

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1523 of 2009

In
Civil Writ Jurisdiction Case No. 18692 of 2008

- =====
1. The State Of Bihar Through Chief Secretary Govt. Of Bihar, Patna
 2. The Secretary Personnel And Administrative Reforms Deptt., Govt. Of Bihar, Patna
 3. The Under Secretary Personnel And Administrative Reforms Deptt., Govt. Of Bihar, Patna
 4. The Secretary Co-Operative Deptt., Govt. Of Bihar, Patna

.... Appellant/s

Versus

Jitendra Kumar Singh S/O Sitaram Singh Under Secretary, Co-Operative Deptt., Vikash Bhawan, Baliroad, Patna

.... Respondent/s

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with

Letters Patent Appeal No.131 of 2010

IN

Civil Writ Jurisdiction Case No. 305 of 2009

- =====
1. The State Of Bihar Through Chief Secretary Government Of Bihar, Patna
 2. The Secretary , Personnel & Administrative Reforms Department Government Of Bihar, Patna
 3. The Under Secretary, Personnel & Administrative Reforms Department Government Of Bihar, Patna
 4. The Secretary , Co-Operative Department Government Of Bihar,Patna

.... Appellant/s

Versus

Vijay Kumar Sharma S/O Late Chandrika Sharma Joint Secretary , Co-Operative Department , Government Of Bihar,Patna

.... Respondent/s

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Appearance :

(In LPA No.1523 of 2009)

For the Appellants : Mr. Mritunjay Kumar, A.c. to AAG-10
For the Respondent : Mr. Rajendra Prasad Singh, Senior Advocate
Mr. Rajeev Kumar Singh

(In LPA No.131 of 2010)

For the Appellants : Mr. Biresh Kumar Sinha, A.C. to AAG-2
For the Respondent : Mr. Rajiv Nayan Singh

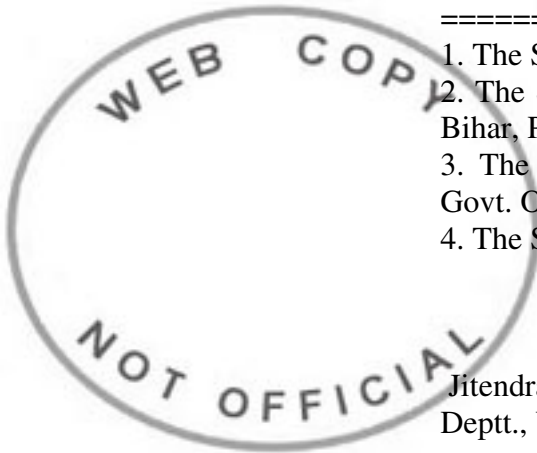
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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL ORDER



(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

13 30-03-2016

I.A. No.606 of 2010

The interlocutory application has been filed for condoning the delay of 219 days in filing the appeal. Earlier, by order dated 03.12.2009 it was directed that the limitation matter shall be considered at the time of admission in both the appeals. Subsequently by order dated 19.01.2011 the delay of 219 days in preferring L.P.A. No.1523 of 2009 was condoned but no formal order has been passed condoning the delay in the present matter.

Since the facts are similar and delay has been condoned in L.P.A. No.1523 of 2009, the delay in filing L.P.A. No.131 of 2010 is also condoned.

I.A. No.606 of 2010 is, accordingly, disposed of.

Heard learned counsels for the parties.

Both the appeals have been filed by the State being aggrieved by the common judgment and order dated 03.03.2009 passed in C.W.J.C. No.18692 of 2008 and another analogous case, out of which the present appeals arise.

The writ applications had been filed for quashing the orders contained in Resolution dated 10.11.2008, by which the two writ petitioners had been suspended in anticipation of initiation of departmental proceedings against them. The reason for the same was given that they had made recommendations to the Central

Government to convert the Bihar Sate Land Development Bank into Multi State Co-operative Society contrary to the decision of the Council of Ministers to wind up the said Bank and without obtaining the order of the competent authority.

Both the petitioners filed the aforesaid two writ applications, which were allowed by the common impugned order dated 03.03.2009 and the orders of suspension dated 10.11.2008 were quashed. The ground for quashing the said orders has been stated by the Writ Court as the fair acknowledgement by the counsel for the State that though the impugned order refers to a Cabinet decision but, in fact, the Cabinet has only approved the proposal for winding up of the Bank but issued no further direction for issuance of necessary notification in pursuance thereof as per the Rules of Executive Business and that on further recommendation of the Cabinet, the State Government, in fact, had given directions for holding election to the Managing Committee of the Board of Directors of the Bank.

