

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.141 of 2015

In

Civil Writ Jurisdiction Case No.401 of 2011

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1. Uttar Bihar Gramin Bank through its Chairman, Kalambagh Chowk, Muzaffarpur.
 2. The Chairman Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur.
 3. The General Manager Uttar Bihar Gramin Bank, Muzaffarpur.

... .. Appellant/s

Versus

Ramdeo Singh S/o Late Chandrika Singh Resident of Village Sipah, P.O. + P.S. Basantpur, District Siwan

... .. Respondent/s

with

Letters Patent Appeal No. 1356 of 2014

In

Civil Writ Jurisdiction Case No.401 of 2011

Ramdeo Singh S/o Late Chandrika Singh Resident of Village Sipah, P.O. + P.S. Basantpur, District Siwan.

... .. Appellant/s

Versus

1. Uttar Bihar Gramin Bank through its Chairman, Kalambagh Chowk, Muzaffarpur.
2. Chairman, Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur.
3. General Manager, Uttar Bihar Gramin Bank, Muzaffarpur.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 141 of 2015)

For the Appellant/s : Mr. Prabhakar Jha
Advocate

For the Respondent/s : Mr. Ram Hriday Prasad
Advocate

(In Letters Patent Appeal No. 1356 of 2014)

For the Appellant/s : Mr. Ram Hriday Prasad
Advocate

For the Respondent/s : Mr. Prabhakar Jha
Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)



Date : 22-02-2018

Heard learned counsel for the parties.

2. Two appeals have arisen from order, dated 01.08.2014, passed by the Learned Single Judge in C.W.J.C. No. 401 of 2011. L.P.A. No. 141 of 2015 has been preferred by the Bank, assailing the decision of the Learned Single Judge, who has set aside the order of punishment of dismissal of the private-respondent, who was a Clerk-cum-Cashier in the Bank, posted at Sohilpatti Branch in the district of Siwan. The reason for setting aside the order of dismissal as well as the affirmance of the same by the Appellate Authority was that the order of punishment of dismissal for defalcation of a sum of Rs. 19,000 /-, coupled with the fact that the two criminal cases, instituted against the private-respondent, he was exonerated, therefore, the punishment order required to be revisited on the principle and ground of disproportionality.

3. The other L.P.A. is L.P.A. No. 1356 of 2014, which has been preferred by the employee, who stood dismissed. He is not satisfied by the decision of the Learned Single Judge, who has set aside the order of punishment of dismissal, because the Learned Single Judge left the issue open to the Bank to decide whether he should be entitled to past salary or not.



4. The main thrust of the argument of the employee, who is the appellant in L.P.A. No. 1356 of 2014, is that if the order of punishment was set aside then he is entitled for all the benefits of service, because the order will relate back to the time when the employee stood dismissed and he cannot be debarred from demanding and begetting the benefits of continuance as well as entitlements, by virtue of putting such an employee back in employment.

5. In other words, the L.P.A. of the employee is not against the rest of the findings of the Learned Single Judge in relation to the fact that Learned Single Judge refused to interfere with the findings recorded by the disciplinary authority, well aware of the principles of law laid down by the Hon'ble Apex Court, while sitting in writ jurisdiction. The scope of judicial review in matter of disciplinary proceeding is limited to review of procedural error of law. The Court would not reverse findings of Enquiry Officer on the ground that the evidence adduced is insufficient, since the Court cannot arrogate to itself role of an Appellate Authority. Reliance in this regard was placed by the Learned Single Judge on the decision of *Union of India and Anr. Vs. K. G. Soni, reported in (2006) 6 SCC 794* and *R.S. Saini Vs. State of Punjab and others, reported in (1999) 8 SCC 90*.



6. From reading of the impugned order of the Learned Single Judge, dated 01.08.2014, it is evident that despite all the submissions and arguments, which had been made at the Bar, the Learned Single Judge was not impressed to interfere with the enquiry report as well as the findings, which emerged therefrom, which culminated into issuance of the order of punishment of dismissal by the disciplinary authority. Therefore, no arguments is required to be entertained on behalf of the employee in his appeal on that aspect.

