IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13465 of 2002

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Madan Mohan Pd.Sinha son of late Sri Bachoo Narain Singh resident of village Sachai P.S. Kurtha District Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Department of Co-operative, Govt. of Bihar, Patna.
2. The Registrar, Co-operative Societies, Bihar, Patna.
3. The Bihar State Co-operative Land Development Bank Simiti, Budh Marg, Patna I through the Administration.
4. The Administrator, Bihar State Co-operative Land Development Bank Simit, Budh Marg, Patna I.
5. The Deputy Managing Director, Administration Bihar State Co-operative Land Development Bank Simit, Budh Marg, Patna I.
6. The Deputy Managing Director, Planning, Bihar State Co-operative Land Development Bank Simit Budh Marg, Patna I.
7. The Assistant Secretary, Bihar State Co-operative Land Development Bank Simit, Budh Marg, Patna I

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siya Ram Shahi, Advocate Mr. Sanjiv Kumar, Advocate
For the State	:	Mr. Rakesh Ranjan, Advocate
For the Bank	:	Mr. Rajesh Prasad Chaudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

Date: 11 -04-2018

Heard counsels for the petitioner and the respondent Bank.

2. The petitioner at the relevant point of time was Branch Manager in the respondent Cooperative Bank. One charge memo dated 26.08.1998 was served upon him containing six charges. The first charge was that the petitioner had received an amount of Rs.

5000/- from one member Shri Arjun Prasad, however, the said deposit was not entered in the loan account of shri Arjun Prasad and by doing so the petitioner had misappropriated the said amount and tampered with the entries made in the loan account.

3. Other five charges were to the extent that the petitioner had not shown due diligence in recovery of loans and thereby not achieved the target set out, that he had shown carelessness in preparation of D.B Register, and in distribution of salary and thereby had violated the instructions/orders issued to him.

4. Charge no. 1 is an allegation pertaining to complaints made by one Bhim Prasad, brother of Arjun Prasad on 03.03.1998 and 14.09.1998. The same are Annexure 4 and annexure 3 respectively. The crux of the allegation in the two complaints is that 5-6 years prior to the allegations being made, the deceased brother (Arjun Prasad) of the complainant (Bhim Prasad) deposited the amount of Rs. 5000/- against the due outstanding in his loan account. The petitioner was the Branch Manager of the Bank at that point of time. It is alleged that in order to achieve the target set out for loan recovery the petitioner had, under threat of arrest coerced the said Arjun Prasad (deceased) to make a deposit of Rs. 5000/-. After obtaining the said amount it is alleged that the petitioner did not give any receipt for the same and had assured the deceased brother of the complainant that entries showing the deposit had been made in the loan account.

5. The allegations have been made after, admittedly the petitioner had deposited an amount of Rs. 8550/- on 30.11.1997, being the amount outstanding in the same loan account of his late brother, for closing the loan account and to take back the mortgage deed and other documents as also for issuance of no dues certificate. It is relevant to note here that prior making the said deposit of Rs. 8550/- on 30.11.1997, the petitioner had not objected to the said amount outstanding and had not complained that 5-6 years prior thereto the outstanding in the said loan account had been liquidated by his deceased brother, as has been stated in the allegation.

6. After the said deposit was made by the petitioner on 30.11.1997 the loan account of his brother Arjun Prasad was closed recording that there was nothing outstanding against the deceased loanee. The entire loan account was sent for checking and for verification to the Regional Accounts Officer on 18.02.1998. The Regional Accounts Officer reported regarding the correctness of the entries made in the loan account from time to time. Accordingly, it was directed that the entire documents may be returned to the loanee. The report dated 19.02.1998 is Annexure 2 to the writ petition. The said Annexure 2 is a glaring testimony to the fact that up till 19.02.1998 the accounts maintained in the books/loan register of the deceased brother of the allegationist were in order and had not been tampered or damaged in any way. It is thus, submitted by the counsel for the petitioner that the allegation in respect of charge no. 1 is therefore, unsustainable.

7. It appears that the allegations levelled by Bhim Prasad, allegationist are an afterthought. The allegations have admittedly been made after the allegationist has on his own volition deposited an amount of Rs. 8550/- on 30.11.1997 considering the same to be the loan amount outstanding in the account of his deceased brother. Till such date he has not sought any credit for the amount of Rs. 5000/- which he alleges to have been deposited by his brother (deceased) 5-6 years back. Till 30.11.1997 he has also not alleged that entries had not been made in the loan register in respect of the alleged deposit of Rs. 5000/-earlier and/or regarding any tampering in the accounts.

8. Another relevant fact worth consideration is that the allegations levelled by Bhim Prasad were enquired into by the Assistant Accounts Officer of the Bank namely, Shyam Narayan Singh who in his report dated 10.03.1998 had held the petitioner to be guilty. Thereafter, the petitioner on 12.03.1998 was placed under suspension and his headquarter had been fixed at Chaibasa.

9. From the two letters of the Regional Accounts Officer dated 04.06.1998 bearing letter no. 366 as also the letter dated

22.07.1998 bearing no. 619 which are Annexures 5 and 6 of the writ petition respectively, it is further evident that no irregularity has ever been found in the accounts/books wherein the loan account of the deceased brother of the allegationist was maintained. In spite of the aforesaid position the petitioner was served with the charge memo and the issue was enquired. The enquiry culminated into submission of the enquiry report which is Annexure 17 of the writ petition. Perusal of the enquiry report reveals that all the procedural requirements have been thrown to the winds. From the proceedings it is obvious that there was no Presenting Officer. No evidence either documentary or oral was produced in support of the charges, and imaginary and baseless findings in respect of the first charge have been recorded and it has been concluded that the allegation in respect of charge no. 1 has been proved.

