

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1145 of 2018

In

Civil Writ Jurisdiction Case No.6019 of 2016

-
1. The Chairman, State Bank Of India and Ors
 2. The General Manager Network-III, State Bank of India, Local Head Office, West Gandhi Maidan, Patna
 3. The Deputy General Manager B and O, State Bank of India Appellate Authority, Zonal Office, Club Ro
 4. The Regional Manager Region-I-cum-Disciplinary Authority, Region-I, State Bank of India, Regional
 5. Sri Manoj Kumar, Investigating Officer, Region-I, State Bank of India, Regional Business Office, CI

... .. Appellant/s

Versus

Raju Kumar Choudhary Son of Sri Dinesh Prasad Choudhary, Ex Customer Assistant, P.F. Index No. 5999405, State Bank of In Resident of At and P.O.- Bariyarpur, Via- Piar, District- Muzaffarpur- 843115 Bihar.

... .. Respondent/s

with

Letters Patent Appeal No. 842 of 2018

In

Civil Writ Jurisdiction Case No.6019 of 2016

Raju Kumar Chaudhary

... .. Appellant/s

Versus

1. The Chairman, State Bank Of India and Ors
2. The General Managar Network -III, State Bank of India, Local Head Officer, West Gandhi Maidan, Pat
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4. The Regional Manager Region-1-cum-Disciplinary Authority, State Bank of India, Regional Business O
5. Sri Manoj Kumar, Investigating Officer, Region-1, State Bank of India, Club Road, Muzaffarpur- 8420

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1145 of 2018)



For the Appellant/s : Mr. Rajendra Narain, Sr. Advocate
Mr. Sanjiv Kumar, Advocate
For the Respondent/s : Mr. Bindhyachal Singh, Sr. Advocate
Mr. Sanchit Singh, Advocate
(In Letters Patent Appeal No. 842 of 2018)
For the Appellant/s : Mr. Bindhyachal Singh, Advocate
Mr. Sanchit Singh, Advocate
For the Respondent/s : Mr. Rajendra Narain, Advocate
Mr. Sanjiv Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 04-08-2022

L.P.A. No. 1145 of 2018 and L.P.A. No. 842 of 2018

Heard learned counsels for the parties.

2. These two appeals are filed by the Bank and employee feeling aggrieved by the order of the learned Single Judge dated 10.05.2018 passed in C.W.J.C. No. 6019 of 2016. Bank have questioned the validity of the entire order of the learned Single Judge whereas respondent - employee has questioned the denial of back wages till afresh decision is taken in a departmental inquiry. In other words, his grievance is that he is entitled to arrears of salary from the date of dismissal till reinstatement.

3. *Raju Kumar Choudhary* – employee was placed under suspension on certain alleged misdeeds stated to have been committed by him on 18.12.2014 and continue to be under suspension till imposition of penalty of dismissal from service on 17.12.2015. Charge memo was issued on 22.06.2015 and



employee had replied to the charge memo on 29.06.2015. The Inquiring Officer submitted his report on 14.09.2015 followed by show cause notice dated 09.11.2015 issued by the disciplinary authority. Based on the aforesaid dates and events read with the records, the disciplinary authority imposed the penalty of dismissal from service on 17.12.2015. Feeling aggrieved and dissatisfied with the order of penalty of dismissal, employee preferred appeal before the Appellate Authority on 29.01.2016 and it was rejected on 12.02.2016. Thus employee preferred C.W.J.C. No. 6019 of 2016 in which he had questioned the validity of dismissal as well as its confirmation by the appellate authority and further sought for various directions.

4. The learned Single Judge has taken note of certain errors stated to have been committed by the inquiring authority which has been narrated in the body of the order. He has also taken note of Apex Court's decision in the cases of *State of Uttar Pradesh and Others vs. Saroj Kumar Sinha* reported in (2010) 2 SCC 772 (paragraph No. 28) and further *Roop Singh Negi vs. Punjab National Bank* reported in (2009) 2 SCC 570 (paragraph No. 14). The Bank feeling aggrieved by the order of the learned Single Judge presented appeal on the score that material documentary evidence suffice to prove the alleged charge, the same has not



been appreciated by the learned Single Judge. In other words, it is submitted that oral evidence is not warranted. On this score the order of the learned Single Judge is to be set aside while confirming the order of penalty as well as appellate authority's order.

