

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No 55 of 2020

Along with

Interlocutory Application No 1 of 2022

Chandra Shekhar Singh Son of Veer Bahadur Singh, Resident of Chandmari Road, Dahiyawa Tola, Chapra, P.S. Muffasil, District- Saran, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Additional Chief Secretary, Cooperative Department, Bihar, Patna.
3. The Registrar, Cooperative Department, Bihar, Patna.
4. The Additional Secretary to Government, (Vigilance), Cooperative Department, Government of Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr Mrigank Mauli, Sr Advocate with M/s Prince Kumar Mishra, Sanket, Advocates
For the Respondent/s	:	Mr Jitendra Kumar, AC to AAG XI

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 02-08-2022

Re: Interlocutory Application No 1 of 2022

This application has been filed assailing the consequential order dated 08.09.2021 bearing Memo No 2473 purporting to give effect to the impugned order of punishment.

2 Heard learned senior counsel for the petitioner as well as the learned State counsel.

3 On 21.07.2010, the petitioner has assumed charge of the Managing Director, District Central Cooperative Bank



Limited, Begusarai. The petitioner, thereafter, on 15.01.2013, was given charge of Joint Registrar, Cooperative Societies, Bhagalpur Division. On 24.01.2014, he was made Managing Director of the District Central Cooperative Bank Limited, Khagaria and, thereafter on 10.03.2014, he was given the additional charge of General Manager, Integrated Cooperative Development Project, Khagaria. The petitioner, during the period, was handling many charges simultaneously in various capacities. The aforesaid various responsibilities have been noted since it is relevant for the issue in the instant writ petition.

4 On 13.10.2018, the Officer on Special Duty has written a letter to several officials including the petitioner who were posted in the district of Bhagalpur in the Cooperative Department in between 1997 – 2013. The letter refers to some serious financial irregularities which have emerged in relation to the said district which have been pointed out by the Accountant General in his audit report. Specific reference is made to some financial irregularities in Srijan Mahila Vikas Sahyog Samiti and it has been stated that the said Samiti was not inspected by any official. It is in this background that the five officials including the petitioner, to whom the letter has been addressed, have been called



upon to give their response failing which the Department had contemplated issuance of departmental proceedings.

5 In response thereto, the petitioner has submitted his reply. It has specifically been stated by the petitioner that in view of the various responsibilities being discharged by him during the period in question, it was humanly impossible to conduct inspection of all the cooperative societies in the district of Bhagalpur where alone there were 1719 cooperative societies. It is also the petitioner's case that there was no specific mandate of the Department to the petitioner to make an inspection of the said Society in question.

6 The petitioner has not denied that he had the powers of inspection under Section 34 of the Bihar State Cooperative Societies Act. However, a plea has been taken that in view of large number of Societies, noted above, it was humanly impossible to conduct inspection of all the Societies and in respect of the Society in question, there was no specific instructions. After considering the said response of the petitioner, the Authorities have inflicted the punishment on the petitioner under Notification dated 16.08.2019. They have directed for withholding of his promotion and reduction to a lower stage in the time scale for three years without cumulative effect.



7 The petitioner has assailed the order of punishment. It is submitted by the learned senior counsel that the order of punishment is product of an exercise dehors the provision contained in the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity, *Bihar CCA Rules*), specifically Rule 19 thereof inasmuch as neither a show cause has been issued in terms of Rule 19 of Bihar CCA Rules, 2005; nor a charge memo.

8 The second submission is that the allegations and findings based on which the punishment has been imposed can, by no stretch of imagination, be considered to be a misconduct. There is no ill motive assigned to the petitioner even in the communication dated 13.10.2018, which the respondents in these proceedings claim to be the show cause notice.

9 The third submission is that in view of the details furnished by the petitioner in his reply regarding the petitioner discharging duty in various capacities during the period in question and the large number of cooperative societies, the Authorities should have considered such plea. The plea, however, has not been considered and without taking into consideration the aforesaid facts, the order of punishment has been passed without any consideration and is, therefore, also liable to be set aside.



