

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10505 of 2003

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Rajendra Prasad Shah, Dy. Manager, Bihar State Financial Corporation (Ex. Branch Manager, Bihar State Financial Corporation, Munger) son of Vishwanath Prasad Shah, permanent resident of Hizla Hill Road, P.S. Sadar Dumka, Town and District Dumka, at present residing at Mohalla- Bakerganj, P.S. Pirbahore, P.O. Bankipur, Patna-4, District Patna, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary to Govt. of Bihar, Department of Industries, Vikash Bhawan, Patna-15.
2. The Bihar State Financial Corporation through the Managing Director, Bihar State Financial Corporation, Frazer Road, Patna-1.
3. Shri Subhash Sharma, IAS, son of not known, Former Managing Director, Bihar State Financial Corporation, Frazer Road, Patna-1, presently posted as Chairman, Bihar Secondary School Examination Board, Sinha Library Road, Patna-1.
4. Shri R.P. Singh, IAS, son of not known the then Officer on Special Duty cum Conducting Officer, (Now retired), C/O the Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.
5. The Chairman, Bihar State Financial Corporation, Frazer Road, Patna-1.
6. The Secretary to Govt. Department of Personnel & Administrative Reforms Department, Patna-15.
7. The Manager, Personnel & Administrative, Bihar State Financial Corporation Ltd., Frazer Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manik Vedsen, Adv.
Mr. S.C. Bose, Adv.

For the Respondent No.1 : Mr. Nishant Kumar Jha, AC to SC 28.

For the Respondents No. 2 to 7: Mr. Y.V. Giri, Sr. Adv.
Mr. Nikhil Kr. Agrawal, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 29-06-2018

The petitioner by way of the present petition has prayed for quashing of the order of dismissal contained in Office Order No. 26/2001-02 dated 22.08.2001, whereby and whereunder the petitioner has been inflicted with the punishment of dismissal from service. The appellate order dated 20.10.2001 has also been challenged. The petitioner has further prayed for quashing of the charge sheet dated 07.09.1996, *ex parte* enquiry report dated 08.05.1997 and for



directing the respondents to pay the back wages with effect from 22.08.2001 till the date of reinstatement.

2. The brief facts of the case are that the petitioner was appointed in the services of the respondent Bihar State Financial Corporation in the year 1978 as a Project Officer and subsequently he was promoted as the Deputy Manger in the year 1982 and prior to his dismissal, the petitioner was posted as Branch Manager, Bihar State Financial Corporation Limited at Munger. A charge sheet was issued against the petitioner, contained in Memo dated 07.09.1996 by the then Managing Director i.e. the respondent no. 2 on the allegation that the petitioner had conducted the pre-sanction site inspection of M/s. Laloo Industries, Siwan, Khurda, Saran on 11.10.1988 of Plot No. 1235 but had reported to the office about another plot bearing No. 1083 at Mouja Belsara, Tola Jagatia under Thana No. 152 and thus permitted the promoter to defraud the Corporation causing a loss of Rs. 5.30 lakhs approximately since after the sanction of a loan of Rs. 2.80 lakhs, a sum of Rs. 2,55,700/- was disbursed which swelled up to a sum of Rs. 5,30,350/- as on 29.02.1996.

3. The Enquiry Officer had conducted the enquiry and submitted the enquiry report dated 08.05.1997 wherein the petitioner has been found guilty of the charges as stated in the charge sheet issued on 07.09.1996. Thereafter, a second show cause notice was issued to the petitioner along with the enquiry report vide letter dated 26.05.1997, which was replied to by the petitioner herein and then the petitioner had submitted a final reply to the aforesaid show cause notice vide letter dated 25.11.1997. The disciplinary authority i.e. the Managing Director of the respondent Corporation had then passed the order of punishment dated 22.08.2001, whereby and whereunder the petitioner has been dismissed from the service of the Corporation with



immediate effect. Thereafter, the petitioner had filed an appeal which has also been dismissed by an order dated 20.10.2001.

4. The learned counsel for the petitioner, referring to the enquiry report, has submitted that the said enquiry report is perfunctory and perverse inasmuch as though the charges levelled against the petitioner were regarding the petitioner having conducted pre-sanction site inspection of M/S Laloo Industries regarding plot no. 1235 but reported to the office regarding plot no. 1083, resulting in loss to the Corporation on account of the loan advanced to M/S Laloo Industries having become unsecured but the enquiry officer has instead submitted his report, not with regard to the said charge, but with a new story regarding construction of the factory at a different plot which has not been mortgaged to the Corporation. It is further submitted that not a single witness has been produced by the prosecution, hence no witness was examined by the Enquiry Officer and since no oral evidence has been examined, consequently the documents have not been proved, hence the same could not have been taken into consideration by the Enquiry Officer to conclude that the charges have been proved against the respondents. The learned counsel for the petitioner has relied on a judgment rendered by the Hon'ble Apex Court in (2010) 2 SCC 772 (**State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha**), Paragraphs No. 27, 28 and 29 whereof are reproduced herein below:

27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence



before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

5. The learned counsel for the petitioner has further submitted that the present case is a case of no evidence and the enquiry report submitted by the Enquiry Officer does not discuss any evidence whatsoever so as to prudently come to a finding of guilt as against the petitioner herein. In this connection, the learned counsel for the petitioner has relied upon a judgment reported in (2009) 2 SCC 570 (**Roop Singh Negi vs. Punjab National Bank & Ors.**), paragraph No.14,15 and 23 whereof are reproduced herein below:-

14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as



evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

6. The learned counsel for the petitioner has further submitted that the present case is a case of ex parte enquiry, which has been admitted by the Enquiry Officer at page No.2 of his enquiry report dated 8.5.1997 wherein it has been stated as follows:-

“Since the proceeding is pending from 21.9.96 and it cannot be kept pending for disposal indefinitely it was ordered on 29.4.97 that this proceeding will be heard on 7.5.97 finally.”

7. Thus, the submission of the learned counsel for the



petitioner is that the enquiry officer had fixed the date for final hearing hurriedly without either taking the evidence of the prosecution on record or without granting an opportunity to the petitioner to lead the defence witnesses, hence the entire enquiry itself is vitiated.

8. The other issue raised by the learned counsel for the petitioner is that non-examination of the concerned Circle Officer, Amin, Revenue Karamchari has prejudiced the petitioner herein and further neither the documents asked for were given to the petitioner, like copy of the relevant reports including the report of the Circle Officer dated 17.6.96, report of the Anchal Amin dated 30.9.95 etc. nor the petitioner was granted sufficient time to obtain the said reports from the concerned circle office. Thus, non-supply of relevant documents by the department, in the present case, has precluded the petitioner herein from making effective representation against the charges levelled against him, hence the enquiry proceedings are vitiated. In this regard, the learned for the petitioner has relied upon a judgment reported in (2010) 2 SCC 772 (**Saroj Kr. Sinha**) (supra) paragraph Nos. 20 to 23 and 25 are reproduced herein below:-

20. We have heard the learned counsel for the parties. We have noticed at some length the sequence of events and the efforts made by the respondent to receive copies of the documents which were relevant for the preparation of his defence in the departmental enquiry. As noticed earlier all the requests made by the respondent fell on deaf ears. In such circumstances, the conclusions recorded by the High Court were fully justified.

21. Copies of the documents which formed the foundation of the charge-sheet against the respondent have been denied to the respondent on the lame excuse, as projected in the pleadings of the appellant, at different stages before the High Court as well as this Court, that the respondent, at the relevant time, was posted in the same division and the documents could have been received by him and the reply could have been given. According to the appellant all the documents concerned were with the division in which the petitioner (the respondent herein) was posted as Executive Engineer.

22. In the counter-affidavit filed in the High Court it is



specifically mentioned that the documents pertain to the same division in which the respondent had been posted as Executive Engineer and therefore he being in knowledge and custody of the said documents, there was no requirement for the said documents to be supplied to the respondent. The very same submission has been reiterated before us by the learned counsel for the appellants. In our opinion, the submission is without any basis as the respondent had been suspended on 5-2-2001.

23. Even if the respondent had continued in the same department it would not have been possible for him to take the custody of the documents as he would no longer be in charge of the office. Furthermore, it is evident from the letter dated 19-11-2003 that the documents had to be collected from different offices and made available to the respondent. This fact is so mentioned in the letter of the Executive Engineer. In such circumstances, we are unable to accept the submission of the learned counsel for the appellants that it was possible for the respondent to make an effective representation against the charge-sheet.

25. A bare perusal of the aforesaid charges shows that the three charges were based on official documents/official communications. We have earlier noticed the relentless efforts made by the respondent to secure copies of the documents, which was sought to be relied upon, to prove the charges. These were denied by the Department in flagrant disregard of the mandate of Rule 7 sub-rule (v). Therefore the inquiry proceedings are clearly vitiated having been held in breach of the mandatory sub-rule (v) of Rule 7 of the 1999 Rules.