5. *Per contra*, learned counsel for the employee resisted the aforesaid contention and submitted that merely relying on documentary evidence would not suffice to prove the alleged charge. It is also submitted that charge is not accompanied by list of documents. Employee has not been given opportunity to adduce oral evidence. So also none of the witnesses on behalf of Bank management have been examined or cross examined. In the light of these facts and circumstances, there is no infirmity in the order of the learned Single Judge.

6. In support of appeal filed on behalf of the employee, learned counsel for the appellant submitted that once the order of dismissal and appellate authority's order is set aside, in that event employee is entitled to monetary benefits during the intervening period from the date of dismissal till reinstatement pursuant to the order dated 10.05.2018 of learned Single Judge. The same has been countered by the Bank's counsel stating that employee is not entitled to any monetary benefits during the intervening period



from the date of dismissal till inquiry is completed in terms of the order of the learned Single Judge.

7. Heard learned counsels for the respective parties.

8. The employee was charge-sheeted on a departmental side on 22.06.2015. Employee had submitted his reply on 29.06.2015 and it was not satisfied with the disciplinary authority thus proceed to hold inquiry while appointing one of the officer as inquiring authority and so also appointing Presenting Officer. Thus inquiring officer submitted his report on 14.09.2015 while holding that the charges levelled against the employee were proved. On receipt of inquiring officer's report, disciplinary authority proceeded to issue second show cause notice and impose penalty of dismissal from service on 17.12.2015 and further employee suffered order before the Appellate Authority.

9. Employee of the Bank are governed by the Bipartite Settlement dated 10.04.2002 which is relating to Disciplinary Action against Workmen Staff and Procedure. Para 12 of the settlement reads as under:

“12. The procedure in such cases shall be as follows:

(a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry,



sufficient time being given to him to enable him to prepare and give his explanation as also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the Officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in his defence. He shall also be permitted to be defended

(i) (x) by a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry.

(y) where the employee is not a member of any trade union of bank employees on the aforesaid date, by a representative of a registered trade union of employees of the bank in which he is employed :

OR

(ii) at the request of the said union by a representative of the state federation or all India Organisation to which such union is affiliated;

OR

(iii) with the Bank's permission, by a lawyer.

He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.

(b) Pending such inquiry or initiation of such inquiry he may be suspended, but if on the conclusion of the enquiry it is decided to take no action against him he shall be deemed to have been on duty and shall be entitled to the full wages and allowances and to all other privileges for the period of suspension; and if some punishment other than dismissal is inflicted the whole or a part of the period of suspension, may, at the discretion



of the management, be treated as on duty with the right to a corresponding portion of the wages, allowances, etc.

(c) In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances, that may exist. Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of the "gross" type he may be merely discharged, with or without notice or on payment of a month's pay and allowances, in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the bank does not, for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary action.

(d) If the representative defending the employee is an employee of the same bank at an outstation branch within the same State, he shall be relieved on special leave (on full pay and allowances) to represent the employee and be paid one return fare to which he will be entitled would be the same travelling on duty. In case of any adjournment at the instance of the bank / enquiry officer, he may be asked to resume duty and if so, will be paid fare for the consequential journey. He shall also be paid full halting allowance for the period he stays at the place of the enquiry for defending the employee as also for the days of the journeys which are undertaken at the bank's cost.

Explanation :



State for the purpose, shall mean the area which constitutes a political State, but this explanation will not apply to SBI.

(e) An enquiry need not be held if :

(i) the bank has issued a show him of the employee advising him of the misconductg and punishment for which he may be liable for such misconduct; be

(ii) the employee makes a voluntary admission of his guilt in reply to the aforesaid show cause notice; and

(iii) the misconduct is such that even if proved the bank does not intend to award the punishment of discharge or dismissal

However, if the employee concerned request a hearing regarding the nature of punishment, such a hearing shall be given.