10 The learned counsel for the State, on the other hand, would submit that the communication dated 13.10.2018 is nothing but a show cause in terms of Rule 19 of Bihar CCA Rules, 2005 issued to the petitioner. Under Section 34 of Bihar Cooperative Societies Act, the petitioner was responsible for carrying out inspection of all the cooperative societies within the district. It is admitted position that he has not inspected the Society in question during the period. The plea, raised by the petitioner, therefore, is untenable. The punishment has been inflicted after duly observing the requirement under the Bihar CCA Rules, 2005 and, therefore, the same does not require any interference by this Court.

11 On consideration of the rival submissions, this Court would observe that on mere perusal of the letter dated 13.10.2018, it is obvious that the same is neither a show cause nor a charge memo in terms of Rule 19 of the Bihar CCA Rules, 2005. From bare reading of the letter that is based on some audit objection, the authorities have written to all the officials of the cooperative societies who have been posted in various capacities in between 1997 to 2013. There is no specific allegation against any individual, much less the petitioner.

12 The same also does not contain any imputation of misconduct or allege any ill motive whatsoever. The findings



recorded in the impugned order dated 16.08.2019, therefore, are not based on any show cause or charge memo; or in compliance with the principles of natural justice in terms of the mandate contained in Rule 19 of the Bihar CCA Rules, 2005.

13 There being no imputation or misconduct or ill motive assigned, the second aspect needs to be considered whether mere negligence in discharge of duties per se without any ill motive or conduct can be considered to be misconduct on which a punishment can be awarded? The answer is in the negative. The issue is well settled. The Apex Court, times without number, has reiterated the law that mere negligence would not constitute misconduct. Unless some ill motive or blame worthy conduct is alleged and proved, an employee cannot be visited with punishment. In the instant case, the facts, as noted above, reveal that neither there is any alleged ill motive or misconduct; nor the same has been proved.

14 In this connection, this Court would be considering decision of a coordinate Bench in the case of Ajay Kumar -Versus- The General Manager, State Bank of India & Others in CWJC No 905 of 2015, reported in 2017 Supreme Court Cases Online Patna 2415, paragraphs 23 & 24 of which reads as follows:-

23. The Supreme Court in a judgment reported in (2007) 4 SCC 566 (Inspector Prem



Chand v Govt of NCT of Delhi) has discussed the issue of misconduct at paragraphs 9 to 12 of the judgment which lends support to the opinion expressed by me.

“9. Before advertng to the question involved in the matter, we may see what the term “misconduct” means.

10. In *State of Punjab v Ram Singh, Ex-Constable*: (SCC pp 57-58, para 5)

“5. Misconduct has been defined in *Black’s Law Dictionary*, 6th Edn at p 999, thus:

‘A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour; its synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence of carelessness.’

Misconduct in office has been defined as:

‘Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.’

11. In *P Ramanatha Aiyar’s Law Lexicon*, 3rd Edn, at p 3027, the term “misconduct” has been defined as under: “The term ‘misconduct’ implies a wrongful intention, and not a mere error of judgment.

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word ‘misconduct’ is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term



occurs, having regard to the scope of the Act or statute which is being construed. 'Misconduct' literally means wrong conduct or improper conduct."

(See also Bharat Petroleum Corpn Ltd v T K Raju)

12 It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was willful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In Union of India v J Ahmed whereupon Mr Sharan himself has placed reliance, this Court held so stating: (SCC pp 292-93, para 11)

"11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pearce v Foster). A disregard of an essential condition of the contract of service may constitute misconduct [see Laws v London Chronicle (Indicator Newspapers)]. This view was adopted in Shardaprasad Onkarprasad Tiwari v Divisional Supdt, Central Rly, Nagpur Division, Nagpur and Satubha K Vaghela v Moosa Raza. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

'Misconduct means, misconduct arising from ill motive; acts of negligence, errors of



judgment, or innocent mistake, do not constitute such misconduct'."

24. The Supreme Court in the case of Union of India v J Ahmad since reported in (1979) 2 SCC 286 while taking note of the dictionary meaning of the word 'misconduct', has held in paragraph 11 as follows:-

"11 A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences, the same may amount to misconduct It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness of malevolence But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

15 For these reasons, this Court does not find the order of punishment to be sustainable. The writ petition is allowed.



16 The order of punishment stands quashed. The consequential order dated 08.09.2021 bearing Memo No 2473, therefore, is also unsustainable and the same is also quashed.

17 Interlocutory Application No 1 of 2022 is also allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.08.2022
Transmission Date	NA

