IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 4533 of 2017

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Mithilesh Kumar Singh Son of Late Buindeshwari Singh, Resident of Village-Patoni, P.O.- Nemdarganj, P.S. Akbarganj, District- Nawada, Bihar.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Cooperative Department, Government of Bihar
2. The Principal Secretary, Cooperative Department, Government of Bihar.
3. The Bihar State Cooperative Bank Ltd through its Managing Director, Ashok Raj Path, PS Pirbahore, District – Patna 800 004
4. The Chairman, The Bihar State Cooperative Bank Ltd, Ashok Raj Path, PS Pirbahore, District- Patna 800 004
5. The Managing Director, The Bihar State Cooperative Bank Ltd, Ashok Raj Path, PS Pirbahore, District – Patna 800 004
6. The Deputy General Manager, Personnel and Administration, The Bihar State Cooperative Bank Ltd, Ashok Raj Path, PS Pirbahore, District – Patna 800 004
7. The Board of Directors, The Bihar State Cooperative Bank Ltd, Ashok Raj Path, P.S. Pirbahore, District – Patna 800 004
8. The Chief Vigilance Officer, The Bihar State Cooperative Bank Ltd, Ashok Raj Path, PS Pirbahore, District – Patna 800 004

... ... Respondent/s

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For the Petitioner/s	:	Mr Kumar Kaushik Ms Namrata Dubey, Advocates
For the S t a t e	:	Mr U S S Singh, GP XIX
For the B a n k	:	Mr S N Pathak, Standing Counsel

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 18-02-2021

Heard Mr Kumar Kaushik, learned counsel for the petitioner; Mr S N Pathak, learned counsel appearing for the Bihar State Cooperative Bank Limited (for brevity, *the Bank*) and Mr U S S Singh, learned GP XIX for the State.

2 The petitioner is aggrieved by withholding of his retiral benefits under order dated 22.09.2015. He has sought quashing of the same. The petitioner has also sought quashing of the Resolution dated 23.06.2015 by which the Board of Directors of the Bank decided to forfeit the entire retiral dues of the petitioner. The petitioner has also sought a direction, in the nature of mandamus, to pay Gratuity, Group Insurance and Leave Encashment along with statutory interest to the petitioner who superannuated from service on 30.09.2014.

3 The petitioner was serving in the Bank as Branch Manager. On the last day of his service, i e, 30.09.2014, the petitioner was served a show cause asking him to respond to certain issues based on some letter issued by the Chief Vigilance Officer of the Bank. The letter, which is enclosed in the show cause dated 30.09.2014 (Annexure P/1) raises an issue regarding some misappropriation in deposits made under the Daily Deposits Scheme (for brevity, *DDS*) in the Bank.

4 The petitioner has responded to the same on the same date. He has communicated to the Authority that it is not possible to respond to the show cause as it relates to deposit under the Scheme made in the New Market Branch of the Bank and that the same can only be done after he is given an opportunity to examine the accounts being maintained in the New Market Branch.

5 Petitioner has again been served a show cause notice dated 21.10.2014 (Annexure P/3) calling upon him to submit his reply in relation to misappropriations in the DDS. The petitioner has again responded to the same under Communication dated 06.11.2014.

6 The Board of Directors of the Bank, thereafter, in a Resolution dated 23.06.2015, has taken a decision to withhold his retirement benefits as also for lodging First Information Report (for brevity, *FIR*) against the petitioner.

7 At the Bar, it is submitted by Mr S N Pathak that several other FIRs have been instituted against the petitioner under similar directions in relation to other alleged misappropriations. The other issues, however, are not before this Court.

8 On 22.09.2015, the petitioner has been visited with an Office Order issued by the Deputy General Manager of the Respondent-Bank communicating the Resolution dated 23.06.2015 inasmuch as it directed withholding of the petitioner’s retiral benefits. These are the undisputed facts of the case.

9 Learned counsel for the petitioner, in this factual background, submits that for the purposes of proceeding against the petitioner on grounds of corruption, there are specific provisions in the Service Regulations of the Bank dated

07.06.2013. These Regulations have been framed by the Board of Directors of the Bank in exercise of powers under Section 44 AV of the Bihar Cooperative Societies Act, 1935. The two specific provisions, relied upon by the petitioner, are Regulations 46 and 52.

10 Regulation 46 provides that major penalties can be imposed by an order of the competent authority in writing. Such order, however, shall not be passed without charge or charges being framed in writing and given to the delinquent. Thereafter, enquiries are to be held affording the delinquent reasonable opportunity to answer the very charges and defend himself.