(f) An enquiry need not also be held if the employee is charged with minor misconduct and the punishment proposed to be given is warning or censure. However,

(i) the employee shall be served a show cause notice advising him of the misconduct and the evidence on which the charge is based; and

(ii) the employee shall be given an opportunity to submit his written statement of defence, and for this purpose has a right to have access to the documents and material on which the charge is based;

(iii) if the employee requests a hearing such a hearing shall be given and in such a hearing he may be permitted to be represented by a representative authorised to defend him in an enquiry had such an enquiry been held.



(g) Where an employee is charged with a minor misconduct and an enquiry is not held on two previous occasions, an enquiry shall be held in respect of the third occasion.”

10. Perusal of the records, it is evident that there is no compliance of Para 12 (a) in particularly examination and cross examination of witnesses on whose evidence the charge rests and to examine witnesses and produce other evidences on behalf of the employee to defend his version. Further, it is noticed that charge memo dated 22.06.2015 is not supported by list of documents and list of witnesses. When the documents were marked in the inquiry, all the documents is required to be examined and cross examined in order to accept the documents which are against the employee. To that effect principle of natural justice is denied to the employee in the light of Para 12 (a) and the fact that none of the witnesses have been examined and cross examined in order to prove the documents which were relied by the inquiring authority with reference to presentation of those documents on behalf of the Presenting Officer. In the light of these facts and circumstances, the appellant – Bank have not made out a *prima facie* case so as to interfere with the order of the learned Single Judge.



11. Employee's appeal relating to monetary benefits during the intervening period from the date of dismissal till reinstatement is concerned, it is to be noted that the learned Single Judge has remanded the matter to the disciplinary authority to commence inquiry afresh from the defective stage and complete. Apex Court in the case of *Managing Director, ECIL vs. B. Karunakaran reported in (1993) 4 SCC 727* read with *Coal India Ltd. Vs. Ananta Saha* reported in *(2011) 5 SCC 142*, in para 46 to 50, it is held as under:

“46. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment of arrears of salary till date. Shri Bandopadhyay, learned Senior Counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of “no work—no pay”. The delinquent had been practising privately i.e. has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put under suspension and would be entitled to subsistence allowance as per the service rules



applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with law only on the conclusion of the fresh enquiry.

47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in *R. Thiruvirkolam v. Presiding Officer* [(1997) 1 SCC 9 : 1997 SCC (L&S) 65 : AIR 1997 SC 633] , *Punjab Dairy Development Corpn. Ltd. v. Kala Singh* [(1997) 6 SCC 159 : 1997 SCC (L&S) 1434 : AIR 1997 SC 2661] and *Graphite India Ltd. v. Durgapur Projects Ltd.* [(1999) 7 SCC 645].

48. In *ECIL v. B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] and *Union of India v. Y.S. Sadhu* [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126 : AIR 2009 SC 161] , this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability



surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC v. Mitthu Singh [(2006) 7 SCC 180 : 2006 SCC (L&S) 1590 : AIR 2006 SC 3018] , Akola Taluka Education Society v. Shivaji [(2007) 9



SCC 564 : (2007) 2 SCC (L&S) 679] and Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale [(2009) 2 SCC 288 : (2009) 1 SCC (L&S) 372].

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.”

12. In the light of Apex Court decisions cited *supra*, employee's L.P.A. stands rejected. In the light of these facts and circumstances, the disciplinary authority is hereby directed to complete the inquiry proceedings within a period of three months from the date of receipt of this order. Further, disciplinary authority is hereby directed to take a decision in respect of reinstatement or placing him under suspension. In the light of



Apex Court decision, such decision shall be taken by the disciplinary authority within a period of one month from the date of receipt of this order.

13. To the above extent order of the learned Single Judge is modified. Accordingly, L.P.A. of Bank stands disposed off.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

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