IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4129 of 2008

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Shailendra Kumar Sinha, son of Shri Rajendra Kumar Sinha, Resident of Back of Zology Department, L.S. College, Mohalla- Damachok, P.S.- Kazi Mohammadpur, District- Muzaffarpur.

... ... Petitioner/s

Versus

1. The Uttar Bihar Khetriya Gramin Bank, Head Office, Muzaffarpur.
2. Competent Authority cum Chairman, Uttar Bihar Khetriya Gramin Bank, Head Office, Muzaffarpur.
3. Chief Manager, Uttar Bihar Khetriya Gramin Bank, Head Office, Muzaffarpur.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Manoj Kumar Manoj, Advocate
For the Respondent/s : Mr. Prabhakar Jha, Advocate
Mr. Mukund Mohan Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 16-12-2021

In the instant petition, the petitioner has prayed for the following releifs:

> That this writ application/petition is being filed on behalf of the petitioner before this Hon'ble High Court for issuance of an appropriate writ/writs, order/orders, direction/directions for quashing the order dated 13.12.2007 passed by the Board of Directors headed by Sri R.B. Yadav, Chief Manager, head office, Uttar Bihar Khetriya Gramin Bank, Head Office, Muzaffarpur whereby and where-under the board illegally as well as in arbitrary manner has upheld the punishment of dismissal awarded by the disciplinary authority without considering the fact that petitioner was dismissed after waving the departmental proceeding and no reason for doing so has been recorded in writing and place before board which is

mandatory according to the regulation 39(b) of Vaishali Khetriya Gramin Bank (officer & employees) service regulation 2000."

2. The petitioner was an officer of the respondent Bank as on the date of dismissal i.e. 18.05.2006.

3. While the petitioner was in service, he was involved in a criminal proceeding on the alleged demand and acceptance of illegal gratification and it was the subject matter of criminal case in which he was convicted on 02.05.2006.

4. Based on the conviction order dated 02.05.2006, the respondent Bank proceeded to dismiss the petitioner from service on 18.05.2006 (Annexure-3). Feeling aggrieved and dissatisfied with the order of dismissal, petitioner preferred appeal before the Appellate Authority on 01.07.2006 and it was rejected on 13.12.2007 (Annexure-5). Thus the petitioner is before this Court in respect of challenge to the order of dismissal and the Appellate Authority order.

5. Learned counsel for the petitioner submitted that the petitioner was convicted in criminal proceeding with reference to offences under the Prevention of Corruption Act, 1988 read with Indian Penal Code on 02.05.2006 in RC No. 4(A) 2003. Based on the conviction, he has been dismissed from service on 18.05.2006 and the order of dismissal dated 18.05.2006 is not in terms of

Vaishali Kshetriya Gramin Bank (Officer & Employees) Service Regulation, 2000, now renamed as Uttar Bihar Gramin Bank, 2006 (for short “Regulation 2006”). The petitioner’s counsel submitted that there is non-compliance of Regulation no. 39 relating to Waiver of the procedure of Regulation 2006.

6. Learned counsel for the respondent resisted the aforesaid contention and submitted that dismissal order dated 18.05.2006 is in terms of Regulation No. 38 and 39 is not attracted in the present case.

7. Heard learned counsels for the respective parties.

8. Undisputed facts are that the petitioner was working with the respondent Bank as an Officer. He was involved in a criminal case relates to demand and acceptance of illegal gratification, for which he was subjected to criminal proceeding and it was concluded in conviction on 02.05.2006.

9. Based on the conviction order dated 02.05.2006, the respondent proceeded to dismiss the petitioner from service on 18.05.2006. Order of dismissal dated 18.05.2006 reads as under:

> UBKGB/HO/DAW/02/06-07/No. 29 date: 18-05-2006
>
> ORDER
>
> Sri Shailendra Kumar Sinha, Officer is hereby informed that in Special Case No.5/03 / R.C. 4(A) 2003 the Special Judge, Central Bureau of Investigation North Bihar Patna has sentenced him for two years rigorous imprisonment on 02-05-2006.

