

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1340 of 2016
IN
Civil Writ Jurisdiction Case No. 11510 of 2000**

- =====
1. The Bihar State Financial Corporation, Fraser Road, Patna, through its Managing Director.
 2. The Board of Directors of Bihar State Financial Corporation, through its Chairman, Fraser Road, Patna.
 3. Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.

.... Appellant/s

Versus

1. Shashi Bhushan Yadav S/o Late R.S. Yadav, residing at Road No. 104, Rajendra Nagar, District- Patna- 800016.
2. Ashok Kumar, son of name not known, Assistant General Manager, Bihar State Financial Corporation, Fraser Road, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Y V Giri, Sr. Advocate Mr. Nikhil Kumar Agrawal, Advocate
For the Respondent/s	:	Mr. Manik Vedsen, Advocate Mr. Subhash Chandra Bose, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 17-08-2017

Seeking exception to an order dated 17.07.2015 passed by the learned Writ Court in CWJC No. 11510 of 2000 this appeal has been filed under Clause 10 of the Letters Patent.

There being a delay of 150 days in filing of the present appeal, I.A. No. 5022 of 2016 has been filed seeking condonation of delay. Keeping in view the reasons indicated in the application, the delay is condoned.



The respondent 1st set-writ petitioner was working in the Bihar State Financial Corporation, Patna (hereinafter referred to as “the Corporation”) and as a measure of punishment he was compulsorily retired based on charge-sheet issued to him and a departmental enquiry conducted. The learned Writ Court having found that the entire enquiry stands vitiated and having quashed the same, this appeal by the Corporation.

From the detailed order passed by the learned Writ Court, we find that based on certain complaint made by one Shri Hemant Kumar Sharma through his letter dated 05.01.1996, the departmental enquiry in question was conducted and it was alleged against the respondent employee that he sanctioned the additional loan from the Corporation on 05.08.1986 and became a victim of the loan agreement and it was shown that one Raj Kumari Sharma had executed the loan agreement as a partner of the firm and that Hemant Kumar Sharma made a complaint that Raj Kumari Sharma has expired and, therefore, the petitioner has committed a misconduct. In the departmental enquiry, it was found that neither Shri Hemant Kumar Sharma, the complainant, was examined nor the complaint made by him proved nor the fact about death of Raj Kumari Sharma on 20th July, 1985 was proved by leading any evidence. On the contrary, the Enquiry Officer admitted in evidence that the complaint



was given by Shri Hemant Kumar Sharma and accepted the allegation to be proved solely on the basis of the aforesaid complaint without the complainant being examined and the petitioner being granted an opportunity to cross-examine the complainant.

The learned Writ Court has gone into details with regard to the manner in which the enquiry was conducted and finding the non-examination of the complainant in the enquiry to be fatal placing reliance on certain judgments of the Supreme Court, particularly in the case of **Commissioner of Police, Delhi vs. Jai Bhagwan [(2011) 6 SCC 376]** held that non-examination of the complainant and non-grant of opportunity to cross-examine the complainant and even without properly proving the complaint the finding recorded by the Enquiry Officer is unsustainable. In our considered view, in doing so, the learned Writ Court has not committed any error.

Learned counsel for the appellant argued before us that when there was no denial by the petitioner to the complaint or the signature in the complaint, the learned Writ Court has committed an error in interfering into the matter.

In our considered view, when the charges are leveled against a delinquent employee and when enquiry is conducted on the allegation levelled based on the complaint received, the complainant becomes a material witness and the complaint has to be proved by



examining of the complainant and the delinquent employee is entitled to have a right to cross-examine the complainant. In this case, nothing was done and merely on the basis of the complaint received the Enquiry Officer held the charges to be proved. We find from the written submission and the explanation submitted by the petitioner that he has categorically raised the question with regard to veracity of the complaint and has also challenged in his written submission before the Enquiry Officer the fact about the complainant not being produced as witness.

Keeping in view all these factors, we are of the considered opinion that the learned Writ Court has not committed any error in allowing the writ petition. We see no reason to make any indulgence into the matter.

The appeal stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

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