

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9032 of 2014

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Ajay Kumar Verma, son of Late Munindra Prasad Verma, resident of Anand Marg
Road, New Chandmari, Motihari, P.O. & P.S.- Motihari, District- East Champaran
.... Petitioner

Versus

1. Uttar Bihar Gramin Bank, Head Office- Kamalbagh Chowk, Muzaffarpur,
through its Chairman
 2. Board of Director, Uttar Bihar Gramin Bank, Head Office- Kamalbagh Chowk,
Muzaffarpur
 3. Chairman, Uttar Bihar Gramin Bank, Head Office- Kamalbagh Chowk,
Muzaffarpur
 4. General Manager, Uttar Bihar Gramin Bank, Head Office- Kamalbagh Chowk,
Muzaffarpur
 5. Enquiry Officer, Uttar Bihar Gramin Bank, Head Office- Kamalbagh Chowk,
Muzaffarpur
.... Respondents
- =====

Appearance :

For the Petitioner	:	Mr. Rajendra Narain, Senior Advocate Mr. Anju Kumari @ Anju Narain, Advocate Mr. Anant Kr.Sinha, Advocate
For the Bank	:	Mr. Prabhakar Jha, Advocate and Mr. Mukund Mohan, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 18-08-2018

Heard learned Senior counsel for the petitioner and
learned counsel for the Bank.

2. Under charge memo dated 21.1.2011 the petitioner has been proceeded against an allegation of reckless financing beyond the service area of the branch where he, at the relevant point of time, was posted as branch manager. Other allegations are that the finance has been done without taking due care with regard to the collaterals and non creation of the assets as a result of various finance made by the petitioner. Charge memo was served on the



petitioner 10 days prior to his attaining superannuation on 31.1.2011. The petitioner has been proceeded against and the Chairman of the Bank being the Disciplinary Authority vide his order dated 24.7.2012 found the charges except Charge No.3 to be proved, whereas in respect of Charge No.11 the finding is that the same is partially proved. All the charges come within the allegations noticed herein above.

Penalty which has been awarded to the petitioner by the Disciplinary Authority is as follows:-

“Recovery of Rs.9,52,772/- being the amount of gratuity and leave encashment, payable to him, as a part of pecuniary loss, caused to the Bank, from Sri Verma CSO, in terms of Regulation 39(I)(a)(iv) of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulations, 2010)”

3. The amount being recovered under order of the Disciplinary Authority is *prima facie* the amount of gratuity and leave encashment payable to the petitioner. The Disciplinary Authority has found the same to be part of pecuniary loss caused to the bank on account of reckless financing and other irregularities committed by the petitioner. The amount of loss has neither been quantified in the charge memo nor during the course of enquiry. Even in the order of the Disciplinary Authority, the alleged amount of loss on account of petitioner's misconduct has not been



quantified or mentioned.

4. Learned Senior counsel for the petitioner submits that in absence of any allegation regarding loss caused to the bank and in absence of quantification of the same, punishment of recovery awarded to the petitioner without reference to any detail and without affording him opportunity in respect of such quantification of loss, is unsustainable. He submits that the amount sought to be recovered is arbitrary and product of the whims of the Disciplinary Authority.

5. Other submission on basis of which instant petition was admitted, is that such recovery of the amount of gratuity due to the petitioner could not have been done. Challenge to the recovery of the amount of gratuity due to the petitioner has been made on two grounds. It is submitted that such recovery is barred under the provisions of the Payment of Gratuity Act, 1972 (herein after referred to as 'the Gratuity Act, 1972'). In support of such submission, he refers to section 14 of the payment of the Gratuity Act, 1972. Relying upon the aforesaid provision and pronouncement of the Division Bench of this Court in case of **The Chairman and MD, UCO Bank and others Vs Shambhu Sharan Singh**, reported in **2013(2) PLJR 866** he submits that action of the bank withdrawing the amount of gratuity was clearly



in violation of section 4 read with section 14 of the Payment of Gratuity Act, 1972 and as such, order to that extent, is unsustainable. It is also his submission that recovery is sought to be made relying upon the provisions contained in regulation 39(I)(a)(iv) of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulations, 2010). The said regulation, in so far as it is in conflict with the provisions of the Gratuity Act, 1972, is unsustainable in law and cannot be made the basis of any recovery from the gratuity of the petitioner.