It is submitted by learned counsel for the State that the writ applications were wrongly allowed relying upon the stand taken by learned counsel for the State which was at variance with the specific stand taken in the counter affidavit filed on behalf of the State in C.W.J.C. No.18692 of 2008. It is further submitted that the stand of the State in the counter affidavit was that while the



petitioner was posted as Under Secretary in the Co-operative Department he committed serious irregularity while sending recommendation for registration of the Land Development Bank, Bihar under Multi-State Co-operative Societies Act, 2002 to the Joint Secretary-cum- Central Registrar, Co-operative and Agriculture Department, Government of India in spite of the fact that the State Cabinet had taken a policy decision for closure of the Bank for its failure to achieve its objectives. It is further stated that neither the consent of the Secretary of the Department of Co-operative, Government of Bihar nor the consent of the Registrar, Co-operative societies was obtained for sending such recommendation. In such cases, the consent and recommendation of the Registrar, Co-operative Societies are essentially required since he remains well informed about the activities of the Co-operative societies. As a result of the action of the writ petitioners an ugly and hazardous situation was created before the Co-operative Department and the Government. The Central Registrar-cum-Joint Secretary, Government of India was conveyed that there was no approval of the competent authority in sending recommendation for registration of Land Development Bank under Multi-State Co-operative Societies Act, 2002 and the recommendation sent earlier was withdrawn by the Secretary, Co-operative Department vide letter dated 06.08.2008. Thereafter, on

the basis of the same, the Central Registrar-cum-Joint Secretary, Co-operative Department, Government of India kept the registration of Land Development Bank as Multi-State Societies in abeyance vide his order date 01.09.2008.

It is also pointed out by learned counsel for the State that the counter affidavit clearly refers to the Secretariat Manual which provides the duties of the dealing Assistant, Section Officer and concerned officers, who give their notings on the file. On the ground that the dealing Assistant and the Section Officer did not discharge their duties and concealed the facts, the Under Secretary cannot escape from his responsibility by simply saying that it was not brought to his notice and he simply endorsed the matter as put up before him by the dealing Assistant and the Section Officer, because he should have carefully examined and reviewed the notings of the dealing Assistant and Section Officer.

Learned counsel for the State also refers to the stand taken in the counter affidavit that it is not necessary for the State Government to agree with the decision of the Department and the plea of the petitioner that he only signed the approved draft cannot be accepted solely on the ground that if that would be the case then all the officers in the hierarchy between the dealing Assistant and the Secretary of the Department would have no responsibility in the matter.



It is also stated in the counter affidavit that the petitioner has been suspended not only because he did not take notice of the Cabinet decision, rather he has also been suspended for not taking the approval from the competent authority and if the petitioner would have taken the approval of the Registrar, Co-operative Department then the Cabinet decision would have definitely come into light. Since the matter was for giving recommendation to a Society for its registration as Multi-State Co-operative Society, therefore, before sending such recommendation, it was incumbent upon the recommending officers to first ascertain whether such society is legally registered or not and whether the registration of such society is continuing or not. Further since the letter of recommendation was to be sent to the Central Government, it is inconceivable that the writ petitioners did not think it proper to take approval of the Secretary of the Department.

It is, thus, submitted by learned counsel for the State that in view of the clear stand taken in the counter affidavit, it was not open to the State Counsel to take a stand which was contrary to the same nor the learned single Judge could have allowed the writ petition only on the basis of the statement of the State Counsel which was not in accord with the said stand.

It is also submitted by learned counsel for the State that the issue is not only of acting contrary to the Cabinet decision rather



the matter was not processed and placed before the appropriate authorities in terms of the Rules of Executive Business and the Secretariat Manual and post haste in a hush-hush manner, the letter has been signed by the writ petitioner Jitendra Kumar Singh with the approval of the other writ petitioner, Vijay Kumar Sharma without informing the higher authorities in the Department.

Learned counsel for the respondent, Jitendra Kumar Singh, on the other hand, submits that the said writ petitioner has not committed any illegality, rather he has only communicated the decision taken by his superior, the other writ petitioner. It is also submitted that the petitioner has to act as per law and under the Multi-State Co-operative Societies Act, 2002 the area of operation of the Society would be the States of Bihar and Jharkhand. Thus, the recommendation made for converting the Bihar Land Development Bank by its registration into a Multi-State Co-operative Society was in keeping with the provisions of the Multi-State Co-operative Societies Act, 2002. Therefore, the action of the petitioner is not contrary to law.

In support of the same, learned counsel for the respondent relies upon a decision of the Supreme Court in the case of Naresh Shankar Srivastava vs. State of Uttar Pradesh and others: (2009) 16 SCC 157.



