

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.626 of 2019

In

Miscellaneous Jurisdiction Case No.450 of 2017

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S. S. Sundaram, Age- 57 years, (Sex Male), S/o Late Jagannath Prasad Srivastava, The then Chief Manager cum Disciplinary authority, Pubjab National Bank, HRD Section, Circle office, Ramchandrapur, Bihar Sharif, presently posted as Chief Manager, PNB, BO Chowk Patna City, Distt. Patna.

... .. Appellant/s

Versus

1. Lalan Kumar Mishra S/o Later Gopi Kant Mishra, R/o Mohalla Rajbari, Khirnighat Road, Ps. Bararia, district Bhagalpur.
2. The State of Bihar Bihar.
3. Punjab National Bank, Bhikaji Cama Place, new Delhi - 110066 through its Chairman MS Usha Ananth Subramaniam.
4. MS Usha Ananth Subramaniam, Chairman, Punjab National Bank, Bhikaji Cama Place, New Delhi- 110066.
5. Sri P.K. Kanaujia, Assistant General Manager, Circle Head cum Appellate Authority Punjab National Bank, Ramchandrapur, Bihar Sharif, Distt. Nalanda.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shashi Anugrah Narain Singh, Sr. Advocate Mr. S.P. Singh, Advocate
For the Respondent/s	:	Mr. Ajay Kumar Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-08-2019

Re: I.A. No. 1 of 2019

Heard Shri Shashi Anugrah Narayan, learned senior counsel for the appellant Bank and Shri Ajay Kumar Sinha, learned counsel for the respondent-employee.

2. The appeal is reported to be delayed by 41 days.



3. We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 1 of 2019 stands allowed accordingly.

Re: L.P.A. No. 626 of 2019

The dispute in this appeal has been brought before this Court on the ground that the learned Single Judge proceeding with the contempt matter has, according to the appellant, enlarged the scope of the contempt application and has initiated proceedings by passing a positive order calling upon the Chairman of the Bank to be personally present for proceeding in the matter. It is at this stage that the present appeal has been filed contending that there is neither any wilful or deliberate disobedience nor is there any challenge raised to the order passed by the Bank in compliance of the order passed by the High Court which order is dated 17th October, 2015. The said order disposes of the matter finally between the parties and according to the learned counsel for the appellant the remedy open to the respondent was to question the correctness of the said order in case he was aggrieved by non-payment of back



wages.

2. Suffice it to say that the entire litigation ended up in an award of punishment which initially was a punishment of compulsory retirement that stood reduced under the order dated 17th October, 2015 by inflicting the punishment of **“Reduction to lower stage in the scale of pay by two stages” as per clause 6 (e) of the Bipartite settlement dated 10.04.2002.** In order to appreciate the impact of the said order, it would be more appropriate to quote the entire order passed on 17th October, 2015, as contained in the last paragraph thereof:-

“On the basis of the facts and circumstances of the case and considering all records relevant to case produced during the enquiry and enquiry report, and personal hearing I am inclined to believe that you got your privilege leave encashed twice, each time for thirty days, first time on 12.12.1997 and second time on 10.03.1999 under the same four year block of 15.01.1997 to 14.01.2001 which was unlawful. Thus, keeping in view the whole facts/case records, circumstances of the case, considering your past service and track record and with due application of mind I hold you guilty of charge-I and I impose a major penalty of “Reduction to lower stage in the scale of pay by two stages” as per clause 6(e) of the Bipartite



settlement dated 10.04.2002. The position of Shri Mishra as existing before the passing of order dated 30.03.2010 is being restored with the effect of the above punishment. Shri Mishra will not be entitled for salary/wages for the period he remained out of service (i.e. the period between the imposition of penalty of compulsory retirement and the date of his resuming duties) on the principle of “NO WORK NO PAY” however, the said period will be counted as qualifying service for the purpose of terminal benefits.

Place: Biharsharif”

3. A perusal of the same would indicate that after two rounds of litigation the order of punishment that was imposed also coupled with it the denial of salary for the period the respondent remained out of service on the principle of “NO WORK NO PAY”. It is this part of the order which led to the filing of a contempt application for the first time before this Court on 14th of February, 2017. The contempt application was entertained and orders were issued from time to time on which reliance has been placed by the respondent-petitioner contending that the order of restoration that had been passed earlier by the High Court clearly intended to restore the status that was existing on 30.03.2010. According to the respondent-



petitioner once the earlier order of compulsory retirement had been set aside then the direction was clearly intended to restore the respondent-petitioner back to the position that was existing as on the said date. The appellant Bank did not comply with the said direction and, therefore, in the contempt proceedings directions were issued to comply with the same in letter and spirit. According to the respondent-petitioner, in spite of repeated indulgences granted by the learned Contempt Judge and the offer of the Bank authorities to purge the contempt, no compliance was shown and instead the substituted punishment order as directed was passed on 17th October, 2015, which is extracted hereinabove.

4. The contention, therefore, is that the respondent-petitioner was denied the benefit of the earlier directions of this Court, whereby his status had to be restored with all consequential benefits. It is urged that there was no ambiguity in the direction issued by the High Court and, therefore, the Bank could not have misconstrued the same after the passing of the order dated 17th October, 2015 so as to deny those benefits which already stood accrued by virtue of the earlier round of litigation.

5. It is in this background that the learned Single



Judge has passed the order treating the said approach of the Bank to be contumacious and has summoned the Chairman of the Bank.

6. A supplementary affidavit has been filed in this Letter Patent Appeal contending that the order of the learned Single Judge amounts to virtually concluding the contempt proceedings against the Bank authorities by observing that the Bank authorities have continuously flouted the orders and, therefore, this amounted to a gross contempt.

7. Learned counsel for the Bank has urged that even otherwise the application for contempt had been filed beyond the period of limitation as prescribed under Section 20 of the Contempt of Courts Act, as such, the contempt application itself was not maintainable. Apart from this, it is submitted that once the order dated 17th October, 2015 had been passed, there was no occasion for having initiated contempt proceedings without any challenge having been raised to the order dated 17th October, 2015. Several judgments have been relied on by learned counsel for both the sides, but what we find is that the fact remains that the respondent-petitioner even though was directed to be restored as on 30th March, 2010 yet, it is evident from the order passed on 22nd July, 2015 in C.W.J.C. No. 8359



of 2011 that while restoring the status as existing on 30th March, 2010 the Court expected that the Disciplinary Authority would pass a fresh order on the quantum of punishment. It is undisputed at the Bar that the said quantum of punishment was reduced and the order of compulsory retirement was substituted by the punishment as indicated hereinabove. It is, thus, clear that the Bank clearly now intended to reinstate the respondent-petitioner in terms of the said order dated 17th October, 2015. This, in our opinion, was a substantial compliance of the directions issued by the High Court and if the appellant was aggrieved by denial of the back wages for the period he had not been allowed to work by the appellant Bank, it was certainly open to the respondent petitioner to have challenged the said order in appropriate proceedings. We, therefore, do not find in the background above that the contempt proceedings ought to have been initiated for the purpose of punishing the officials of the Bank for having committed gross contempt of the Court.

8. Accordingly, the appeal is allowed. The order dated 14th of August, 2019 passed in M.J.C. No. 450 of 2017 is set aside. The contempt proceedings in M.J.C. No. 450 of 2017 are dropped with liberty to the respondent petitioner to question the correctness or otherwise of the order dated 17th October,



2015 before the appropriate forum. It will be open to the respondent-petitioner to seek any relaxation in the period for filing of any fresh proceedings in this Court.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	05.09.2019
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