11 This Court would consider it useful to reproduce Regulations 46 (relevant extract), and 52 which reads as follows:

> *"**(46) Penalties** – Without prejudice to the foregoing regulations of this Chapter, an officer or employee who commits a breach of these regulations or who displays negligence, inefficiency or indolence or who commits acts detrimental to the interests of the Bank or in conflict with its instructions, or who commits a breach of discipline or is guilty of any other acts of misconduct, shall be liable for any one or more penalties as follows, namely, -*
>
> *1. Officers:*
>
> *(A) Minor Penalties*
> *(i) Censure;*
> *(ii) Withholding or stoppage of increments of pay without cumulative effect;*
> *(iii) Withholding of promotion;*

(iv) Recovery from emoluments or such other amounts as may be due to him, of the whole or part or any pecuniary loss caused to the Bank by negligence or breach of orders;

(v) Reduction to a lower stage in time scale of pay for a period not exceeding two years without cumulative effect;

(ii) Major Penalties:

(i) save as provided in item (v) of the clause (a) of sub-regulation (1) of regulation 39, reduction to a lower stage in time scale of pay for a specified period with further directions as to whether or not the officer shall earn increments of pay during the period of such reduction and whether on expiry of such period the reduction shall or shall not have the effect of postponing the future increments of his pay;

(ii) Reduction to a lower grade or post;

(iii) Compulsory retirement;

(iv) Removal from service which shall not be a disqualification for future employment;

(v) Dismissal which shall ordinarily be a disqualification for future employment.

Explanation: *For the purposes of this regulation, - the following shall not amount to be a penalty, namely,*

(i) withholding of one or more increments of an officer on account of his failure to pass a departmental test or examination in accordance with the terms of appointment to the post which he holds;

(ii) stoppage of increment (s) of an officer at the efficiency bar in a time scale on the grounds of his unfitness to cross the bar;

(iii) not giving an officiating assignment or non-promotion of an officer to a higher grade of post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case;

(iv) Reserving or postponing the promotion of an officer for reasons like

completion of certain requirement for promotion or tendency of disciplinary proceedings;

(v) reversion to a lower grade or post of an officer officiating in a higher grade or post, on the ground that he is considered, after trial, to be unsuitable for such higher grade or post or on administrative grounds unconnected with his conduct;

(vi) reversion to the previous grade or post of an officer appointed on probation to another grade or post during or at the end of the period of probation, in accordance with the terms of his appointment or rules, or orders governing such probation;

(vii) Reversion of an officer on deputation to his parent organization;

(viii) Termination of a service of an officer,

(a) Appointed in a temporary capacity otherwise than under a contract or agreement on the expiration of the period for which he was appointed, or earlier in accordance with the terms of his appointment.

(b) appointed under a contract or agreement, in accordance with the terms of such contract or agreement; and

(c) as part of retrenchment:

Provided that no minor penalties as specified in items (a) to (e) of clause (i) of sub-regulation (1) of regulation 45, shall be imposed by the Competent Authority unless the office is given a notice in writing,

(i) informing him of the grounds on which it is proposed to impose the said penalties;

(ii) Giving him a reasonable opportunity for making a statement of defense in writing within a period of 15 days from the date of receipt of notice, and statement of defense, if any, submitted by the Officer shall be taken into consideration and being heard.

Provided further that no order in imposing any of the major penalties specified above, shall be made except by an order in writing signed by the Competent Authority and no such order shall be passed without the charge or charges being framed in writing and given to the officer and enquiry held so that he shall have reasonable opportunity to answer the charge or charges and defend himself.

Provided further that no enquiry shall be made, if,

(i) the misconduct in such cases even if proved, the Bank does not intend to impose the punishment of removal or dismissal; and

(ii) the Bank has issued a show cause notice to the officer advising him of the misconduct and the punishment for which he may be liable for such misconduct; and

(iii) the officer makes a voluntary admission of his guilt in his reply to the aforesaid show cause notice;"

(52) *Disciplinary proceedings after retirement. -*

(1) An officer or employee who is under suspension on a charge of misconduct and who attains the age of superannuation, shall be deemed to be in a service even after the age of superannuation for the specific purpose of continuation and conclusion of the disciplinary proceedings and issue of final orders thereon.

(2) The officer or employee who is under suspension shall not be eligible for any subsistence allowance for the period beyond the date of superannuation.

(3) The officer or employee against whom disciplinary proceeding has been initiated shall cease to be in service on the date of superannuation but the disciplinary proceeding shall continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof.

(4) The officer or employee against whom disciplinary proceedings has been initiated shall not receive any pay and/or allowance after the date of superannuation and also not be entitled for the payment of retirement benefits till the proceeding is completed and final order is passed thereon except his Contributory Provident Fund (CPF).

Explanation: For the purposes of this regulation, the normal retirement benefits such as encashment of privilege leave and Gratuity may be withheld till the completion of the disciplinary proceeding and passing of final order by the Competent Authority and the release of benefits shall be as per the final order of the Competent Authority."

