IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4021 of 2011

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Mukti Nath Rai, Ex Clerk cum Cashier (Dismissed) Punjab National Bank, Janta Bazaar Branch Late Heera Lal Village Sahasarawan, P.O. Sahasarawan Via Bhagwanpurhat, P.S. Bhagwanpurhat, Dist. Siwan.

.... Petitioner/s

Versus

1. The Punjab National Bank Through The Chairman Cum Managing Director, Punjab National Bank, New Delhi, 7 Bhikiji Cama Place, New Delhi.
2. The General Manager, Punjab National Bank, New Delhi, 7 Bhikaji Cama Place, New Delhi.
3. The Chief Vigilance Office, Punjab National Bank, Bihar and Jharkhand, R-Block, Chanakya Place, Dist. Patna.
4. The General Manager, Punjab National Bank, Bihar and Jharkhand, R-Block, Chanakya Place, Dist. Patna.
5. The Deputy Zonal Manager oOf The Then Integrated Zonal Office, Patna, Punjab National Bank, R-Block, Chanakya Place, Dist. Patna.
6. The Manager HRD of The Then Integrated Zonal Office, Patna, Punjab National Bank, R-Block, Chanakya Place, Dist. Patna.
7. The Circle Head, Punjab National Bank, Muzaffarpur, Pankaj Market, Saraiyaganj, Now At Aghoria Bazar, Dist. Muzaffarpur.
8. The Chief Manager, Circle Office Muzaffarpur, Pankaj Market, Saraiyaganj, Now At Aghoria Bazar, Dist. Muzaffarpur.
9. The Zonal Manager, First Appellate Authority Of Central Public Information Officer, Punjab National Bank, Bihar, North Zone Now Circle Office Muzaffarpur, Pankaj Market, Saraiyaganj, Now At Aghoria Bazar, Dist. Muzaffarpur.
10. The Central Public Information Officer, Punjab National Bank, Circle Office Muzaffarpur, Pankaj Market, Saraiyaganj, Now At Aghoria Bazar, Dist. Muzaffarpur.
11. The Manager Staff, Personnel Section Of The Then Regional Office, Punjab National Bank, Muzaffarpur, Pankaj Market, Saraiyaganj, Now Aghoria Bazar, Dist. Muzaffarpur.
12. The Branch Manager, Punjab National Bank, Bhagwanpur Hat Branch, Siwan, Dist. Siwan.
13. The Branch Manager, Punjab National Bank, Janta Bazaar Branch, Chapra, Dist. Saran.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Pradip Kumar, Advocate.

For the Respondent-Bank: Mr. Prashant Vedsen and
Mr. Manoj Kumar Singh, Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 05-01-2018

Heard learned counsel for the petitioner and learned counsel representing the respondent Bank.

2. The petitioner has moved this Court in its writ jurisdiction for the following reliefs:-

> "(i) For quashing the impugned proposed order dated 22.09.03 [Annexure – 13/2] issued by the then Regional Manager, Punjab National Bank, Muzaffarpur Region (Disciplinary Authority) [Respondent no. – 7].
>
> (ii) For quashing the impugned final order dated 30.09.2003 [Annexure – 13/5] issued by the then Regional Manager, Punjab National Bank, Muzaffarpur Region (Disciplinary Authority) [Respondent no. – 7].
>
> (iii) For quashing the impugned order dated 16.02.2004 [Annexure – 13/8] issued by the Appellate Authority, the then Zonal Manager, Bihar Zone, Patna [respondent no. – 4].
>
> (iv) For quashing impugned letter dated 15.06.2010 [Annexure no. – 23] issued by the Chief Manager, Punjab National Bank, Circle Office, Pankaj Market, Saraiyaganj, now at Aghoria Bazar, District – Muzaffarpur [respondent – 8].
>
> (v) For a direction to respondents to reinstate petitioner in service with all consequential benefits in terms of the paragraph no. – 521 (2)(d) of Sastri award, Desai award

[Annexure – 1] duly modified w.e.f. 10.04.2002 by the Bipartite settlement as stipulated in Paragraph no. – 3(d) at Annexure – 10/2 read with the paragraph no. – 505 of Sastri award [Annexure – 17].

(vi) For any other relief / relief's for which petitioner is entitled in the facts and circumstances of this case."

