IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 5768 of 2005

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1 Jitana Devi, wife of Lalji Singh, resident of Village – Bandipur, Opposite – G B College, Bandipur, PS – Ramgarh, District – Kaimur (Bhabhua)
2 Anil Kr Singh, son of Lalji Singh, resident of Village – Bandipur, Opposite – G B College, Bandipur, PS – Ramgarh, District – Kaimur (Bhabhua)

... ... Petitioner/s

Versus

1 Punjab National Bank through its General Manager, Human Resources Development Division, Head Office : 7 Bhikhaji Cama Place, Africa Avenue, New Delhi – 66
2 The Zonal Manager, Punjab National Bank, Disciplinary Action Cell, Zonal Office, 'B' Block, Patna (Bihar)
3 The Dy General Manager (Zone), Punjab National Bank, Disciplinary Action Cell, Zonal Office, 'R' Block, Patna
4 The Regional Manager, Punjab National Bank, HRD Section, Regional Office, Ara, Bihar
5 The Lead District Manager, Punjab National Bank, Inquiry Authority, LDMO, Bhabhua, District – Kaimur (Bhabhua)
6 The Branch Manager, Punjab National Bank, Ramgarh, Godasara Branch, District – Kaimur (Bhabhua)

... ... Respondent/s

For the Petitioner/s	:	Mr Triloki Nath Maitin, Senior Advocate with Mr Dharmesh Kr Srivastava, Advocate
For the Respondent/s	:	M/s Prashant Vedasen, Subhash Chandra Bose, Advocates

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 08-11-2019

Heard learned Senior Counsel for the petitioners as well as the learned counsel appearing for the respondent-Bank.

2 The issue is in relation to a period when the petitioner No 1's husband was posted as an Assistant Manager in the respondent-Bank at Godasara Branch, Ramgarh in the district of Kaimur. On the basis of a charge memo alleging various irregularities/lapses committed while recommending loans, the petitioner was proceeded against departmentally. The charge memo is dated 04.07.2003. The substance of the allegation against petitioner No 1's husband was that he had not done proper credit appreciation before recommending sanction in favour of various loanees. It is also alleged that he had granted the facilities of a clean overdraft to various account holders for which he had not even given intimation to the competent authorities. It is also alleged that he had granted loans to loanees beyond service area of the Branch. Another aspect of the allegations enquired into was that though the loaning power of the incumbent (Branch) was suspended between the period 01.08.2002 to 27.11.2002, he had recommended sanction/disbursement of 88 loan accounts in between that period. Altogether, the allegations are in respect of various accounts.

3 Petitioner No 1's husband, as a result of the proceedings, has been visited with an order of punishment by the Disciplinary Authority which is dated 01.06.2004. Finding the petitioner No 1's husband's conduct to be worthy of grant of major penalty, the severest major penalty of dismissal has been awarded to the petitioner No 1's husband with a rider that the same was also to be a disqualification for future employment.

4 Having considered these relevant admitted facts, this Court would proceed to consider the submission advanced by the learned Senior Counsel representing the petitioner. The arguments, at the very outset, are confined to the quantum of punishment inflicted by the Authority.

5 The learned Senior Counsel for the petitioner submits that the nature of the allegations, findings arrived at by the Enquiry Officer as well as the Disciplinary Authority, even if taken at their face value, do not lay the foundation for grant of the severest major punishment available under the Service Regulations. It is his submission that the petitioner No 1's husband had 38 years of spotless service behind him at the time the punishment was inflicted. It is also submitted that there was no pecuniary loss caused to the Bank in respect of the allegations proved in the enquiry. Placing these issues, he submits that the same should have weighed before the Authorities in arriving at a conclusion regarding the quantum of punishment. Had the Authorities considered these circumstances, surely they would not have awarded the severe punishment of dismissal which was also to be a disqualification for future employment.

6 Mr Prashant Vedasen appearing for the Bank submits that the petitioner No 1's husband himself has not asserted that there is any procedural lapse in the enquiry. Since the findings are product of a procedure in accordance with law, the submissions advanced by the petitioners are not worthy of consideration. In view of the scheme of Bank's Regulations, any pecuniary loss is not necessary for inflicting the major punishment. In this connection, he placed reliance on Rules 3 (1) and 3 (3) of the Punjab National Bank Officer Employees' (Conduct) Regulations, 1977 (for brevity, the Regulations) in respect of which the proceedings were conducted and which have been found to be proved in the enquiry. Regulations 3 (1) and 3 (3) are being reproduced for easy reference:

> ***"3. General:***
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> *(1) Every Officer employee shall, at all times take all possible steps to ensure and protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of an officer employee.*
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> *(2) ... ...*
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> *(3) No officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him act otherwise than in his best judgment except when he is acting under the direction of his official superior.*
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> *... ... ..."*

7 It is also submitted by Mr Vedasen appearing for the respondent-Bank that petitioner No 1's husband was serving in a Bank performing a very crucial role of recommending loans. Bank employees performing such duty, while dealing with public money, are cast a duty to maintain the highest degree of integrity and ensure due diligence while discharging their duties since any lapse has the potential to put larger financial interest of Society at stake. He also submits that after the punishment was inflicted against the petitioner No 1's husband, some of the accounts have also become bad debts.

