IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4603 of 2021

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Dilip Kumar Thakur Son of Nageshwar Thakur Resident of village/Mohallah-Purab Sarai, P.o.- Munger, P.s.- Munger, District- Munger, Pin Code-811201 (Bihar)

... ... Petitioner/s

Versus

1. The Union of India through its Secretary, Ministry of Finance, Department of Financial Services, RRB Section, Banking Division, Jeevan Deep Building, 3rd Floor, Parliament Street, New Delhi, 110001
2. National Bank of Agriculture and Rural Development (NABARD) through its Chief General Manager, having its Head Office at Ploct No. C-24, G-Block, Bandra Kurla Complex, BKC Road, Bandra East, Mumbai, Maharashtra, Pin Code-400051
3. Punjab National Bank (PNB) through its Chairman, Managing Director, having its Head Office at Plat No. 4, Sector-10, Dwarka, New Delhi-110075
4. Dakshin Bihar Grameen Bank through its Chairman having its Office at Shri Vishnu Commercial Complex, NH-30, New Bypass, Near B.P. Highway Services Petrol Pump, Ashochak, Patna-800016 (Bihar)
5. Board of Directors, Dakshin Bihar Grameen Bank through its Chairman having its Office at Shri Vishnu Commercial Complex, NH-30, New Bypass, Near B.P. Highway Services Petrol Pump, Ashochak, Patna-800016 (Bihar)
6. The Chairman Dakshin Bihar Grameen Bank having its Office at Shri Vishnu Commercial Complex, NH-30, New Bypass, Near B.P. Highway Services Petrol Pump, Ashochak, Patna-800016 (Bihar)
7. The General Manager (HRD/PENSION) Dakshin Bihar Grameen Bank having its Office at Shri Vishnu Commercial Complex, NH-30, New Bypass, Near B.P. Highway Services Petrol Pump, Ashochak, Patna-800016 (Bihar)
8. The Chief Manager, Pension Cell, Dakshin Bihar Grameen Bank having its Office at Shri Vishnu Commercial Complex, NH-30, New Bypass, Near B.P. Highway Services Petrol Pump, Ashochak, Patna-800016 (Bihar)

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jai Prakash Singh, Advocate
		Mr. Harendra Singh, Advocate
For the DBGB	:	Mr. M.N. Parbat, Sr. Advocate

For the NABARD	:	Mr. Praveen Prabhakar, Advocate Mr. Siddhartha Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 02-11-2023

Heard Mr. Jai Prakash Singh, learned counsel appearing on behalf of the petitioner; Mr. M.N. Parbat, learned senior counsel assisted by Mr. Praveen Prabhakar, learned counsel appearing on behalf of the Dakshin Bihar Gramin Bank and Mr. Siddhartha Prasad, learned counsel for the Nabard.

2. This order is being passed in continuation of order dated 10.10.2023 and 12.10.2023, pursuant to which the Branch Manager posted at the relevant point of time including the present Branch Manager have submitted a comparative analysis of internal audit report, on which basis, disciplinary action was taken against the petitioner to verify as to whether any irregularity which can well be rectified treating it to be a procedural one within a period of three months as per the several circulars of the Bank as informed by the law officer of the Bank Mr. Navin Kumar.

3. The comparative analysis chart is silent with respect to column no. 18 to the present Branch Manager, who has informed this Court that the branch's power to open KCC account has been seized but such decision taken by the Secretary of the Dakshin Bihar Gramin Bank has not been

mentioned in the comparative chart. Similarly, this Court finds that allegation has been made that thumb impression on the application and the document executed differs but no evidence with respect to report of the forensic science laboratory or handwriting expert has been taken before making such allegation and imposing penalty against the petitioner and misappropriation of fund of Rs. 2,05,68,066/- to have been swindled by the petitioner is also surprising that such large scale fraud has been committed by the petitioner without participation of other officials, however, high position they may be holding.

4. The audit report is a public document. The audit team had detected and reported a large scale of misappropriation committed by the officers of the branch and no step was taken to rectify the defect by the petitioner or his higher authorities of the Bank. This Court is of the prima facie opinion that nexus between the higher authority of the Bank and Branch Manager of the branches including the clerks cannot be denied to have indulged in misappropriation of public money of the bank in an organized manner starting from the period alleged till the year 2023.

5. The audit has also pointed that certain KCC has been opened and lapses have been found by the audit team

which relates to fraudulent withdrawal of certain amount on the basis of certain allegations, however, according to the pleadings of the writ petition, no opportunity was provided to the petitioner to clarify himself or to meet those irregularities by correcting and satisfying the authorities within a period of three months as provided. The Dakshin Bihar Gramin Bank (Employees') pension Regulation, 2018 provides that in cases like the present where a pensioner is not convicted by a court for a serious crime, pension can be withheld or withdrawn as per Regulation 43 only after following procedure specified in the Service Regulations. In the present case no opportunity of hearing was provided to the petitioner lest alone any proceeding specified in the Service Regulations as contemplated under Regulations 43 of the aforesaid Regulation, 2018.

6. This Court finds that it would be proper not to give effect to the order dated 02.07.2019, by which application of the petitioner for grant of pensionary benefits has been rejected and it is hereby held to be inoperative. The Chief Engineer, Pension Cell Head Office, Patna, is directed to consider the case of the petitioner on the basis of the comparative analysis of internal audit report of the petitioner, as well as, the present Branch Manager, in whose case also the

audit which has been conducted on 19.02.2022, certain irregularities have been pointed out by the audit team and same could have been rectified within prescribed time. Record reveals that petitioner was denied opportunity of hearing to explain himself and defend. The writ petition relating to disciplinary proceeding against the petitioner is pending.

7. It is well settled principle of law that pension is not a bounty rather a property in accordance with Article 300(A) of the Constitution of India as has been held by the Apex Court in case of ***D.S. Nakara and Ors. Vs. Union of India*** reported in ***(1983) 1 SCC 305***. The matter is remitted back to the General Manager, Dakshin Bihar Gramin Bank, who will call for the service particulars of the petitioner and provide the petitioner an opportunity of hearing, as well as, resort to verify from the records relating to the internal audit dated 19.02.2022 whether the irregularities/ objection of the audit team could have been rectified within the prescribed time but in want of opportunity to the petitioner to rectify, the authorities cannot deny the right of the petitioner to receive pensionary benefits.

8. The provisions of the Banking Regulation Act, 1949 (hereinafter referred to as the ‘Act, 1949’) cast upon the banking companies including the Respondent Bank by virtue of

Section 51 (1) of the Act, 1949 the bank has failed to adhere to directions issued by the Reserve Bank of India. The Reserve Bank of India has also failed to discharge its statutory supervisory and regulatory obligation in exercising powers under the Act, 1949 by resorting to take penal action under Section 47-A of the Act, 1949 empowered to suspend and cancel the banking license/ business in the event of breach of the provisions of the Act, 1949, as well as, terms and conditions of banking license so issued. This Court restrains itself from issuing any adverse order at this stage against the respondent bank or its officers, however, with a word of caution to the officers of the respondent bank and the Reserve Bank of India that they should discharge their statutory duties with utmost sincerity and integrity in taking appropriate action once large scale misappropriation is detected. The Gramin Banks are last mile banking services to the marginalised society residing in rural areas and its officers having violated the law should not go undetected/unpunished. The concerned officers/ employees need to be identified and punished in accordance with law. Failure on this aspect must be taken into account by the Reserve Bank of India to utilize appropriate penal provisions and the Act, 1949 against the erring banks promptly.

9. Accordingly, the present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	10.11.2023
Transmission Date	N/A