9. Per contra, the learned counsel for the respondents has submitted that the enquiry Officer had permitted the petitioner to make inspection of the relevant file and was also supplied copies of all the relevant documents and it is not necessary to supply each and every documents and failure to do so, would not vitiate the enquiry unless and until prejudice caused to the delinquent is shown. In this regard, a judgment reported in 2016(2) PLJR 496 (**Chairman, Bihar School Examination Board & Anr. vs. Jai Mangal Singh & Anr.**) has been relied upon. It has been next submitted that since no procedural error can be found in the conduct of the departmental proceeding, the enquiry report is well reasoned and the order of



punishment has been passed after agreeing with the findings of the enquiry officer, the disciplinary proceedings do not suffer from any illegality. The learned counsel for the respondents has relied upon a judgment reported in *2015(1) PLJR 117* (**The Management, State Bank of India & Ors. vs. Hrishikesh Mishra**).

10. I have heard the learned counsel for the parties and perused the materials on record. At the very beginning it must be pointed out that surprisingly, though the charge framed by the department against the petitioner was regarding submission of pre-sanction site inspection report of M/S Laloo Industries pertaining to plot no. 1083 instead of 1235, but the enquiry officer has found the petitioner guilty of the charge of construction of the said factory on a plot not mortgaged to the Corporation. Thus, I find that the enquiry report dated 8.5.1997 is perverse and has been submitted without any application of mind inasmuch as the enquiry officer did not even have the basic knowledge or understanding that the petitioner has not been charged with dereliction in his duty on account of not ensuring that the factory was constructed on a plot mortgaged to the corporation. I further find that the enquiry report is based on no evidence inasmuch as the prosecution has failed to either lead oral evidence or prove the documents being relied upon, during the course of the enquiry proceedings, hence on this ground as well the enquiry report is fit to be quashed. At this juncture, it might be relevant to mention here that the judgments rendered by the Hon'ble Apex Court in the case of **Roop Singh Negi** (Supra) and **Saroj Kumar Sinha** (Supra) squarely cover the instant case.

11. The enquiry report is further fit to be set aside on the ground of denial of sufficient opportunity to the petitioner to present his defence as well as not furnishing of the relevant documents to the



petitioner herein.

12. Having regard to the facts and circumstances, as discussed herein above, the enquiry report dated 8.5.1997 is set aside.

13. At this juncture, it is relevant to state that the first disbursement of loan was made to M/S Laloo Industries only after the Deputy Manager (Technical) confirmed the construction of the building at the marked site, as is also apparent from the inspection report of the said officer dated 22.4.1989, which are annexed as Annexure-27 and Annexure-28 to the writ petition. In fact, the petitioner has also filed a supplementary affidavit on 10.10.2017, bringing on record the letter of the Corporation showing that the said M/S Laloo Industries, Siwan has paid the entire settlement amount under OTS Scheme, 2006 of BSIC, pertaining to the loan in question in the present proceeding, hence no loss has been caused to the Corporation.

14. For the reasons mentioned herein above, and the fact that the enquiry report has already been quashed, the punishment order dated 22.8.2001 passed by the Managing Director of the Corporation, which is solely based on the perverse enquiry report dated 8.5.1997 cannot be sustained in the eyes of law, hence the same is also set aside.

15. In view of setting aside the order of punishment dated 22.8.2001, the appellate order dated 16.7.2003 passed by the Board of Directors, Bihar State Financial Corporation, Patna does not survive, hence the same is also set aside.

16. In view of setting aside of the enquiry report dated 8.5.1997, the order of dismissal dated 22.8.2001 and the appellate order dated 20.10.2001, since the present case has been found to be a case of wrongful termination of the service of the petitioner herein,



the question that now arises for consideration is regarding the issue of back wages. In this regard it would be apt to refer to a judgment reported in (2013) 10 SCC 324 (**Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya & Ors.**), paragraph No. 38 to 38.7 whereof is reproduced herein below:-

38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back



wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works (P) Ltd. v. Employees* 7.

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal*⁵ that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three- Judge Benches^{7,8} referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

17. Thus, in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. It is also a trite law that once the employee shows that he was not



gainfully employed elsewhere, the onus lies to the employer to specifically plead and prove that the employee was gainfully employed, which the respondents in the present case have failed to do so. Another factor to be considered is that in case the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court concerned will be fully justified in directing payment of full back wages. I find that the present case is a case of gross injustice meted out to the petitioner herein by the respondents and the materials on record sufficiently demonstrates that the principles of natural justice has been given a go by and the petitioner has been victimized, as such I am of the view that as a consequences of the quashing of the enquiry report, order of punishment and the appellate order, the petitioner is entitled for full back wages w.e.f. 22.8.2001 till the date of superannuation along with all consequential benefits.

18. The writ petition is allowed with a direction to the respondents to pay the back wages w.e.f. 22.8.2001 till the date of superannuation of the petitioner along with all consequential benefits within a period of two months from today.

(Mohit Kumar Shah, J)

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CAV DATE	20-03-2018
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