

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1646 of 2017
IN
Civil Writ Jurisdiction Case No. 905 of 2015**

- =====
1. The General Manager, State Bank of India, Patna.
 2. Appellate Authority and Deputy General Manager (B & O) Zonal Office, J.C. Road, Patna -800001.
 3. The Asst. General Manager (Admin.) & Disciplinary Authority, State Bank of India Administrative Officer, Patna. null null
 4. The Branch Manager, State Bank of India, S.K. Nagar Branch, Patna.

.... Respondents / Appellants

Versus

Ajay Kumar, S/o Late Rajendra Prasad, Resident of No. 64- State Bank of India Staff Colony Digha Ghat, District Patna - 800011.

.... Petitioner / Respondent

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Appearance:

For the Appellant/s : Mr. Rakesh Kumar Singh, Advocate.
For the Respondent/s : Mr.

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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: 20-03-2018

Challenging the impugned judgment dated 14.09.2017 passed by the learned Writ Court in CWJC No. 905/2015, the General Manager, State Bank of India, Patna and others are in intra-court appeal before us.

2. The Writ Application was preferred by the present respondent no. 1, who happened to be an employee of the State Bank of India. He was served with a memo of charges for certain acts and omissions. Charges levelled against him led to initiation of a disciplinary proceeding in which the charges were held proved against



him and the disciplinary authority passed an order for “removal from service with superannuation benefits as would be deemed otherwise under the rules and regulations and without disqualification from future employment” in terms of paragraph 6(b) of the Memorandum of Settlement on Disciplinary Action Procedure dated 10.04.2002. The order passed by the Disciplinary Authority was upheld by the Appellate Authority. The order passed by the Disciplinary Authority as well as the Appellate Authority and the charge memo were challenged and a prayer was made for setting aside the same with consequential benefits reinstating the petitioner in service.

3. The learned Writ Court took note of the charges levelled against the petitioner – respondent no. 1 which reads as under:-

“i) You have deliberately overdrawn beyond the limit of Rs. 3.00 lacs in your CA OD A/C No. 10223782514 on 20 occasions from 24.06.2005 to 12.04.2007, thereby rendering above account irregular by Rs. 1.43 lac. The irregularity continued for more than a year.

ii) You have liquidated these over drawings on 23.5.2007 and 24.5.2007 by taking credit of Rs. 20,000/- and Rs. 50,000/- from our two Cash Credit borrowers M/s Aryodaya and M/s Jai Maa Kali Cementwala respectively to liquidate these over drawings against stipulations of the service condition and credited the same to your SB A/C No. 10223875056 from where fund was utilized to liquidate overdrawn in CAOD A/C No. 10223782514.

iii) You have deposited cash of Rs. 40,000.00 & Rs. 5000.00 in your account No. 10223875056 on 23.5.2007 and Rs. 30,000.00 in the account No. 10223782514 on 24.05.2007. You have failed to satisfactorily explain the



source of cash deposited in your account.

2. The above charges, if established, would amount to Gross misconduct in terms of Memorandum of Settlement of Disciplinary Action for Workmen dated 10.04.2002.”

4. Having gone through the pleadings and the materials available on the record the learned Writ Court examined Paragraph 5(j) of the Memorandum of Settlement dated 10.04.2002 relied upon by the Disciplinary Authority to hold that the act of the petitioner so complained of would constitute a “gross misconduct”. Clause 5(j) read as under:-

“5. By the expression “gross misconduct” shall be meant any of the following acts and omissions on the part of an employee:

.....
(j) doing any act prejudicial to the interest of the bank or gross indulgence or negligence involving or likely to involve the Bank in serious loss;
.....”

5. The learned Writ Court took a view that the expression “gross misconduct” as defined in Paragraph 5(j) would confirm that it is any such act which is found prejudicial to the interest of the Bank and amounts to gross negligence or by the negligent act the employee involves a Bank in serious loss, which would constitute a “gross misconduct” and not every irregularity committed by the Bank employee.

6. As regards the charges, the learned Writ Court found



that Charge No. 1 simply charges the petitioner of deliberately overdrawing beyond the limit of three lacs from his Current A/C on 20 occasions rendering the account irregular and this situation continued for more than a year. The learned Writ Court was of the view that the charge simply alleges the petitioner with irregularity of over withdrawal from his Current A/C. It was noticed by the learned Writ Court that the charge nowhere says that the petitioner was doing the act of overdrawing the money without sanction from the proper authority or by adopting dubious methods. This finding of the learned Writ Court is in the light of the response of the petitioner that on each and every occasion he had made withdrawals with due permission of the Branch Manager or the Bank Officers. This specific stand of the writ petitioner was found consistently maintained all through the proceedings. The Bank did not examine the Branch Manager of the Bank to confront the petitioner with his statement nor any other evidence was produced to demonstrate that the petitioner had overdrawn the money by adopting a wrongful process.

7. As regards Charge No. 2, the learned Writ Court found that the petitioner even if had taken help from the proprietors of the two firms, who are said to be the borrowers of the Bank, it would not amount to “gross misconduct”. The learned Writ Court has interpreted Chapter 19 of the Award and has come to a conclusion that a plain



reading of Paragraph 5(i) of Clause 19.2 would show that it is in the nature of an advice given to the employee of the Bank not to borrow any money amongst others, from any person, a firm or company dealing with the Bank. The word used in the clause is 'may' and is not preceded with 'shall', meaning thereby that the employee has been advised not to borrow money as far as possible from any such person, firm or company dealing with the Bank, otherwise it would amount to misconduct. The learned Writ Court found that such act of the petitioner would not be classified as "gross misconduct" within the meaning of any of the clauses under Paragraph 5 of the Memorandum of Settlement dated 10.04.2002.

