

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 765 of 2018**

{Arising out of order dated 08.05.2018 passed in Writ Petition (S) No. 5213 of 2011 by the learned Single Judge}

The Chief Executive Officer Zila Sahkari Kendriya Bank Maryadit, Raipur
Through The Chief Executive Officer Shivnandan Prasad Chandrakar ,s/o Late
Chhabilal Chandrakar Aged About 54 Years Zila Sahkari Kendriya Bank Maryadit
Raipur District Raipur Chhattisgarh.

---- Appellant**Versus**

1. Horendra Giri S/o Devnarayan Duney Aged About 69 Years R/o Subhash Ward ,kanker ,police Station Tahsil And District Kanker Chhattisgarh.
2. The Registrar Co-Operative Societies Chhattisgarh, Raipur Chhattisgarh

---- Respondents

For Appellant	: Shri Harshvardhan Parganiha, Advocate.
For Respondent No. 1	: Shri Sushobhit Singh, Advocate.
For Respondent No. 2/State	: Shri Rahul Jha, Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per Ajay Kumar Tripathi, Chief Justice****22/01/2019**

1. Heard learned counsel for the parties.
2. Writ application of the private Respondent was allowed by the learned Single Judge on 08.05.2018. The relief prayed for therein was that since he was exonerated in the three criminal cases which were registered against him under Section 409 of the Indian Penal Code, there was no occasion to sustain the decision to terminate him on the basis of institution of criminal cases in the first place. No departmental enquiry was held which could in turn become the reason or justification for his dismissal from service.

3. The learned Single Judge took a view that since the employee in question stood acquitted in the criminal cases, therefore, the advantage of him having established his innocence will accrue to the employee as the reason for his termination was the initiation of criminal case against him relating to misappropriation of a sum of Rs.27,777.67 paise.
4. The learned Single Judge took note of the fact that since there was no departmental enquiry conducted with regard to the charges and the criminal case was the reason for his termination, he was required to be reinstated in service and if he had reached the age of superannuation, he would be entitled to entire monetary benefit as if the order of termination was never passed.
5. It is in this background that an appeal has been preferred by the Bank where a very detailed and extraneous arguments have been made as to the justification for declaring the order of the learned Single Judge dated 08.05.2018, which is the order impugned in this appeal to be unsustainable.
6. This Court has not been able to appreciate one aspect of the matter as to how an employee could be terminated from service merely on initiation of a criminal proceeding. The case would have been different had such employee been convicted by a criminal Court of law. In that situation may be the employer was not required to hold a departmental enquiry in addition to the trial and the verdict of guilt passed by a criminal Court. Such a situation has been envisaged under Article 311(2) of the Constitution of India. But in the present case, institution of an FIR itself formed the basis for termination which per se in our opinion was an illegal decision.
7. Independent of the criminal proceedings, an employer, no doubt has powers to hold a departmental enquiry and then take a decision to dispense with the services of an employee provided the omission and commission for which he had been charged is established in the said enquiry.

8. The Court granted adequate opportunity to the counsel appearing for the Appellant to demonstrate even at the stage of appeal that a departmental enquiry was held which formed the basis for the order of termination. If that would have been so then the finding given or the reason assigned by the learned Single Judge could have become vulnerable.
9. No doubt, an application for taking additional document on record which was registered as IA No. 2 of 2018 was filed as an effort to show that there was a departmental enquiry, but with due respect to the Bank as well as the counsel, a look at the documents does not complete the jigsaw puzzle. We repeatedly asked the counsel for the Bank to produce at least a copy of the enquiry report, which could have been accepted as an evidence but in absence of the same it is difficult to hold that a domestic enquiry was held.
10. The Bank takes a plea that since it is a very old matter some how they do not have the necessary records, but there are enough indications that something of the kind which is known as regular departmental enquiry was held.
11. We refuse to accept such line of argument because inferences can be drawn provided the picture is complete.
12. We have gone through Annexure P/2, dated 15.09.1973 which was the order under challenge in the writ application and which is also the order of termination of the private Respondent.
13. It seems that a new or a novel methodology was adopted by the Bank before passing the order of termination. From reading of Annexure P/2 to the writ application, it seems that the employee was issued a show cause and not being satisfied with the response filed thereto, the order of termination came to be issued.

14. If a show cause was issued to the employee seeking his response in relation to the charges or omission and commission and if the employer was not satisfied with his response, they ought to have held a regular departmental proceeding. But this Court is not aware where a show cause and a reply to show cause would be treated to be an enquiry held against an employee which in turn could become the basis for termination.
15. This is an unheard kind of procedure adopted by the Bank and since such innovations is not supported by any law or at least service jurisprudence relating to conduct of departmental enquiry, the finding given by the learned Single Judge that there was no departmental enquiry held based on which the order of termination could be sustained, the restoration of the private Respondent to his post, position as well as restoration of his dignity and vanity was in order.
16. Since we have found that institution of criminal case itself was the basis for termination and that in absence of any cogent and valid evidence of a regular departmental proceeding having been held or conducted against the employee, the order of termination is unsustainable and it has been rightly interfered with.
17. The appeal has no merit. It is dismissed.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE