

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.848 of 2013

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Rajendra Prasad Son Of Late Ram Chandra Prasad Resident Of Village And P.O.
Chakmuhila, P.S. And District Sitamarhi

.... Petitioner

Versus

1. The State Of Bihar Through The Secretary, Cooperative Department, Bihar, Patna
2. The Registrar, Cooperative Societies, Bihar, Vikas Bhawan, Patna
3. The Bihar State Cooperative Land Development Bank Ltd., Budha Marg, Patna Through Its Managing Director
4. The Administrator , The Bihar State Cooperative Land Development Bank Ltd., Budha Marg, Patna
5. The Managing Director, Bihar State Cooperative Land Development Bank Ltd., Budh Marg, Patna
6. The Deputy Managing Director (Administration) Bihar State Cooperative Land Development Bank Ltd., Budh Marg, Patna
7. The Senior Regional Manager, Muzaffarpur Region, Bihar State Cooperative Land Development Bank, Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Nitiranjana Jha, Adv. Mr. Rakesh Kumar Jha, Adv.
For the Respondent/s	:	Mr. M.K.Uppadhyay, AC to GP3
For the Bank	:	Mr. Y.V.Giri, Sr.Adv. Mr. Rajesh Pd. Chaudhary, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-11-2016

Heard Mr. Nitiranjana Jha, learned counsel appearing for the petitioner, learned counsel for the State and the learned counsel for the Bank.

With the consent of the parties the writ petition has been heard with a view to finally disposal of at the stage of admission itself.

The petitioner is aggrieved by the order dated 5.10.2012/ 18.10.2012 of the Registrar, Co-operative Societies, whereby as an



appellate authority he has upheld the order of dismissal dated 14.11.2000 passed against the petitioner by the Administrator, Bihar State Co-operative Land Development Bank (hereinafter referred to as 'the Bank'), a copy of which order(s), is impugned at Annexure 11 and 9 respectively to the writ petition.

In the nature of the order which this Court proposes to pass it would not be required to delve deep into the merit of the case. Suffice it to say that amongst other arguments advanced by Mr. Jha, learned counsel for the petitioner, the argument which drives home the matter in favour of the petitioner is the undisputed fact that the disciplinary proceedings were conducted in absence of the Presenting Officer. Law is well settled and a disciplinary proceeding conducted in absence of the Presenting Officer stands vitiated. An identical issue fell for consideration before this Court in the case of Lalan Pandey v. the State of Bihar & ors. arising from C.W.J.C.No. 270/2016 and this Court after taking note of the judgment(s) rendered by this Court and the Apex Court on the issue, has concluded as follows:

"The legal position being such, the Enquiry Officer representing the Disciplinary Authority could not have assumed the role of a Presenting Officer who represents the department and thus is an interested party. This single aspect of the matter has left the entire proceedings vitiated. The opinion expressed by this Court is supported in the judgment of the Supreme Court reported in (2010)2 SCC 772 (State of

Uttar Pradesh vs. Saroj Kumar Sinha) and paragraph 28 of the judgment explains the legal position which reads as under:

"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/ disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."

Reference in this regard is made to another judgment of this Court reported in 1996 (1) PLJR 401 (Panchanan Kumar vs. Bihar State Electricity Board) which was a case in which even when the Presenting Officer was appointed for the proceedings, he failed to appear and which role was assumed by the Enquiry Officer himself. A Bench of this Court taking note of the circumstances, made the following observations:

"11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of

both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of natural justice."

In the circumstances so discussed above where there was no Presenting Officer either to lead or to prove the evidence that was collected against the petitioner, the Enquiry Officer could not have assumed this duty to examine the evidence himself and to hold the same sufficient to uphold the guilt of the petitioner. Even if the case of the petitioner is of allegedly being caught red-handed while accepting the bribe and even if strict rules of evidence are not to be followed in the disciplinary proceeding yet a duty is cast on the Enquiry Officer to examine the evidence to see whether it is supportive of the allegation made and connects the delinquent with the charge. In absence of the Presenting Officer this mandatory procedure could not have been discharged by the Enquiry Officer himself."

Although in the case referred to above the Enquiry Officer had himself assumed role of a Presenting Officer, in the present case the situation is that even when the Administrator vide office order bearing Memo No. 1247 dated 16.8.1989, served the memo of charge on the petitioner and has proceeded to appoint one Siyaram Prasad Sinha, Deputy Manager, as an Enquiry Officer with direction to the petitioner to submit his defence but the order does not make any reference for appointment of a Presenting Officer.

In my opinion, this single infirmity where the disciplinary authority has failed to appoint the Presenting Officer, the disciplinary

proceeding so initiated against the petitioner stands vitiated. An appointment of a Presenting Officer is not an empty formality rather it is the Presenting Officer who has to place the case of the department on the charge against the petitioner and to adduce evidence in support enabling the delinquent to contest the charge as well as the evidence relied upon in support thereof. This lapse is fatal for the proceeding as a whole as in absence of any evidence being led by the department, the charge cannot be proved. On the other hand, the right of the petitioner delinquent to cross-examine the evidence also stands forfeited. On this short count, the entire proceedings initiated against the petitioner culminating in the order of dismissal dated 14.11.2000 passed by the Administrator, impugned at Annexure 9, as affirmed by the appellate authority in his order dated 5.10.2012/ 18.10.2012, impugned at Annexure 11, cannot be upheld and are accordingly set aside.

The writ petition is allowed.

This order, however, would not preclude the respondent Bank to proceed in the matter afresh but in accordance with law.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.11.2016
Transmission Date	NA