In view of above conviction of Sri Shailendra Kumar Sinha, he is hereby dismissed from the service of bank with effect from 02-05-2006 under Regulation 29(3)(a) read with regulation 38(1)(b)(v) of Earstwhile VAISHALI KSHETRIYA GRAMIN BANK (OFFICER & EMPLOYEES) Service Regulation, 2000 and notification of Govt. of India, Ministry of Finance, published in Gazette of India, extraordinary in part II section 03, sub-section (ii) dt. 1st March 2006.

(S.N. MEHROTRA)
COMPETENT AUTHORITY
CUM CHAIRMAN

10. The petitioner had preferred appeal. The Appellate Authority passed the following order:

"Head Office Letter No. DAW/03/2007-08/616 date: 13.12.2007
Sri Shailendra Kumar Sinha
S/O Sri Rajednra Kumar Sinha
Dhamuchak
Behind of University (Biology Deptt.,)
Muzaffarpur
Reg.: **Your appeal dated 01.07.2006 against the order of Disciplinary Authority in respect of penalty awarded to you**.
Sri Shailendra Kumar Sinha, Branch Manager (Dismissed) is hereby informed that his appeal dated 01.07.2006 against the order of Disciplinary Authority dated 18.05.2006 inflicting upon him the penalty of "**Dismissal from the service of bank w.e.f. 02.05.2006 under Regulation 29(3)(a) read with regulation 38(1)(b)(v) of Vaishali Kshetriya Gramin Bank (Officers & Employees) Service Regulation, 2000**" The appeal of Mr Sinha dated 01.07.2006 was placed before Sub Committee constituted

by Board Of Directors and decision of Sub Committee was placed before the Board Of Directors in their meeting held on 31.10.2007. The Board of Directors approved the following decision of the Sub Committee.

The Sub Committee observes that Mr Sinha has been convicted by the CBI Court for criminal offence attracting moral turpitude. So, The Disciplinary Authority has rightly issued the order of dismissal from the bank's service. Further, the Hon'ble High Court, has not granted any relief in the case of prosecution given by the CBI Court.

It is settled law that the disqualification to continue in service in a case where a person has been convicted for an offence involving moral turpitude attached to the conviction, not to the sentence. Being released on bail has the effect only of suspending the sentence. So, even if he is released on bail, it is of no help to him. As such, the Sub Committee do not find any merit in his appeal and uphold the punishment of dismissal awarded by the Disciplinary Authority.

However, the sub committee decided that the appellant may be paid the salary of the intervening period i.e. the date of effect of punishment and the date of receiving of the punishment order up to which he worked in the bank."

Sd/-

(R. B. YADAV)

CHIEF MANAGER

11. Undisputedly, based on the conviction order dated 02.05.2006, the respondent Bank has not initiated disciplinary proceeding so as to impose penalty, since Bank is not required to initiate proceedings and impose any one of the penalty under

Regulation 38. In other words, there is provision called as Waiver of the procedure, which is Regulation No. 39, which reads as under:

> "39. Waiver of the procedure
>
> The requirements of Regulation 38 may be waived by the Competent Authority:
>
> (a) If the facts on the basis of which penalty is to be imposed on the officer or employee have been established in the Court of Law or Court martial; or
>
> (b) Where the officer or employee has been convicted on a criminal charge; or
>
> (c) Where the officer or employee has been absconding; or
>
> (d)Where it is for any other reason impracticable to communicate with him; or
>
> (e) Where it is reasonably not practicable to observe the procedure prescribed under Regulation 38:
>
> Provided that no requirements of Regulation 38 may be waived unless reasons for doing so are recorded in writing and placed before the Board."

12. Regulation 29 relating to Officer or employee arrested for debt or on a criminal charge reads as under:

> 29. **Officer or employee arrested for debt or on a criminal charge**
>
> (1) An officer or employee who is arrested for debt or on a criminal charge or is detained in pursuance of any process of law, may, if so directed by the Competent Authority, be treated as being or having been under suspension from the date of his arrest, or as

the case may be, of his detention, up to such date or during such period as the Competent Authority may direct:

Provided that in respect of the period in regard to which he is so treated he shall be paid subsistence allowance as specified in Regulation 44.