7. Since the Learned Single Judge interfered with the order of punishment only on the ground that the order of dismissal seems to be shocking to the conscious, keeping in mind that the defalcation was only of Rs. 19,000/-, as well as the employee having been exonerated by the criminal court also, is required to be looked into a little closely.

8. So far as the two criminal cases are concerned, one was quashed by the High Court on the principle of Article 21 of the Constitution of India as there was no substantial progress in the criminal cases over a period of 7 to 8 years. In other words the High Court also never had opportunity to go into the merits of the allegation. Only for the technical reason that the accused, i.e., the employee's right of life was being violated, because of delay in



trial became the sole reason for earning reprieve against the criminal prosecution.

9. In another criminal case the Magistrate acquitted the employee, because the prosecution did not produce witnesses. Only one witness was produced and thereafter they were dragging their feet. It is not evident from record whether the Magistrate took any serious effort to ensure presence of the witnesses. But be that as it may, the second criminal case of exoneration or acquittal of employee was for non-production of witnesses. In other words, the acquittal in the two criminal cases, if, at all, it can be said so, was not on the merits of the matter, but because of technical default. None of the Courts, therefore, had opportunity to comment upon the correctness of the allegations, whether those allegations were prima facie made out or not, since there was no trial.

10. If an employee wants to draw advantage of such an acquittal then in our opinion it is not available to him. Only in cases where acquittal by criminal case was on the merits and on a clear declaration that the evidence do not lead to the charges and the charges cannot be established on the evidence brought against the accused, there could be an arguable case that since the accused had been tried on the same ground and evidence, therefore, acquittal by a criminal court can become an arguable case by such



a person that there may not be an occasion to punish him a second time over the same set of charges. But in this case the employee never had the privilege of being let off after full fledged trial. He succeeded on technical knock-outs. The sum essence is that the criminal court exoneration cannot accrue to the benefit of the employee.

11. If this is the position with regard to two orders in the criminal case, then if a full fledged enquiry was held against the employee, evidence and material was brought with full participation of the charged employee then the findings, which emerge from the departmental enquiry, will have to be given weightage too and the accused will have to be judged on the basis of the departmental enquiry and not on the basis of acquittal or closure of criminal cases.

12. So far as the finding of guilt is concerned the Learned Single Judge refused to interfere with the finding of the disciplinary authority. In other words, the charges brought against the employee was established and the issue is required to be closed. We have also gone through the material which has come during the course of enquiry. It is not only a case of defalcation of Rs. 19,000/- but a persistent dishonest conduct of the employee by withdrawing small amount of money at times Rs. 1,000 /- at other



times, Rs. 3,000/- from the accounts of poor illiterate account holders. Seven instances have been brought to the notice, for which charges were drawn up. Evidence to link the employee with fraudulent withdrawal of money from the account holders and pocketing it, has been established. The account holders had also given affidavits about illegal withdrawals and even opinion of hand writing experts was taken with regard to such withdrawal. Another thing, which is of significance is most of these withdrawals have been done by the employee when the Branch Manager was either on leave or had left the Branch for one reason or the other. This gave the opportunity to the employee not only to draw the withdrawal slip but also to pass it and then pocket the amount so passed. There was no supervision done of such withdrawals.

13. There is also evidence and materials which has come that the employee in question also tried to destroy evidence by removing the records. Attempt was made earlier, which was frustrated by intervention of the police and on yet another occasion, he succeeded in putting the bundle of records in the Narayani river, available nearest to the Branch in question.

14. All these put together, seems to be the reason for the Learned Single Judge not to interfere with the findings of guilt.



15. Coming to the issue of interference on the issue of disproportionality, this Court observes that the Learned Single Judge has committed a serious error of law in judgement by trying to interfere in a case of this kind where a Bank employee is established to be rank dishonest in his conduct by persistent and consistent mechanism and pattern of such withdrawals, which, in turn, has created a situation where the Bank has lost trust and faith in him. There have been many an occasion, where Courts in similar matters have taken a very grim view of the situation. Courts have observed that Bank employees are in fiduciary relationship with the Bank as well as customers. Once the Bank has lost confidence in the delinquent, the order of dismissal from service was wholly justified. In this regard attention of the Court has been drawn to the case of *Bank of India vs. Smt. Snehlata Saran, reported in 2014 (1) PLJR 108*.