3. Earlier, the petitioner moved this Court vide CWJC no. 3060/2010 (Mukti Nath Rai Vs. Punjab National Bank & Ors.) challenging the order of punishment imposed upon him in the disciplinary proceeding conducted by his employer as also the communication (Annexure-16/2) by which his employer had communicated that it has been decided not to respond on his representations dated 26.07.2007, 23.08.2007, 12.09.2007 and 16.10.2007 to reinstate him in service of the Bank in the light of his acquittal recorded under judgment dated 11.05.2007 passed in Cr. Appeal No. 30/2006 by the learned Additional Sessions Judge-F.T.C. Court No. II, Siwan.

4. This Court vide its order dated 12.03.2010 passed in CWJC No. 3060/2010 as contained in Annexure-18 to the Writ Petition quashed the communication as contained in Annexure-16/2 of the said Writ Application by which the Bank had communicated the petitioner that it has been decided not to respond to his requests for

reinstatement made vide representations dated 26.07.2007, 23.08.2007, 12.09.2007 and 16.10.2007 and directed the employer to consider the aforesaid four representations within a period of three months. Thus, the limited issue which remained open for consideration in the case of the petitioner was as to whether the petitioner has been able to make out a case for his reinstatement in service by virtue of his acquittal in the criminal case under the judgment dated 11.05.2007 passed in Cr. Appeal No. 30/2006 as mentioned here-in-above. So far as the order of dismissal and the appellate order are concerned, those were not interfered with by the learned Court while disposing of the Writ Application preferred by the petitioner.

5. In view of the limited scope of consideration in the present Writ Application this Court is not going into the details of the charges and the proceedings conducted against the petitioner which ultimately led to his dismissal from service save and except to note that the allegations against the petitioner were that of misappropriation of about 9 lakhs of different account holders of the branch. It is also revealed from the pleadings that altogether 13 charges were proved against the petitioner and 6 were partially proved and, for that reason, he was dismissed from service while the criminal case was still pending trial. It was not a case of dismissal of the

petitioner based on an order of conviction in a criminal case.

6. Pursuant to the judgment and order dated 12.03.2010 passed in CWJC No. 3060/2010 (Annexure-18 to the Writ Petition), the petitioner once again represented to his employer vide his letter dated 18.03.2010, as contained in Annexure-19 to the Writ Application, and thereupon the employer has considered his representation and passed a reasoned order which has been duly communicated to the petitioner, a copy of which is enclosed as Annexure-23 to the Writ Application. The petitioner is aggrieved by the order rejecting his representation including refusal to reinstate him in service.

7. In course of submissions learned counsel for the petitioner accepts the factual positions that so far as the order of dismissal and the appellate order are concerned, those orders have attained finality and, therefore, the limited scope for consideration revolves around his plea that his acquittal in the criminal case which came after the order of dismissal passed on 13.09.2003 and confirmation of the said order in the appeal by the Appellate Authority on 17.02.2004, would be a good ground for consideration of his case for reinstatement in service.

8. Learned counsel has relied upon a judgment of the Hon'ble Apex Court dated 16th July, 2012 in the case of **Sushila**

Tiwary & Ors. Vs. Allahabad Bank & Ors. (Civil Appeal No. 5224 of 2012). His submission is that once the petitioner has been acquitted in the criminal case, the order of dismissal must go and he should be reinstated in service.

9. On the other hand, learned counsel representing the Bank submits that pursuant to the order passed by this Court in CWJC No. 3060/2010, the representation of the petitioner has been duly considered. Emphasis has been given on the distinguishing feature of the case of the petitioner with that of the case of **Sushila Tiwary & Ors.** (Supra) on which reliance has been placed on behalf of the petitioner. It is submitted that in the said case of **Sushila Tiwary & Ors.** the very order of dismissal was based on the order of conviction passed by the Court of Sessions which would be apparent from a reading of Paragraph 5 of the judgment whereas in the present case the order of dismissal was passed in an independent disciplinary proceeding when the criminal trial was still pending and, therefore, it is not a case covered under Clause 19.3(b) of the Bipartite Settlement, 1966 amended up-to-date.

10. Learned counsel has referred from the impugned order rejecting the representation of the petitioner and has shown to this Court that the stand of the Bank is very clear from a bare reading of the impugned order.