(2) Any payment made to an officer or employee under Sub-Regulation (1) shall be subject to adjustment of his pay and allowances which shall be made according to the circumstances of the case and in the light of the decision as to whether such period is to be accounted for as a period of duty or leave:

Provided that full pay and allowances shall be admissible only if the officer or employee-

(a) is treated as on duty during such period, and

(b) is acquitted of all charges or satisfies the Competent Authority, in case of his release from detention or his detention being set aside by the Competent Court, that he had not been guilty of improper conduct resulting in his detention.

(3) (a) An officer or employee shall be liable to dismissal or to any of the other penalties referred to in Regulation 38, if he is committed to prison for debt or is convicted of an offence which in the opinion of the Competent Authority, either involves moral turpitude, or has a bearing on any of the affairs of the Bank or on the discharge by the officer or employee of his duties in the Bank, the opinion in this respect of the Competent Authority shall be conclusive and binding on the officer or employee.

(b) Such dismissal or other penalty may be imposed as from the date of his committal to prison or conviction and nothing in Regulation 38 shall apply to such imposition.

(4) Where an officer or employee has been dismissed in pursuance of Sub-Regulation (3) and the relative conviction is set aside by a higher court and the officer or employee is honourably acquitted, he shall be reinstated in service.

(5) Where the absence of an officer or employee from duty is without leave or his overstayal is due to his having been arrested for debt or on criminal charge or to his having been detained in pursuance of any process of law, the provisions of Regulation 22 shall also apply and for the purpose of that Regulation as so applied, the officer or employee shall be treated as having absented himself without leave or as the case may be, overstayed otherwise than under circumstances beyond his control."

13. In order to ascertain whether is there any compliance to Regulation 39 in particularly Proviso that the "Provided that no requirements of Regulation 38 may be waived unless reasons for doing so are recorded in writing and placed before the Board."

Emphasis supplied

14. Perusal of dismissal order dated 18.05.2006 extracted above do not reveal of recording reasons in writing so as to waive of the procedure and imposition of any one of the penalty under Regulation 38.

15. Regulation 29 cited on behalf of the respondent Bank is relating to Officer or employee arrested for debt or on a criminal charge. No doubt Sub-Rule 3 empowers the competent authority to dismiss or to impose any other penalty under Regulation 38, if employee/officer his committal to prison for debt or for convicted for an offence. At the same time, it is to be noted that in the present case no enquiry has been held, therefore, what is attracted is Regulation 39 cited (supra). The respondents counsel contention that if Regulation 29 is read with Regulation 38 is invoked in that event the matter need not be placed before the Board.

16. On the other hand, reading of the Appellate Authority order dated 3.12.2007, it is evident that matter was placed before the Board with reference to Sub-Committee decision dated 31.10.2007 i.e., during pendency of the petitioner's appeal and not before dismissal order.

17. In other words, the matter was placed before the Board at the time of deciding the petitioner's appeal pursuant to his appeal dated 01.07.2006. Meeting was held by the Board of Directors on 31.10.2007. Therefore, the petitioner has made out a *prima facie* case that there is non-compliance of Proviso to Regulation No. 39 cited (supra), which is one of the requirement

before imposing any of the penalty under Regulation 38 recording of reasons in a Board meeting.

18. In the light of these facts and circumstances, the petitioner has made out a case, so far as interfere with dismissal order dated 18.05.2006 (Annexure-3) and Appellate Authority order dated 13.12.2007 (Annexure-5) and they are set aside.

19. The petition stands allowed.

20. The concerned Bank respondent is hereby directed to extend all consequential benefits pursuant to quashing of dismissal order dated 18.05.2006 (Annexure-3) and Appellate Authority order dated 13.12.2007 (Annexure-5) within a period of three months from the date of receipt of this order.

(P. B. Bajanthri, J)

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AFR/NAFR	NAFR
CAV DATE	23.12.2021
Uploading Date	NA
Transmission Date	NA