

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1111 of 2017
IN
Civil Writ Jurisdiction Case No. 323 of 2009
With
Interlocutory Application No. 5755 of 2017
And
Interlocutory Application No. 5756 of 2017

- =====
1. The Bihar State Housing Board, through the Chairman cum Managing Director, 6, Mangls Road, Patna.
 2. The Chairman cum Managing Director, Bihar State Housing Board, 6, Mangls Road, Patna.
 3. The Secretary, Bihar State Housing Board, 6, Mangls Road, Patna.
 4. The Chief Engineer, Bihar State Housing Board, 6, Mangls Road, Patna.
 5. The Superintending Engineer, Bihar State Housing Board, Bahadurpur, Patna.
 6. The Executive Engineer, Bihar State Housing Board, Patna Division No. 3, Bahadurpur, Patna.

.... Respondents / Appellants

Versus

1. Ram Dhani Singh Son of Late Ramdeo Singh Resident of Village : Rustampur, P.O. Rustampur, P.S. Hulasganj, District : Jehanabad.

..... Petitioner / Respondent 1st Set

2. The Regional Provident Fund Commissioner, R. Block, Road No. 6, Bihar, Patna.
3. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Vikas Bhawan, Patna.

.... Respondents / Respondents 2nd set.

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Appearance:

For the Appellant/s : Mr. Ram Kishore Singh, Advocate.

For the Respondent/s : Mr. Rupak Kumar, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 16-02-2018

Re. I.A. No. 5755 of 2017.

This Interlocutory Application has been filed for
condonation of delay of 255 days occurred in filing of Letters Patent



Appeal.

For the reasons stated in the Interlocutory Application, the delay is condoned.

The Interlocutory Application is allowed.

Re. L.P.A. No. 1111 of 2017.

The Bihar State Housing Board and its authorities are in appeal before us for setting aside the impugned judgment and order dated 27.10.2016 passed in C.W.J.C. No. 323 of 2009. By the impugned judgment the learned Writ Court has been pleased to quash the impugned order dated 04.03.2008, as contained in Memo No. 1331 (Annexure-1 to the Writ Application), and after quashing of the impugned order the Writ Court has further issued a direction to the respondents-appellants to refund the recovered amount of Rs. 37,531/- within the stipulated period, failing which interest @ 9% per annum shall be payable.

2. The facts as appearing from the impugned judgment of the learned Writ Court are not in dispute. The writ petitioner was working as a Junior Engineer with the Bihar State Housing Board (hereinafter referred to as 'the Board'); he was served with a charge sheet. The allegation against the petitioner was that while he was posted at Gaya Division, Gaya, he had made excess payment of Rs. 19,929/- and Rs. 17,602/- (Total Rs. 37,531/-) to the contractors



engaged for construction of houses in Village Jhangri Bigha and Telbhadro. It was alleged that he had, thus, caused a loss of Rs. 37,531/- to the Board.

3. It appears from Annexure-4 to the Writ Application that in course of enquiry the Presenting Officer could not produce any evidence to prove the charges, therefore, the Enquiry Officer came to a conclusion that in absence of any provision the charges could not be proved and it is difficult to prove the entries made in the Measurement Book No. 308G as wrong entries, therefore, he recommended that the Disciplinary Authority should consider exonerating the petitioner from the alleged charges.

4. The enquiry report, as contained in Annexure-4, was sent to the Chairman-cum-Managing Director of the Board vide letter dated 02.05.1991 issued under signature of the Chief Engineer, who had been entrusted with the enquiry. Despite submission of the enquiry report in the year 1991. It is the case of the petitioner that Office Order No. 4771 dated 26.11.1992 was issued by the Secretary, Housing Board dropping the departmental proceeding against another Junior Engineer, namely, Sri Kapildeo Singh but, so far as the petitioner is concerned, he was served with a show cause as contained in Annexure-9 with a copy of the enquiry report, vide Memo No. 6642 dated 01.09.1999, issued by the Secretary of the Housing Board



requiring a reply from the petitioner on the enquiry report. It is the specific case of the petitioner that with the show cause the Disciplinary Authority did not serve any notes of disagreement on his part.

