normal retirement benefits such as encashment of privilege leave and Gratuity may be withheld till the completion of the disciplinary proceeding and passing of final order by the Competent Authority and the release of benefits shall be as per the final order of the Competent Authority."

7. Unfortunately, the Regulation is silent as to what would be the mechanism, if such proceeding has not been started prior to the retirement of the employee or the officer. In such circumstances, one of the options open to the Bank is institution of criminal case. But in absence of any specific provision, which could enable the Bank to proceed against a retired employee, it would not be possible to recover the misappropriated or defalcated amount from the retiral benefits under Regulations 39 or 45, if such action has not been taken prior to his/her retirement. The Bank unfortunately does not have any such provision like one under Section 43(b) of the Bihar Pension Rules nor it has adopted the said provisions to ensure that no one, who has committed misconduct, escapes punishment. It would be useful to quote Rule 43(b) of the Bihar Pension Rules. Rule 43(b) of the Bihar Pension Rules is quoted herein below:

> "43 (b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service

rendered on re-employment after retirement:”

8. It is for the Bank to consider either formulating its own Regulation or to adopt such provisions of the Bihar Pension Rules to ensure that a defaulter does not go unpunished. Thus in my considered view, in absence of any proceeding or show show-cause, prior to his retirement, the Bank is not empowered under the existing Regulation to recover the loss caused or misappropriated sum, save and except by taking resort to lodging of criminal case or filing a money suit, if there is pecuniary loss.

9. The petitioner retired, on 13.06.2012, as Branch Manager, Bhupatti Branch, within Muzaffarpur district. No explanation or show-cause was issued to him prior to his retirement with respect to any act of omission or misconduct. For the first time, only on 14.09.2012, after 3 months of his retirement, some acts of irregularity committed by the petitioner during his service period were noticed by the respondents. I have already observed in forgoing paragraphs that there is no provision, which authorizes the Bank to withhold the retiral benefits, if no action has been taken prior to retirement of an employee/officer.

10. In the result, the writ application is allowed. The impugned order, dated 14.09.2012, passed by the respondent no.3 is set aside.

11. Let a copy of this order be communicated to respondent nos. 1 and 2 for effecting necessary changes in the Officers and Employees Service Regulation, 2010 by the Board of Uttar Bihar Gramin Bank in the interest of revenue of the Bank.

(Samarendra Pratap Singh, J.)

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