10. Reference has been made to one report submitted by the Assistant Accounts Officer Shyam Narayan Singh. But inspite of the request made by the petitioner, the said Shyam Narayan Singh, Assistant Accounts Officer had never been called for examination in the proceedings. The report submitted by Shyam Narayan Singh was an earlier report dated 10.03.1998 submitted upon the direction of the Deputy Manager Director (Planning) much earlier, on the basis of which the petitioner had been placed under suspension. The same was report of the preliminary enquiry conducted internally as is evident from the pleadings on record. The same could not have been made the basis of concluding the petitioner's guilt in the duly constituted enquiry pursuant to the charge memo dated 25.08.1998, moreso, when even author of the said report had not been examined in the proceeding. The Enquiry Officer has arrived at the conclusion of the petitioner's guilt without even serving the petitioner a copy of the report dated 10.03.1998 submitted by the said Shyam Narayan Singh, Assistant Accounts Officer. Without there being any other documentary evidence on record, the Enquiry Officer had also concluded the existence of fake receipt and has relied upon alleged copy of the loan register prior to it having been tampered and mutilated by the petitioner as alleged.

11. There is no reference in the charge memo to a copy of the loan account prior to, and/or subsequent upon the tampering as alleged. However, in the enquiry report the conclusion of the petitioner's guilt in respect of the said charge no. 1 had been recorded by relying upon such copies having been produced by the Bank Management. Clearly the said finding is perverse. Neither the alleged copies of the accounts prior to, and subsequent upon the mutilation/tampering have been referred to as evidence in the charge memo, nor copies of the same have ever been made available to the petitioner in the enquiry.

12. Another fact which is relevant to be noticed at this juncture is that the Regional Accounts Officer in report dated 18.02.1998, has till that date, found the accounts to be in order. Thus, there is no scope for recording of any legitimate finding in respect of the loan account of the deceased brother of the allegationist having been tampered/mutilated. Thus, in respect of charge no. 1 this Court finds that the charge itself is unsustainable. This is evident form the fact that the allegation, as noticed above has apparently been made as an afterthought. The departmental report of the Regional Accounts Officer dated 18.02.1998 Annexure 2 to the writ petition also belies the allegation inasmuch as till that date the accounts were found to be in order. The conduct of the allegationist in not raising such allegations till 30.11.1997 when he had deposited the outstanding amount of Rs. 8550/- in the loan account of his deceased brother also shows the falsity of the allegations as it is an allegation that the loan account had been settled 5-6 years prior thereto by payment of amount of Rs. 5000/- by his brother, since deceased. The findings in respect of the charge no. 1 are also without a reference to any material produced in accordance with law. Without any factual basis and in view of the infirmity noticed herein above, this Court finds the proceedings in respect of charge no. 1 to be unsustainable. The charges itself in the circumstances appeared to be perverse.

13. Apart from this fact the findings suffer from serious and grave infirmities inasmuch as the same is a product of procedure which is not in accordance with the Principles of Natural Justice and fair play, without any evidence documentary or oral in support of the charge.

14. As regards the other charges it is submitted by the counsel for the petitioner that the same cannot constitute misconduct. He submits that at best they indicate/allege some deficiency in performance of the petitioner but cannot constitute a misconduct. In support of his submission to this extent, he relies upon the judgment of this Court in the case of **Navin Kumar Singh vs. State of Bihar** reported in **2018 (1) PLJR 134.**

15. Submission on behalf of the respondent Bank is that the scope of the judicial scrutiny in respect of this case is confined to the decision making process only. It is submitted that the findings had been recorded after affording due opportunity of hearing. It is also submitted that the petitioner has availed his remedy of hearing by filing Service Appeal no. 30 of 2000.

16. It is submitted that all the issues raised by the petitioner has been considered even by the appellate authority being the Registrar Cooperative Societies and after considering the petitioners contentions the appellate authority vide order dated 20.09.2002 has dismissed the appeal filed by the petitioner.

17. This Court has gone through the order dated 20.09.2002. In respect of charge no. 1 there appears to be no consideration whatsoever. In a most mechanical and cryptic manner the finding of guilt in respect of the charge has been sustained and the order of dismissal has been affirmed. Insofar as charge no. 1 is concerned, this Court has already found that the same is unsustainable as a charge itself. This Court has also found that the enquiry having been conducted in a procedure unknown to law and in violation of Principles of Natural Justice is unsustainable.

18. In light of the above noted findings the punishment of termination of the petitioner's service by the office order dated 29.11.1999 bearing memo no. 14644 as also the mechanical and cryptic order passed in respect of charge no. 1 in service Appeal No. 30 of 2000 vide order dated 20.09.2002 are hereby quashed. As a result of quashing of the impugned orders in respect of charge no. 1, this Court considers it appropriate that the Department/Bank may re-examine the issue with reference to the remaining five charges in charge memo dated 25.08.1998. It would be open to the petitioner to take all his defence and raised all his contentions regarding the remaining five charges including the plea that the same do not constitute a misconduct.

19. With the liberty as aforesaid, the writ petition is allowed to the extent indicated hereinabove.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	08.02.2018
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