IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2819 of 2014

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Lakshmeshwar Prasad Roy @ Rai Son Of Bhagat Narayan Rai, resident of village and Post Office Dehuli, via Chandanpatti, Police Station Shakara, District - Muzaffarpur

.... Petitioner

Versus

1. Uttar Bihar Gramin Bank, Head Office Lallambagh Chowk, Muzaffarpur, District Muzaffarpur, Bihar through its Chairman
2. The Chairman, Uttar Bihar Gramin Bank, Head Office Lallambagh Chowk, Muzaffarpur, District Muzaffarpur, Bihar
3. The Branch Manager, Uttar Bihar Gramin Bank, Laxumanpur Barbatta Branch, District - Vaishali

.... Respondent

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Appearance :
For the Petitioner/s : Mr. Sanjay Kumar Verma, Advocate
For the Respondent/Bank: Mr. Prabhakar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
CAV JUDGMENT
Date: 20-06-2017

The prayers of the petitioner in paragraph- 1 of the writ application are as under:-

> "1. That this is an application praying for issuance of a writ in the nature of Mandamus or any other appropriate writ, order or direction commanding the respondents for making payment of post retiral dues to the petitioner along with interest simple as well as penal, inter alia, the following reliefs:-
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> (i) Respondents' perception in considering the petitioner as under suspension for the purpose of the enquiry so for withholding the outstanding dues of the petitioner, when no enquiry commenced against

the petitioner, be highly deprecated and accordingly for directing the respondent to release the outstanding dues of the petitioner in favour of the petitioner;

(ii) Respondents be directed to pay outstanding provident fund amount, gratuity, cash against privileged leave, the arrears of pay as of the period of suspension i.e. from 21.2.2007 to 31.05.2012 and other retiral dues to the petitioner without being prejudiced by the suspension order considered as deemed continued even after retirement of the petitioner from service as on 31.05.2012;

(iii) Respondents be directed to grant all the consequential benefits to the petitioner for which he is legally entitled to;

(iv) Any other relief or reliefs be granted to the petitioner as he is legally entitled in the facts and circumstances of the case."

2. The facts of the case, in short, are that the petitioner was initially appointed on 01.09.1977 in Uttar Bihar Kshetriya Gramin Bank (for short 'the Bank') and from the said date, he was discharging his duty in different branches of the Bank in different capacities. While the petitioner was functioning as the Branch Manager of the Bank in Laxmanpur Barbatta Branch, Vaishali, a team of State Vigilance led a trap on 21.02.2007 and arrested him while accepting illegal gratification of Rs.3000/- in lieu of sanctioning of loan to the complainant. After his release on bail, he submitted his joining on 25.6.2007, but no order was passed thereon and the petitioner continued to receive subsistence

allowance regularly at the rate of 50 per cent of his salary. On 27.07.2007, he represented before the respondent Chairman of the Bank to vacate the order of suspension and for his reinstatement, but no order was passed thereon. Thus, the petitioner approached this Court by filing CWJC No. 7510 of 2011 for quashing of the suspension order. This Court, vide order dated 9.8.2011, disposed of CWJC No. 7510 of 2011 by granting liberty to the petitioner to file fresh representation before the Chairman of the Bank for revocation of order of suspension and the Chairman of the Bank was directed to consider and take a decision in accordance with law on such representation. Thereafter, the petitioner challenged the aforesaid order in an appeal, vide LPA No. 1252 of 2011, but the same was also disposed of, vide order dated 19.9.2011 without interfering with the order passed on the writ petition. Thereafter, the petitioner filed his representation afresh before the respondent Bank requesting therein for revocation of his suspension order, but the aforesaid representation was rejected, vide order dated 4.5.2012 issued under the signature of Chairman of the Bank. Thereafter, the petitioner challenged the aforesaid order before this Court, vide CWJC No. 10072 of 2012. However, even before the said writ application could have been taken up, the petitioner superannuated from service with effect from 31.05.2012.