6. Learned counsel appearing for the bank vehemently opposes the prayer made in the writ petition referring to the law laid down by the Hon'ble Apex Court in case of **State Bank of India and another Vs. Bela Bagchi and others**, reported in **(2005) 7 SCC 435**. It is submitted that since the expected conduct of the employee of the bank is to exercise higher standards of honesty and integrity while dealing with money of the depositors and the customers, no leniency can be shown in the matter. He submits that the petitioner was dealing with the public money and the reckless financing had caused loss to the bank as such recovery sought to be made from the petitioner after subjecting him in departmental proceeding, should not be interfered with as the same is in accordance with law. He has also relied upon the Division



bench decision of this Court reported in case of **the Bank of India through its Chairman-cum-Managing Director and others Vs. Smt. Snehlata Saran @ Snehlata**, reported in **2014(1) PLJR 108** to submit that this Court is not expected to go into the fishing enquiry since the punishment is the consequence of the proceedings conducted in accordance with law, this Court should not re-appreciate the issue.

7. The legal position arising out of the said two citations relied upon by the bank cannot be denied. Whether the same is applied in the facts and circumstances of the case is an issue which has to be seen. Learned Senior counsel for the petitioner has submitted to the extent that the action of recovery from petitioner's gratuity cannot be sustained on the ground that there is no basis of recovery and the action of recovery is arbitrary as also in violation of the provisions of the Gratuity Act, 1972. The penalty in so far as it purports to withdraw the amount of gratuity due to the petitioner is unsustainable in law. This Court would notice that on bare perusal of the entire proceedings, right from the issuance of the charge memo dated 21.1.2011 up till order of punishment of the Disciplinary Authority under order dated 24.7.2012, the alleged loss caused to the bank on account of reckless financing by the petitioner has neither been alleged nor



quantified in the entire proceeding.

8. Even, the punishment order which purports to withdraw the amount of gratuity payable to the petitioner is said to be a part of the total loss occasioned but the total loss has never been quantified. The recovery sought to be made under order of the Disciplinary Authority is therefore without any basis whatsoever. No charge in this respect was communicated to the petitioner nor has the same been quantified in any way. The civil consequence of recovery of a huge amount of gratuity amounting to Rs. 9,52,772/- without ever quantifying the loss occasioned, is unsustainable. The amount has never been quantified with reference to any allegation of loss having been caused to the bank. On this ground, recovery of any amount is unsustainable in the eyes of law. This Court, in view of the findings, does not consider it appropriate to go into the issue whether the regulation should be declared illegal and in violation of the Gratuity Act, 1972. In view of the conclusions herein above, recovery from the retiral dues of the petitioner, in so far as it purports to recover Rs. 9,52,772/- which includes the amount of gratuity of the petitioner, is unsustainable in the eyes of law. In the absence of any allegation and finding in respect of quantification of loss, the order, in so far as it directs recovery of Rs.9,52,772/- is unsustainable as being arbitrary and without conducting any



enquiry alleging any quantum of loss and cannot be made the basis of recovery from the petitioner. The order dated 24.7.2012 to the extent it directs recovery of Rs.9,52,772/- is quashed. The respondents are thus restrained from making any recovery from the petitioner on basis of the order dated 24.7.2012.

9. The writ petition is allowed to the extent indicated herein above.

10. The petitioner would thus be entitled to the consequential relief in terms of the payment of the amount of his retiral dues which has been withheld along with statutory interest as permissible in law.

11. The writ petition is allowed.

(Madhuresh Prasad, J)

Shashi.

AFR	AFR
CAV DATE	NA
Uploading Date	21.8.2018
Transmission Date	NA