8. As regards discharge, the learned Writ Court relied upon the judgment of the Hon'ble Supreme Court in the case of **Inspector Prem Chand Vs. Govt. of N.C.T. of Delhi & Ors.**, reported in (2007) 4 SCC 566; Paragraphs 9 to 12 of the said judgment have been extensively quoted by the learned Writ Court which we have gone through in course of hearing.

9. The learned Writ Court has also relied upon the judgment of the Hon'ble Apex Court in the case of **Ravi Yashwant Bhoir Vs. District Collector**, reported in (2012) 4 SCC 407, to hold that the expression 'misconduct' has to be understood as a transgression of some established and definite rule of action, a



forbidden act, any unlawful behaviour which is willful in character. The Court has held that the expression 'misconduct' has to be construed and understood in reference to the subject matter and context wherein the terms occurs, taking into consideration the scope and object of the statute which is being construed. It has also been held that the act of misconduct is to be measured in terms of the nature of misconduct and should be viewed with consequences of such act as to whether it is detrimental to public interest. The Writ Court took a view that even if it is assumed for a moment that the petitioner should have refrained from taking help from his proprietor friends, yet in absence of such act being construed as a 'gross misconduct' under Paragraph 5 of the Memorandum of Settlement dated 10.04.2002, until such time that the Bank would have been able to demonstrate during the course of enquiry with aid of evidence that such act of the petitioner has proved prejudicial to the Bank's interest or amounted to gross negligence or was likely to involve the Bank in serious loss, a mere error of judgment on the part of the petitioner in seeking help from his close friends who also happen to be borrowers with the Bank, even if treated ipso facto an irregularity, cannot be held a 'gross misconduct'.

10. The learned Writ Court also examined the relevant provisions of the Memorandum of Settlement and held that even the



3rd charge, i.e., alleged failure of the petitioner to disclose the alleged source of deposit cannot be said to be 'misconduct'. The learned Writ Court held that no loanee is required to disclose the source of his deposit nor the rules mandates any such disclosure and, secondly, by production of receipt the petitioner had done his bit. The petitioner had claimed that the money was generated by sale of the ornaments of his wife which was not acceptable to the Enquiry Officer. The learned Writ Court was of the view that the enquiry on the source of such deposit would be beyond the scope of the disciplinary proceeding.

11. The learned Writ Court relied upon the judgment of the Hon'ble Supreme Court in the case of **Roop Singh Negi Vs. Punjab National Bank**, reported in (2009) 2 SCC 570, to take a view that a mere production of an F.I.R. in the said case was not treated as evidence to uphold the charge of misconduct in absence of any evidence standing up to prove the same. The Hon'ble Supreme Court held that it would not be treated as evidence.

12. Mr. Chittaranjan Sinha, learned Senior Counsel assisted by Mr. Rakesh Kumar learned advocate on record, would submit that the learned Writ Court has committed an error in setting aside the entire proceedings beginning with the charge memo as Annexure-3, the enquiry report as Annexure-6, the order of removal passed by the Disciplinary Authority which is Annexure-10 and the



order of the Appellant Authority annexed as Annexure-14 to the Writ Application.

13. Learned Senior Counsel submits that the learned Writ Court has taken upon itself to examine the defence of the writ petitioner in the disciplinary proceeding and upon a meticulous examination of the defence, the learned Writ Court has reached to a conclusion contrary to the conclusion reached by the Enquiry Officer and the Disciplinary Authority. According to the learned Senior Counsel, the learned Writ Court has exceeded the scope and ambit of interference in its writ jurisdiction in the matter of disciplinary proceedings.

14. On the other hand, learned counsel representing the respondent no. 1 would submit that in the present case, the learned Writ Court has not examined the defence, rather the learned Writ Court has only examined the relevant provisions of the Bi-partite Settlement and the flaws of charges which were levelled against the petitioner, the learned Writ Court having examined the relevant provisions of the settlement came to a conclusion that the charges would not fall in the category of “gross misconduct” within the meaning of Bi-partite Settlement dated 10.04.2002 and if the charges levelled against the petitioner are not falling within the meaning of “gross misconduct”, the very initiation of the disciplinary proceeding



against the petitioner was bad in law.

15. Having heard learned Senior Counsel for the appellant as also learned counsel representing the respondent no. 1, we are of the considered opinion that the learned Writ Court has gone into the relevant rules of conduct and the provisions of Memorandum of Settlement dated 10.04.2002, relied upon by the Disciplinary Authority, to hold that the act of the petitioner so complained of could constitute “gross misconduct”.

16. We have also taken note of the charges levelled against the petitioner – respondent no. 1 and we find that the learned Writ Court is fully justified in taking a view that there was no charge against the petitioner that he had withdrawn money irregularly from his Current A/C without due permission from the Branch Manager. If there was no charge of withdrawal without sanction or permission from the competent authority, the mere withdrawal in excess of the limit prescribed in the Loan A/C would not constitute a “gross misconduct” as has been defined under the Bi-partite Settlement dated 10.04.2002. Paragraph 5(j) of the Memorandum of Settlement talks of “gross misconduct” by doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss. The petitioner has made good the borrowing from the A/C by depositing the required money and, therefore, in



absence of any charge that he had withdrawn money without due permission from the Branch Manager, the learned Writ Court is justified in taking a view that it is not a case of “gross misconduct”. There is no charge that any loss has been caused to the Bank.

17. We are satisfied that in the nature of the charges levelled against the petitioner, in the given facts apparent from a bare perusal of the charges and the Bi-partite Settlement the learned Writ Court has rightly exercised its jurisdiction under Article 226 of the Constitution of India. The impugned judgment needs no interference.

18. The Appeal is dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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