3. It is contended by the learned counsel for the petitioner that on retirement of the petitioner from service, the relationship of the employee and the employer ceased, as there was no departmental proceeding either commenced or pending against him while he was in service. Though the petitioner made a request to the Bank to pay his terminal benefits and also filed a detail representation in this regard on 15.10.2013, his terminal dues has not been paid. He contended that in terms of service regulation the petitioner is entitled to receive the payments of contributory provident fund, gratuity, leave encashment and group insurance. He contended that in absence of any departmental proceeding against the petitioner, the respondent Bank has no jurisdiction to withhold the terminal benefits of the petitioner.

4. *Per contra*, learned counsel for the respondent Bank submitted that in terms of the service regulation, the petitioner is not entitled for payment of terminal benefits till completion of the judicial proceeding pending against him. He contended that after retirement, a show-cause notice was asked by the Bank, vide letter no. 3.2.2014, from the petitioner as to why his terminal dues should not be withheld. Since the petitioner failed to reply to the show-cause notice within the stipulated period of 15 days, the Chairman of the Bank, vide order dated 12.1.2015 informed the petitioner that

needful action would be taken up against him after the completion of the judicial proceeding pending against him. It was also informed that the petitioner will not be entitled for payment of terminal benefits until such proceeding is completed and the final orders are passed thereon except his own contribution to the provident fund. In support of his submission, learned counsel for the respondent Bank has placed reliance on regulations 30 and 45 of the **Uttar Bihar Gramin Bank (Officers & Employees) Service Regulations, 2010** (for short 'the Regulations, 2010').

5. In reply, learned counsel for the petitioner submitted that the impugned action of the respondent Bank to inform the petitioner that his terminal benefits except his own contribution to the provident fund would not be paid until completion of the judicial proceeding is without jurisdiction, as after cessation of the master servant relationship in absence of any power vested in the Chairman of the Bank, the Chairman could not have invoked such power to withhold the terminal benefits of the petitioner.

6. I have heard learned counsel for the parties and carefully perused the record.

7. The issue for adjudication is whether or not in terms of the service regulations framed under 'the Regulations,

2010' of 'the Bank', the petitioner is entitled for payment of his terminal benefits during the pendency of the judicial proceeding initiated against him.

8. Be it noted at this juncture that in exercise of powers conferred by Section 30 of Regional Rural Bank Act, 1976 (21 of 1976), the Board of Directors of the Bank after consultation with the Central Bank of India, being the Sponsor Bank and National Bank for Agriculture and Rural Development and with the previous sanction of the Central Government made 'the Regulations, 2010', which came into force with effect from 12.08.2010.

9. In order to resolve the issue, at this stage, it would be expedient to refer to the relevant service regulations provided in 'the Regulations, 2010'.

10. Thus, the relevant regulations 30 and 45 of 'the Regulations, 2010' are extracted hereunder :-

> "**30. Officer or employee arrested for debt or on a criminal charge,**
>
> **(1)** An officer or employee who is arrested for debt or on a criminal charge or detained in pursuance of any process of law for the time being in force, may, if so directed by the Competent Authority, be treated as being or having been under suspension from the date of his arrest, and/or detention, as the case may be, upto such date or during such period as the Competent Authority may direct :
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> **Provided that** in respect of the period in regard to which he is so treated, he shall be paid subsistence allowance as specified in regulation 46.

(2) Any payment made to an officer or employee under sub-regulation (1) shall be subject to adjustment of his pay and allowances which shall be made according to the circumstances of the case and in the light of the decision as to whether such period is to be accounted for as a period of duty or leave:

Provided that full pay and allowances shall be admissible only if the officer or employee,-

(i) is treated as on duty during such period; and

(ii) is acquitted of all charges or satisfies the Competent Authority, in case of his release from detention or his detention being set aside by the Competent Court, that he had not been guilty of improper conduct resulting in his detention.

