

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2392 of 2016
IN
Civil Writ Jurisdiction Case No. 1257 of 2013**

- =====
1. Bihar State Cooperative Marketing Union Ltd., through its Chairman, Biscomaun Bhawan, Patna through its Chairman.
 2. The Managing Director, Bihar State Co-Operative Marketing Union, Biscomaun Bhawan, West Gandhi Maidan, Patna
 3. The Secretary, Bihar State Co-operative Marketing Union Ltd, Patna, Biscomaun Bhawan, Patna.
 4. The Special Officer (Administration) Bihar State Co-operative Marketing Union Ltd, Patna, Biscoman Bhawan, Patna.
 5. The Enquiry Officer, Biscomaun, Patna.
 6. The Range Officer, Biscomaun , Dumka.

.... Appellant/s

Versus

1. The State of Bihar
2. The Registrar, Co-operative Societies, Bihar, Patna.
3. The District Co-Operative Officer, Dumka .
4. Dinesh Kumar S/o Ramji Mahto Resident of Village- Gonawa Road, Harnaut, P.S Harnaut, District Nalanda.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Surendra Kumar Mishra
Mr. Ashish Giri
For the Respondent/s : Mr. Abu Haider and Mr. Abu Shajar

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 23-08-2017

Seeking exception to an order dated 17.11.2016
passed by the learned Writ Court in CWJC No. 1257 of 2013, this
appeal has been filed under Clause 10 of the Letters Patent.

The respondent-employee Dinesh Kumar was
working as an Assistant Store Manager with the Bihar State Co-



operative Marketing Union Limited ('BISCOMAUN' for brevity). A departmental enquiry was conducted against him and he was dismissed from service. The appeal filed by him was also dismissed and, therefore, the writ petition was filed.

The learned Writ Court allowed the writ petition, quashed the order of dismissal and the appellate order and directed for reinstatement of the petitioner in service with 50% back wages and, therefore, challenging the said order this appeal has been filed under Clause 10 of the Letters Patent by the appellant-BISCOMAUN, primarily on account of the fact that the learned Writ Court has acted in excess of jurisdiction, has disagreed with the findings of the Enquiry Officer. Even though it is alleged that in doing so, the law laid down by the Supreme Court in the case of **Diwan Singh vs. Life Insurance Corporation of India & Ors. [(2015)2 SCC 341]** and by a Division Bench of this Court in the case of **Bihar State Electricity Board vs. Bindeshwar Mandal [2014(3) PLJR 109]** have been lost sight of which demarcated the jurisdiction available to this Court in such matters under Article 226 of the Constitution of India.

Learned counsel for the appellants invited our attention to the charge-sheet available in the record of the writ petition (Annexure-4A) and argued that there were six charges against the



petitioner. Even though the learned Writ Court has dealt with various charges but it did not deal with Charge No. 6 pertaining to defalcation of rent of Rs.4000/-. It was argued that by sitting over the decision of the disciplinary authority and the appellate authority as if it was exercising the appellate jurisdiction the learned Writ Court committed grave error. However, learned counsel for the respondent invites our attention to the perverse finding recorded by the Enquiry Officer, its assessment by the learned Writ Court and pointed out that when an enquiry is conducted and the punishment is imposed on the basis of a perverse finding which amounts to violation of the principles of natural justice, the Writ Court can very well interfere into the matter and, in this case, as the learned Writ Court has interfered into the matter finding the report of the Enquiry Officer to be perverse and the decision making process vitiates the prayer for interference into the matter.