11. Having heard learned counsel for the parties and upon perusal of the records I am of the considered opinion that the impugned order dated 15.06.2010, which has been communicated to the petitioner vide letter issued under the signature of Manager – HRD, Punjab National Bank as contained in Annexure-23, is a well reasoned and speaking order. The competent authority has considered the representation of the petitioner and upon giving a consideration with a conscious mind he has taken a view which is duly reflected in the following paragraphs of the impugned order. Those are as under:-

> "The departmental action was taken against Sri Rai in accordance with the provisions of the prevailing bipartite settlement. 1966 amended up to date. It is also apparent that the dismissal of the Petitioner Sri Rai was not based on conviction in the criminal case (which was still pending) as per clause 19.3(b) of the then settlement so as to warrant a review of his case for reinstatement or a fresh proceeding under clause 19.3(d) in case of acquittal in an appeal preferred by him against his conviction.
>
> It also appears that in the criminal case, Sri Rai was convicted and sentenced by the trial court on 11-09-2006 under Sections 409, 420, 467, 468 and 471 of the I.P.C. against this, Sri Rai filed appeal no. 30/06 in which the appellate court by judgment dtd. 11-05-2007 acquitted Sri Rai on technical grounds.

Thereafter, Sri Rai by his representations contained in Annexure-15 series to the writ petition requested the bank for a review of his case and his reinstatement following his acquittal in appeal by the criminal appellate court which requests as discussed hereinabove were rejected by the bank Annexures-16 & 16/2 to the writ petition on grounds that the dismissal of the Petitioner was not based on judgment of conviction in the criminal case.

Thus, Sri Rai filed the writ petition in which the order dated 12-03-2010 under reference was passed by the Hon'ble Court directing the Competent authority of the bank to consider the representation of Sri Rai contained in Annexure-15 to the writ petition in the light of paras 8 & 9 of the appellate court judgment dated 01-05-2007.

Perused paragraph nos. 8 & 9 of the judgment wherefrom it appears that the judgment of conviction & sentence of the trial court was reversed by the appellate court on a technical finding that the vouchers of the bank being proof of the fraud of the appellant were either not available on records of the case and if available they were either not produced in court or exhibited by the prosecution.

So far as the above finding is concerned, it is purely technical in nature and a lapse on the part of the prosecution i.e. the state conducting the case. Thus the Acquittal of Sri Rai by no stretch of imagination can be termed to be clean but a case of benefit of doubt for lack of production and exhibiting of documentary evidence.

Thus Sri Rai's case is not fit for review for reinstatement in service even after his acquittal in the criminal case by the appellate court. Moreover, Sri Rai is not entitled for a review of his case under the applicable provisions of Clause 3 (a to d) of the bipartite settlement dated 10-04-2002…..

Having due regard to the above positions, I hereby turn down the request of Sri Rai for reinstatement in service. I order accordingly my office is directed to communicate this order forthwith to Sri Rai."

To this Court it appears that the reasons assigned in the impugned order are in consonance with the legal principles on the subject.

12. So far as the judgment in the case of **Sushila Tiwary & Ors.** (Supra) on which reliance has been placed on behalf of the petitioner is concerned, in the said case an order of conviction was passed against the employee concerned on 19.04.1999 by the Sub Divisional Judicial Magistrate, Bhojpur and he was ordered to undergo rigorous imprisonment for one year for the offence punishable U/S 468 IPC and rigorous imprisonment for one year for

the offence punishable U/S 477(A) IPC. In view of the conviction in the criminal case the Assistant General Manager, Regional Office, Patna, who was the Disciplinary Authority, invoked provisions of Clause 19.6(a) of the Bipartite Settlement, 1966 and dismissed the concerned employee from service of the Bank by Order no. 9/99 dated 21.07.1990.

13. In the present case, an independent disciplinary proceeding was instituted and conducted against the petitioner in which altogether 13 charges were proved against him and 6 were partially proved, based on what emerged in the enquiry the Disciplinary Authority passed the order of dismissal and the said order has already attained finality as in the earlier round of proceeding in CWJC No. 3060/2010, the same has not been interfered with and the employer was directed only to consider the representation of the petitioner within the limited scope and ambit.

14 . In the ultimate analysis this Court does not find any reason to interfere with the impugned order. The Writ Application is devoid of merit and it is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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