12 As per the aforesaid Regulations, when the allegations are in respect of acts of corruption, as in the instant case, charge memo was required to be proceeded by an investigation into the allegations. Thereafter, the competent authority (disciplinary authority) was required to consider the report of the investigation, record a satisfaction that there is a prima facie case for instituting a disciplinary proceedings against the delinquent, and then only issue the charge memo. This also, is required to be done while the delinquent is in service. Only if the charge memo is served prior to retirement of the delinquent, the Bank could have continued to enquire into the charge memo as if the delinquent is still in service until the proceedings are concluded and a final order is passed in respect thereof.

13 It is specific assertion of the petitioner that the aforesaid procedure prescribed as per Regulations has not been followed. Only two show cause notices dated 30.09.2014 and 21.10.2014 have been issued to the petitioner. No charge memo has ever been served. His submission is that in fact no charge memo was ever drawn up, let alone service of the same. The Board in the case of the petitioner has taken a decision vide its Resolution dated 23.06.2015 to withhold the petitioner's retiral dues. This Resolution has been communicated to the petitioner by an Office Order dated 22.09.2015. The Resolution as well as the Office Order, both are after the petitioner's superannuation on 30.09.2014. The specific case of the petitioner is that neither he was placed under suspension, nor any charge memo has been served on him prior to his superannuation on 30.09.2014 in respect of the alleged misappropriations in the DDS, based on which the petitioner has been visited with the penal consequences of withholding of his retiral dues under Office Order dated 22.09.2015. Even from the Office Order dated 22.09.2015 communicating decision of the Board of Directors, it is evident that withholding of the retiral dues is because he has not given a correct reply to the show cause issued to him, as per Resolution of the Board of Directors dated 23.06.2015. The Resolution of the

Board is Annexure P/5 and the Communication is Annexure P/6 of the writ petition.

14 Learned Standing Counsel representing the Bank has submitted that the petitioner was a habitual offender. Many cases have been instituted against him for similar allegations. The petitioner has also been visited with certain punishment orders based on an enquiry report (Annexure J/2 to the second counter affidavit filed by the Respondent-Bank). Details of the various FIRs instituted against the petitioner have also been placed on record in the first counter affidavit. The submission is that the petitioner has been involved in the embezzlement of funds of the depositors in the Bank and that the Authorities have rightly withheld his retiral dues. On a specific query whether any charge memo has been issued to the petitioner in respect of alleged misappropriation prior to his superannuation on 30.09.2014, the learned Standing Counsel for the Bank has fairly submitted that no charge memo was ever issued to the petitioner.

15 One counter affidavit was filed earlier on behalf of the Bank. Recently, on 03.02.2021, second counter affidavit has also been filed on behalf of the Bank. The fact that the petitioner was also not placed under suspension in respect of the allegation of misappropriation in DDS is also not denied by the respondents.

In the counter affidavits, there is reference to other proceedings allegedly initiated against the petitioner and criminal cases lodged in respect of the various illegalities committed by the petitioner while in service.

16 The various instances mentioned in the counter affidavit, however, are not the concern of this Court in the instant proceedings. In the instant proceedings, the issue is only whether for petitioner's alleged misappropriation in DDS, while posted at New Market Branch, Patna, the authorities could have withheld the retiral benefits of the petitioner, without complying with Regulations 46 and 52 of the Bank Service Regulations dated 07.06.2013? The answer has to be in the negative. The authorities could not have withheld the retiral benefits without complying the due procedure in Regulations 46 and 52. The requirement in the Service Regulation was that either the petitioner shall be placed under suspension, or served with a charge memo in respect of the allegation regarding misappropriation in the DDS. This also was required to be done while the petitioner was still in service, so as to continue the proceedings by virtue of the provisions contained in Regulation 52. As noticed above, petitioner was never suspended nor charge memo served upon him while in service in respect of the misappropriation in the DDS. The impugned

Resolution of the Board dated 23.06.2015, and communication of the same under Office Order dated 22.09.2015 in so far as it purports to withhold retiral dues of the petitioner on the alleged misappropriation in the DDS is unsustainable in the eyes of law. To this extent, the Resolution dated 23.06.2015 and the office order dated 22.09.2015 are quashed.

17 The Court has quashed the order only in respect of alleged misconduct in the DDS. It is made clear that the order is without going into the merits and commenting upon other alleged pending allegations, or pending criminal proceedings against the petitioner for various other allegations. The authorities would be at liberty to pass any order in respect of any other departmental allegation/s or criminal proceedings, but in accordance with law.

18 The writ petition is allowed in the aforesaid terms.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.03.2021
Transmission Date	NA