We have heard learned counsel for the parties and we have gone through the materials available on record. We find that various charges were levelled against the petitioner and the matter pertains to defalcation and misappropriation of Rs.95,281.20p. in all. However, the learned Writ Court evaluated the entire matter and found that the petitioner was working as an Assistant Store



Manager in Sale Centre, Masalia, in the district of Dumka, now in the State of Jharkhand. Even though it is indicated that there is defalcation or misappropriation of Rs.95,281.20p., the charge in fact was with regard to causing loss to the establishment to the tune of Rs.79,690.55p. in the matter of supply and destroy of fertilizers. The second allegation was for not realizing Rs.13,708.65p. from the Central Co-operative Bank on account of supply of fertilizers and the third charge was with regard to spending excess of Rs.1882/-. Accordingly, it is seen that it is not a case of misappropriation but it is a case of performing the work and causing loss to the department in the manner. That apart, the learned counsel argues that there is a charge of defalcation of Rs.4000/- towards the rent payable.

We have considered that aspect of the matter also and we find that all these allegations were taken note of and after analyzing the enquiry report the learned Writ Court has found that the charge of defalcation has already been diluted by the Enquiry Officer and it has been considered to be failure on the part of the petitioner in recovering the amount and spending excess amount of Rs.1882/-. With regard to defalcation of Rs.79,690.55p., the learned Writ Court found that the defalcation is not proved. In fact, the learned Writ Court in Page -8 of its order in detail records the



explanation of the petitioner with regard to the charges and has pointed out that the loss was caused to the department because of the administrative lapse on the part of the department itself after taking note of the explanation submitted by the petitioner which goes to show that the godown in question was in a remote hilly area and because of water seeping into the godown the loss occurred. The petitioner had been communicating to the department with regard to the dilapidated condition of the godown, had been seeking interference by the local authorities time and again by his communications from 1986 to 1989 for repairing of the godown and the Writ Court taking note of all these explanations and defence recorded its finding as follows:-

“A cursory glance at the explanation of the petitioner, the extract of which is reproduced above, shows that in very clear terms, the petitioner has explained the reasons which led to the loss of fertilizers. He has also referred to the letters written by him to the superior officers for repair of the godown and the steps taken by him to save the fertilizers. The petitioner has stated that it is because the godown was in bad condition and his letters did not bear attention that it resulted in loss of the fertilizers. The petitioner has also explained the non-cooperative attitude of the local officers. I am rather surprised that despite such explanation given by the petitioner, while the Enquiry Officer has failed to even discuss the explanation, the Administrator acting as the disciplinary authority has gone a step further to mechanically uphold the charge. The order of penalty passed by the Administrator does not deal with the reply of the petitioner nor discusses the evidence supporting charge of defalcation nor



assigns reasons for upholding the charge. The order apparently has been passed mechanically and reflects no application of mind. Law is well settled and where an order of quasi-judicial authority is acting to the prejudice of a party, it should discuss the reasons on which such decision is resting otherwise it sails into the category of perversity. An order visiting the delinquent with civil consequences should at least reflect application of mind.

In my opinion, in view of the explanation given by the petitioner to the charge of defalcation of Rs.79,690.55p. which explanation has neither been noticed nor rejected either by the Enquiry Officer or the disciplinary authority, the charge itself loses its sting. In so far as the remaining two charges are concerned, even if a non-recovery of the balance amount of Rs.13,708.65p. from the Central Co-operative Bank would comment on the efficiency of the petitioner on his recovery powers but it certainly cannot be held a defalcation. The same also applies to the charge of expenditure of Rs.1882/-, which may be an error of judgment on the part of the petitioner but these charges have no trapping of a misconduct inviting punishment of dismissal. Conformingly the impugned orders, upholding the charges against the petitioner, is based on no evidence and since the explanation given by the petitioner, has not been dealt with, it is a perversity.”

This being the position as it made out from the record, we see no reason to make any indulgence into the matter. It is not a case where the learned Writ Court has acted in exercising appellate jurisdiction. It has only gone into the matter in detail and finding the report of the Enquiry Officer and that of the disciplinary authority to be unreasonable and perverse has interfered into it and directed for reinstatement of the petitioner with 50% back wages.



The order of the learned Writ Court is reasonable in nature and we find no case for interference into the matter. The appeal is accordingly dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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