16. Similar views have also been taken by Hon'ble Supreme Court in many a cases, where this kind of conduct and indiscretion of Bank employees, where defalcations have been made, have not been given indulgence to. It is not the quantum, but the conduct, which is subject matter of scrutiny and such conduct of corruption in public offices and Banks are not required to be overlooked in any manner. The case of *Tara Chand Vyas Vs. Chairman & Disciplinary*



Authority & Ors., reported in (1997) 4 SCC 565 is of significance.

Paragraph 2 of the said decision is reproduced hereinbelow for ready reference:

“Economic empowerment is a fundamental right of the weaker sections of the people, in particular the Scheduled Castes and Scheduled Tribes, ensured under Article 46 as a part of social and economic justice envisaged in the Preamble of the Constitution; the State is enjoined to promote their welfare effectuated under Article 38. Distribution of material resources to elongate that purpose envisaged in Article 39 (b) is the means for the development of the weaker sections. The banking business and services were nationalized to achieve the above objects. The nationalized banks, therefore, are the prime sources and pillars for establishment of socio-economic justice for the weaker sections. The employees and officers working in the banks are not merely the trustees of the society, but also bear responsibility and owe duty to the society for effectuation of socio-economic empowerment. Their acts and conduct should be in discharge of that constitutional objective and if they derelict in the performance of their duty, it impinges upon the enforcement of the constitutional philosophy, objective and the goals under the rule of law. Corruption has taken deep roots among the sections of the society and the employees holding public office or responsibility equally became



amenable to corrupt conduct in the discharge of their official duty for illegal gratification. The banking business and services are also vitally affected by catastrophic corruption. Disciplinary measures should, therefore, aim to eradicate the corrupt proclivity of conduct on the part of the employees / officers in the public offices including those in banks. It would, therefore, be necessary to consider, from this perspective, the need for disciplinary action to eradicate corruption to properly channelize the use of the public funds, the live wire for effectuation of socio-economic justice in order to achieve the constitutional goals set down in the Preamble and to see that the corrupt conduct of the officers does not degenerate the efficiency of service leading to denationalization of the banking system. What is more, the nationalization of the banking services was done in the public interest. Every employee / officer in the bank should strive to see that banking operations or services are rendered in the best interest of the system and the society so as to effectuate the object of nationalization. Any conduct that damages, destroys, defeats or tends to defeat the said purposes resultantly defeats or tends to defeat the constitutional objectives which can be meted out with disciplinary action in accordance with rules lest rectitude in public service is lost and service becomes a means and source of unjust enrichment at the cost of the society.”



17. If this be the case and the factum of illegal withdrawals and misappropriation stands and has not been interfered with by the Learned Single Judge, then taking cue from the decisions, which have been noticed in the earlier part of the order all told Rs. 19,000/- is not of significance. The significance is the conduct and loss of confidence in the fiduciary relationship, which the employees have to maintain, both with the Bank and the Account Holders. That facts have been established and allowed to stand by the Learned Single Judge. It was not a case where the order of punishment of dismissal should have been interfered with and a lease of life should have been given to an employee by putting the employee back on the head of the Bank, where his continuance would always be a matter of great stress, both to the employer as well as the system.

18. In totality, therefore, we come to an opinion that this was not a fit case where the Learned Single Judge should have quashed the order of punishment of dismissal on the two ground that the punishment order was disproportionate or that the employee was exonerated in the criminal cases. Both the grounds have been suitably taken note of and explained in this order and which in our opinion leads to one conclusion that there was error, committed by the Learned Single Judge both of facts and in law by interfering or



setting aside the order of dismissal, which was unwarranted in the given facts and circumstances of the case.

19. In view of the above, L.P.A. No. 141 of 2015 is allowed.

20. The impugned order of the Learned Single Judge, dated 01.08.2014 is set aside.

As a consequence thereof, L.P.A. No. 1356 of 2014, preferred by the employee, seeking a direction for payment of his wages etc., has no meaning and the said LPA stands dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

skm/-

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