(3) (a) An officer or employee shall be liable to dismissal or to any of the other penalties referred to in regulation 39 if he is committed to prison for debt or is convicted of an offence which in the opinion of the Competent Authority, either involves moral turpitude, or has a bearing on any of the affairs of the Bank or on the discharge by the officer or employee of his duties in the Bank, the opinion in this respect of the Competent Authority shall be conclusive and binding on the officer or employee;

(b) such dismissal or other penalty may be imposed as from the date of his committal to prison or conviction and nothing in regulation 39 shall apply to such imposition.

(4) Where an officer or employee has been dismissed in pursuance of sub-regulation (3) and the relative conviction is set aside by a higher court and the officer or employee is acquitted, he shall be reinstated in the service of the Bank.

(5) Where the absence of an officer or employee from duty is without leave or his overstay is due to his having been arrested for debt or on criminal charge or to his having been detained in pursuance of any law for the time being in force, the provisions of regulation 23 shall also apply and for the purpose of that regulation the officer or employee shall be treated as having absented himself without leave or as the case may be, overstayed otherwise than under circumstances beyond his control.

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 competed 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."

11. From a perusal of the aforesaid sub-regulation (1)

of the regulation 30, it would be evident that the same vests the Competent Authority of the Bank with the jurisdiction to put an employee, who is arrested for debt or on a criminal charge or detained in pursuance of any process of law under suspension from the date of his arrest provided that in respect of the period in regard to which he is treated under suspension, he shall be paid subsistence allowances, as specified in the regulation 46.

12. Sub-regulation (2) of the aforesaid regulation 30 stipulates that full pay and allowances shall be admissible only if the officer or employee is treated on duty during period of suspension and is acquitted of all charges or satisfies the Competent Authority in case of his release from detention or his detention is set aside by the Competent Court.

13. Sub-regulation (3) of the aforesaid regulation 30 stipulates that an officer or employee shall be liable to dismissal or to any of the other penalties referred to in the regulation 39, if he is committed to prison for debt or is convicted of an offence, which in the opinion of the competent Authority, either involves moral turpitude, or has a bearing on any of the affairs of the Bank, or on the discharge by the officer or employee of his duties in the Bank.

14. Clause (b) of sub-regulation (3) of the aforesaid regulation 30 stipulates that such dismissal or other penalty may be

imposed as from the date of this committal to prison or conviction of the officer or employee and nothing in the regulation 39 of 'the Regulations, 2010' shall apply to such imposition.

15. Sub-regulation (4) of the aforesaid regulation 30 stipulates that where an officer or employee is dismissed in pursuance of sub-regulation (3) and the relative conviction is set aside by a higher court and the officer or employee is acquitted, he shall be reinstated in the service of the Bank.

16. Sub-regulation (5) of the aforesaid regulation 30 stipulates that where the absence of an officer or employee from duty is without leave, or his overstay is due to his having been arrested for debt, or on criminal charge, or to his having been detained in pursuance of any law, the officer or employee shall be treated as having absented himself without leave.

17. Regulation 45 of 'the Regulations, 2010' deals with the disciplinary proceedings in respect of an officer or employee after retirement. Sub-regulation (1) of the said regulation 45 stipulates that 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.

18. Sub-regulation (2) of the aforesaid regulation 45 prescribes that the officer or employee who is under suspension shall not be eligible for any subsistence allowance for the period beyond the date of superannuation.

19. Sub-regulation (3) of the aforesaid regulation 45 prescribes that the officer or employee against whom disciplinary proceeding is 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 conclusion of proceedings and passing of final order in respect thereof.

20. Sub-regulation (4) of the aforesaid regulation 45 prescribes that the officer or employee against whom disciplinary proceeding is initiated shall not receive any pay and allowances after the date of superannuation and shall also not be entitled for the payment of retirement benefits till the proceeding is competed and final order is passed thereon except his own contribution to Contributory Provident Fund.

21. Explanation to the aforesaid regulation 45 clarifies that for the purposes of the regulation, the normal retirement benefits like 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.

22. On a careful reading of the regulations 30 and 45 of ‘the Regulations, 2010, I find that sub-regulation (3) of regulation 30 confers jurisdiction on the Competent Authority to dismiss an employee or officer or to impose any other penalty referred to in the regulation 39, if he is committed to prison for debt or is convicted of an offence which involves moral turpitude or has a bearing on any of the affairs of the Bank.