It is submitted by learned counsel for the respondent that the Cabinet decision regarding the closure of the Land Development Bank was never brought to the notice of the said writ petitioner and therefore, at best, this is a technical lapse on his part, for which he should not have been thrust with the liability of the departmental proceedings. Learned counsel has also sought to place various developments that have taken place subsequent to the decision of the learned single Judge on 03.03.2009 to submit before this court to consider the over all situation and not interfere with the order.

In this connection, learned counsel for the writ petitioner seeks to rely upon subsequent development with regard to his career, which has been brought to the notice of this Court on the basis of an affidavit filed today in Court.

So far as such affidavit is concerned, the same can be of no relevance in the matter nor can it be looked into for examining the correctness or otherwise of the order under appeal.

So far as the respondent, Vijay Kumar Sharma, is concerned, learned counsel for the said writ petitioner submits that he has already superannuated on 30.06.2009 and much after his superannuation, the present appeal has been filed. It is also submitted that, as of today, no relationship of master and servant survives and thus the suspension order and the proposed

departmental proceedings cannot be proceeded against him.

We have considered the rival submissions of learned counsels for the parties and perused the records of the case.

It is evident that the impugned order of the learned single Judge has been passed on the basis of the stand taken by learned counsel for the State which on perusal of the counter affidavit appears to be clearly contrary to the stand taken therein.

The issue in the present matter is not really as to whether the Land Development Bank has become Multi State Co-operative Society or not under the Multi State Co-operative Society Act and as to whether the petitioners had acted in accordance with the said law while sending the recommendation on behalf of the State to the Joint Secretary-cum-Central Registrar, Co-operative and Agriculture Department, Government of India. The issue also is not whether the policy decision of the State Cabinet to close the Land Development Bank for its failure to achieve its objectives was followed-up by issuance of necessary notification in pursuance thereof as per the Rules of Executive Business nor is it relevant for the decision of the writ petitions as to whether the State Government had subsequently given direction for holding election to the Managing Committee of the Board of Directors of the Bank.

The question before the court was as to whether the State



Government was justified in issuing the order of suspension, by which the two writ petitioners were suspended from the post of Joint Secretary and Under Secretary in the Co-operative Department, Government of Bihar, by separate orders dated 10.11.2008. The issue actually pertains to the discipline that an officer of the Government is required to follow while taking any decision or communicating the same.

From the conspectus of facts brought on the record by way of the counter affidavit and as narrated above, it is evident that the allegation against the two writ petitioners was that they had not acted in accordance with the Rules of Executive Business while sending the recommendation to the Joint Secretary-cum-Central Registrar, Co-operative and Agriculture Department, Government of India with regard to the registration of Land Development Bank under the Multi State Co-operative Societies Act, 2002, i.e., without obtaining the consent of the Secretary of the Department of Co-operative, Government of Bihar or the consent of the Registrar, Co-operative Societies before sending such recommendation and also contrary to the Secretariat Manual in the matter.

On a consideration of the submissions of learned counsels for the parties, this Court finds much force in the submissions of learned counsel for the State that there was strong prima facie case

against the petitioners for suspending them and proceeding against them departmentally.

This Court does not find much substance in the submissions of learned counsels for the writ petitioners that they had only acted on the notings made by the Dealing Assistant and Section Officer who had not placed the correct facts before them. Without expressing any view regarding the culpability of the writ petitioners, this Court is of the view that if they had not complied with the Rules of Executive Business and the Secretariat Manual and had post haste in a hush hush manner sent the letter signed by the petitioner Jitendra Kumar Singh with the approval of the other petitioner, Vijay Kumar Sharma without informing the higher authorities of the Department then certainly there was a justification for the State Government to pass an order of suspension and proceed departmentally against them.

This Court also does not find much force in the stand of the respondent Jitendra Kumar Singh that he had only communicated the decision taken by his superior, the other writ petitioner, Vijay Kumar Sharma. It would be for the competent authority in the departmental proceedings to take a proper view of the matter on the basis of the materials that may come forward during the course of departmental proceedings; but once it is shown that the State Government has not acted arbitrarily in the matter and had prima

facie case for suspending the petitioners and proceeding against them departmentally then there can be no reason for interfering with such order of suspension by this Court.

The submission regarding superannuation of the respondent Vijay Kumar Sharma is also of no relevance as it cannot be said that since there is no relationship of master and servant, the proposed departmental proceedings cannot be proceeded against him since such a situation is covered by the Bihar Pension Rules and it would be for the competent authority to take appropriate steps in the matter.

Thus, in the light of the aforesaid discussions, both the appeals are allowed, the order of the learned single Judge is set aside and both the writ petitions are dismissed.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Dr. Ravi Ranjan, J)

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