5. Learned Senior Counsel representing the petitioner – respondent no. 1 submits that in terms of the judicial pronouncements of the Hon'ble Supreme Court in the case of **Punjab National Bank & Ors. Vs. Kunj Behari Misra**, reported in (1998) 7 SCC 84, in the facts of the present case where the petitioner was exonerated in the enquiry if the Disciplinary Authority wanted to differ with the enquiry report it was incumbent upon him to serve a note of disagreement calling upon the petitioner to show cause as to why the charge against the petitioner be not held to be proved. Since in the present case no notes of disagreement was issued, learned Senior Counsel submits that the Housing Board and its authorities had not acted in accordance with the principles of natural justice.

6. From the records it also appears that no order was passed in the departmental proceeding and the petitioner was allowed to superannuate on 31.07.2007, i.e., after more than 7 years from the date of service of second show cause on 01.09.1999 and filing of reply thereto. It is only when the Housing Board was required to pay the post-retiral dues to the petitioner, all of a sudden, the impugned



order dated 08.05.2008 was passed for recovery of Rs. 37,531/- which is said to be the alleged loss.

7. The learned Writ Court has relied upon a number of judicial pronouncements on the subject wherein it has been held that the competence of an authority to hold the enquiry against an employee, who has retired, depends upon the statutory rules which governed the terms and conditions of his service. In this connection judgments of the Hon'ble Supreme Court in the case of **NOIDA Entrepreneurs Association Vs. NOIDA & Ors.**, reported in AIR 2011 SC 2112, has been relied upon. The judgments of the Hon'ble Supreme Court in the case of **B.J. Shelat Vs. State of Gujarat & Ors (AIR 1978 SC 1109)**, **Ramesh Chandra Sharma Vs. Punjab National Bank & Anr. [(2007) 9 SCC 15]** and **UCO Bank & Anr. Vs. Rajinder Lal Capoor (AIR 2008 SC 1831)** have been referred to. The learned Writ Court found that the service rule of the Housing Board do not envisage continuation of a disciplinary proceeding on superannuation of a delinquent, therefore, the continuation of the proceeding in the case of the petitioner after his retirement had no sanction of law.

8. Learned counsel for the appellants while addressing us could not demonstrate that there is any service rule whereunder the disciplinary proceeding initiated against the writ petitioner in the



present case could have been continued even after his superannuation. Learned counsel has referred Annexure-A to the Supplementary Affidavit filed on behalf of the appellants which is in the nature of an office order issued by the Urban Development Department in exercise of its power U/S 115 of the Bihar State Housing Board Act. According to this office order, until the Housing Board frames its own service rules and regulations and obtains approval of the State Government thereon, all Financial Rules and Public Works Code and Public Works Account Code shall apply to the Housing Board. There is nothing on the record to show that the Housing Board has any rule in force whereunder the disciplinary proceeding could have been continued against the petitioner even after his retirement.

9. We also find that in the present case the ratio of the judgment of the Hon'ble Supreme Court in the case of **Punjab National Bank & Ors.** (Supra) shall apply with full force. A perusal of the enquiry report (Annexure-4 to the Writ Application) makes it crystal clear that no evidence could be brought against the petitioner to prove the charges and, therefore, the Enquiry Officer had exonerated him. Once the Enquiry Officer exonerated him, if the Disciplinary Authority wanted to proceed in the matter, he was obliged to issue a note of disagreement and only after giving an opportunity to the petitioner to submit his reply thereon, an



appropriate order could have been passed. In the present case, no disagreement note was ever served upon the petitioner.

10. In these circumstances if the learned Writ Court has quashed the impugned order and allowed the Writ Application, we do not find any reason to interfere with the same.

11. The Appeal has no merit. It is accordingly dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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