23. It is not the case of the respondent Bank that the petitioner was committed to prison for debt or has been convicted of any offence.

24. I further find that the regulation 45 of ‘the Regulations, 2010’ deals with the provision of disciplinary proceedings after retirement. It empowers the Competent Authority to continue with the disciplinary proceedings after retirement of an officer or employee, who is under suspension on a charge of misconduct. It provides, *inter alia*, that an officer or employee against whom a disciplinary proceeding has already been initiated while he was in service shall cease to be in service on the date of superannuation, but the disciplinary proceeding shall continue as if he was in service until conclusion of the proceeding. It specifically

provides that an employee against whom a disciplinary proceeding has already been initiated would not be entitled to receive any pay or allowances after the date of superannuation and he would also not be entitled for payment of terminal benefits till the proceeding is completed and final order is passed.

25. There is nothing in the regulation 30 and 45 of 'the Regulations, 2010' on the basis of which it can be said that an officer or an employee, who was under suspension due to institution of a criminal case against him and who has been allowed to retire without initiating any departmental proceeding against him can be denied his terminal benefits during the pendency of the criminal case.

26. The question now is whether any disciplinary proceeding had been initiated against the petitioner prior to his retirement. Admittedly, no charge-sheet was ever served against the petitioner while he was in service and even after his retirement no proceeding has been initiated against him. It is well settled that framing of charge is the first step for initiating any disciplinary proceeding against an employee. It is true that explanation of regulation 45 clarifies that terminal benefits may be withheld till the completion of disciplinary proceedings. But, in the present case, when no disciplinary proceeding has been initiated against the

petitioner, there is no question of withholdment of terminal benefits.

27. The importance of right to pension was considered by the Constitution Bench of the Supreme Court in ***D.S. Nakara & Others Vs. Union Of India [AIR 1983 SC 130].*** In the said decision the Constitution Bench held :

(i) Pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer ;

(ii) Pension is not an ex-gratia payment but it is a payment for the past service rendered ; and

(iii) Pension is a social welfare measure rendering socio-economic justice.

28. In ***All India Reserve Bank Retired Officers Association Vs. Union of India [AIR 1992 SC 767]***, a two-Judge Bench of the Supreme Court observed "**The concept of pension is now well known and has been clarified by this Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socio economic requirements of the**

Constitution when the employer is a State within the meaning of Article 12 of the Constitution….”

29. In ***Madhaorao Phalke Vs. The State of Madhya Bharat [AIR 1961 SC 298], State of Madhya Pradesh Vs. Ranojirao Shinde & Anr [AIR 1968 SC 1053]*** and ***Deokinandan Prasad Vs. State of Bihar & Ors [AIR 1971 SC 1409],*** the Supreme Court held that the pension is property.

30. In. ***State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr. [2013(3) PLJR SC 458]***, the Supreme Court observed “**It is thus hard earned benefit which accrues to an employee and is in the nature of “property”. This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India**.”

31. In view of the discussions made above and the ratio laid down by the Supreme Court in the decisions noted above, I am of the considered opinion that the petitioner may not be entitled to receive any pay or allowances during pendency of the criminal proceeding initiated against him keeping in mind the provisions prescribed under the regulation 45 of ‘the Regulations, 2010’, but in absence of any disciplinary proceeding and in absence of having been convicted of any criminal charge, it is not within the jurisdiction of the respondent Bank to withhold his retirement

benefits.

32. Accordingly, the respondents are directed to release the terminal benefits of the petitioner within three months from the date of receipt/production of a copy of this order. Any contrary order passed by the Chairman of the Bank in this regard stands quashed. The Competent Authority of the Bank shall consider the claim of the petitioner regarding the outstanding dues for the period of suspension after the judgment in the criminal case initiated against him.

33. The writ application stands allowed to the extent indicated hereinabove.

34. The parties shall bear their own costs.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	20.02.2017
Uploading Date	21.06.2017
Transmission Date	NA