

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2969 of 2014

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1. Vishnu Kumar Jhunjhunwala Son Of Girdhari Lal At Present Branch Manager,
Madhya Bihar Gramin Bank, Branch Gopal Bad, P.S. Sarmera, District- Nalanda
.... Petitioner/s

Versus

1. The Madhya Bihar Gramin Bank Through Chairman, Head Officer, South Of
Museum, Patna
2. The General Manager, Madhya Bihar Gramin Bank, Head Office, South Of
Museum, Patna
.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. PREM PRAKASH ARYA
For the Respondent/s : Mr. MAHESH NARAYAN PARBAT

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 24-07-2017

Heard both sides.

2. The petitioner filed this writ petition for issuance of writ of mandamus to direct the respondents to publish the result of the examination held for promotion from Officer Scale-I to Officer Scale-II in Madhya Bihar Gramin Bank.

3. The brief facts which are relevant for the disposal of the writ petition are that the petitioner was appointed in Officer Scale-I on 09.03.1990 in Nalanda Gramin Bank and he worked at different branches of the bank. The petitioner joined on 22.12.2011 as Branch Manager in Gopalbad branch of the bank. The bank held an examination for promotion from the post of Officers Scale-I to Officers Scale-II on 26.02.2012 (vide Letter No. 847/2013 dated 15.02.2012) (Annexure-1). The petitioner was called for interview on



25.03.2012. The interview was held from 04.06.2012 to 12.06.2012. The petitioner was interviewed on 09.06.2012. The result of the examination was published but, the petitioner was not appointed and his result was kept in sealed cover on 27.06.2012. Although the persons who got less marks than the petitioner were promoted.

4. The respondent nos. 1 and 2 filed counter affidavit stating the facts that the petitioner is Junior Management Grade Scale-I Officer of the bank and he was posted as Gopalbad branch of the bank. A disciplinary proceeding was contemplated vide order dated 30.05.2012 (Annexure-A to the supplementary counter affidavit) with regard to illegality and irregularity committed by the petitioner in the bank. The charge sheet was issued on 06.07.2013. The Manager of the bank recommended for CBI enquiry and that is why some delay was caused. The respondents although admitted the facts that on the date of publication of the result there was no proceeding pending against the petitioner.

5. The only question arises for consideration, as to whether the bank is justified in keeping the result of the petitioner in sealed cover? It is admitted fact that the written examination of the petitioner was held on 26.02.2012. The petitioner was interviewed on 25.03.2012. The final result was also published and person such as Mr. Ramsagar Prasad who got 20 marks was promoted to the post of



MMG Grade Scale-II. Admittedly, the petitioner got 31.25 marks and the persons who got less marks than the petitioner were promoted. On the date of publication of the result of Officer Scale-II MMG no proceeding was pending against the petitioner. The charge sheet was submitted against the petitioner only on 06.07.2013 therefore, the fact is admitted that on the date of publication of result, there was no proceeding pending against the petitioner. The proceeding can be deemed to be initiated only on the date of service of memo of charge and thus withholding the result of the promotion and keeping the same in sealed cover is not legal. This view has been fortified by the Supreme Court in the case of ***Union of India V.K.V. Jankiraman and Others*** reported in (1991) 4 Supreme Court Cases 109 paragraph nos. 16 & 17 being relevant read as follows:-

16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and



it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows: (ATC p. 196, para 39)

“ (1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(4) the sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal court and not before;”

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said



benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.

6. The sealed cover procedure can also be adopted when the employee is placed under suspension. Admittedly the charge sheet was issued and served on the petitioner on 06.07.2013 and much prior to the aforesaid date, junior to the petitioner was promoted and on that day there was no proceeding against the petitioner.

7. Having considered the facts aforesaid I find that the respondents have illegally withheld the promotion of the petitioner by keeping the result of the petitioner in sealed cover. The respondents are directed to publish the result of the petitioner and give him promotion from the date on which his junior was promoted to the post of Officer Scale-II and pay the arrears to the petitioner within a period of four months from the date of receipt/production of a copy of this order. Accordingly, this writ petition is allowed.

(Prabhat Kumar Jha, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.08.2017
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