8 This Court has considered the rival submissions of parties. The submission, advanced by the learned Senior Counsel for the petitioners with respect to the fact that there is no pecuniary loss, does not inspire any confidence. Since the findings of the enquiry have not been denied or disputed, the charge being in respect of Regulations 3 (1) and 3 (3) of the Regulations, this Court would not insist on any pecuniary loss to sustain the findings once the charges have been proved under Regulations 3 (1) and 3 (3) of the Regulations. Clearly, the Regulation does not contemplate or require that there has to be a pecuniary loss.

9 The other submission advanced regarding the fact that the petitioner No 1's husband has 38 years of spotless service behind him, the said fact has not been denied by the respondent-Bank anywhere in the pleadings.

10 The other aspect of the matter is that in respect of 88 loan accounts, which are said to have been recommended for sanction/disbursement within the period when the power of the Branch to sanction loans had been suspended, this Court would observe that throughout the proceedings before the Authorities as well as in the instant proceedings, it is the consistent case of the Bank that the petitioner No 1's husband was the Recommending Authority. The allegation is that the power of the Branch to sanction loans had been suspended in between 01.08.2002 to 27.11.2002 by the Regional Authorities. The order of the Regional Authorities, therefore, governed the petitioner No 1's husband, as well as the Branch Manager where petitioner No 1's husband was posted. The facts are clear and admitted that it was a Two Men Branch. Both incumbents in the Branch were, thus, governed by the suspension of loaning power within the said period and prevented from sanctioning/disbursing loans. The admitted facts lead this Court to the irresistible conclusion that at least in respect of 88 loan accounts, which are said to have been sanctioned between the period 01.08.2002 to 27.11.2002 when the loaning power of the Branch was suspended, liability/responsibility cannot be fastened only on the petitioner No 1's husband. After petitioner No 1's husband's recommendation, sanctions were accorded by the competent Authority (Branch Manager) of the Branch. It was the petitioner No 1's husband's case before the Authorities that the purported order dated 01.08.2002 issued by the Regional Manager, suspending the loaning power was not communicated in the Branch or within the knowledge of the petitioner No 1's husband. No such order has been brought on record in the enquiry before the Enquiry Officer. No such communication from the Regional Authorities have been placed on record to show that the same was even available in the Branch.

Even if the said facts are overlooked, the fact that the Branch Manager, petitioner No 1's husband's Superior Authority in the Branch had proceeded to sanction the loans, is glaring proof of the fact that the petitioner No 1's husband could not have been singly fastened with the liability in respect of sanction/disbursement of 88 loan accounts. This circumstance, in favour of the petitioner No 1's husband, has not been considered while awarding the punishment.

11 Learned Senior Counsel for the petitioners has relied upon judgments in support of his contention that this Court should interfere with the quantum of punishment and substitute its own opinion in respect of the punishment to be awarded to the petitioner No 1's husband. The judgments relied upon by the petitioners are in the cases of *Laxmi Shankar Pandey -Versus-Union of India & Others* reported in *AIR 1991 Supreme Court 1070, Suresh Prasad -Versus – Bihar State Ware Housing Corporation & Others* reported in *2007 (3) PLJR 55,* and lastly decision of the Apex Court in the case of *Prem Nath Bali -Versus-Registrar, High Court of Delhi & Another* reported in *2016 (1) PLJR (SC) 461.* The learned Senior Counsel submits that the settled legal position arising from these three judgments, is that where mitigating circumstances exist, which have not been considered by the Authorities while deciding the quantum of punishment, it is open for this Court to set aside the punishment and substitute its own punishment in place of that which has been awarded by the Authorities. The judgments relied upon by the learned Senior Counsel, therefore, are in respect of two propositions (i) power of this Court to interfere with the quantum of punishment and (ii) to substitute its own punishment in place of that which has been imposed by the Authorities. In respect of the first proposition, having regard to the facts and circumstances in hand, which have been considered hereinabove, this Court would observe that the case of the petitioners stands fully covered by the decisions relied upon by the learned Senior Counsel for the petitioners.

12 Regarding substituting its own opinion in place of the punishment awarded by the Authorities, in view of the order this Court proposes to pass, this Court would observe that the facts and circumstances are yet to be considered by the respondent-Authorities. At this stage before consideration by Authorities, this Court would not impose its own opinion in respect of the lesser punishment to be awarded to petitioner No 1's husband.

13 There are two mitigating factors, which have been taken note of hereinabove. (i) The Branch Manager also had a role, even as per admitted facts in respect of sanction of 88 loans at the time when loaning power was suspended by the Regional Manager. (ii) The fact that petitioner No 1's husband has 38 years of unblemished service behind him, was also required to be considered. Court, however, would refrain from imposing its own opinion as to what is the lesser punishment which is to be awarded to the delinquent. The same is left to be decided by the Appellate Authority.

14 Let a final decision in respect of a lesser punishment be taken by the Appellate Authority within a period of three months from the date of receipt/production of a copy of this order.

15 Another submission advanced by the respondent-Bank was that the issue of quantum of punishment was never raised by petitioner No 1's husband before the Appellate Authority.

16 The same having not been done, this Court would observe that even if the Authorities today decide to award a lesser punishment, they cannot be saddled with consequential retrospective pecuniary liabilities that may arise in the event a lesser punishment is awarded. The same shall entail prospective pecuniary benefits to the petitioners, if any.

17 The writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.02.2020
Transmission Date	NA