

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6839 of 2003

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Baijnath Choudhary, S/o Shri Gopi Choudhary, R/M – Baradari, P.S. and P.O.-
Bhagwan Bazar, District- Chapra, Saran.

... .. Petitioner/s

Versus

1. The Central Bank Of India through the Zonal Manager, Zonal office, Central Bank of India, Pawapuri, Bihar, N.H. 28, Bhagwanpur, Muzaffarpur.
2. The Zonal Manager, Central Bank of India, Zonal Office, Pawapuri, Bihar, N.H.-28, Bhagwanpur, Muzaffarpur.
3. The Regional Manager, Central Bank of India, Regional Office, Siwan.
4. Shri Sachidanand Sharma, Branch Manager, Central Bank of India, Goraiya Kothi, Siwan, presently posted at Notijhil Branch, Muzaffarpur.
5. Shri B.D. Jha, Inquiry Officer-cum-Branch Manager, Central Bank of India, Akma Saran, presently posted at Laheria Sarai Branch, District- Darbhanga.
6. Shri Ram Bilas Shrivastava, Management Representative, Assistant Manager, Central Bank of India, Regional Office, Siwan, presently at Nagar Mahapalika Branch, Sigranagar, Varanasi.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 14700 of 2005

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Baij Nath Choudhary, Son of Sri Gopi Choudhary, R/o Mohalla- Baradari,
P.S. Bhagwanpur, Distt.- Chhapra.

... .. Petitioner/s

Versus

1. The Chairman, Central Bank of India, Central Office, Chandermukhi, Nariman Point, Mumbai.
2. The Chief Manager, Central Office, Central Bank of India, Chandermukhi, Nariman Point, Mumbai.
3. Regional Manager, Regional Office, Central Bank of India, Naya Bazar, Siwan (Bihar).
4. Branch Manager, Central Bank of India, Branch Office, Bhagwanpur Chowk, Muzaffarpur.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 6839 of 2003)

For the Petitioner/s	:	None
For the Respondent/s	:	Mr. Ajay Kumar Sinha, Sr. Advocate
		Mr. Nilanjan Chatterjee, Advocate
		Miss. Dilkash Khan, Advocate
		Miss Minu Kumari, Advocate

(In Civil Writ Jurisdiction Case No. 14700 of 2005)

For the Petitioner/s	:	None
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For the Respondent/s : Mr. Ajay Kr.Sinha, Sr. Advocate
Miss. Dilkash Khan, Advocate
Miss Minu Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 22-03-2023

C.W.J.C. No. 6839 of 2003

In the present petition learned counsel for respondents has filed Interlocutory Application to recall the order dated 09.12.2021. It is relating to imposition of cost of Rs. 5,000/-. There is delay of more than one year in filing Interlocutory Application to recall the order dated 09.12.2021 on 22.03.2023. Accordingly the Interlocutory Application for recalling the order dated 09.12.2021 is rejected.

None appears for the petitioner.

Matter is of the year 2003.

Learned counsel for respondent- Bank on instruction submitted that original records relating to enquiry proceedings were stated to have been burnt in a fire accident. Therefore, he is not in a position to produce the original records relating to initiation of enquiry and its conclusion.

Perusal of documents enclosed along with the writ petition, charge-memo is not supported by statement of imputation, list of documents and list of witnesses vide charge-



sheet dated 15.03.2001. There is not even reference in the charge-memo. However, the alleged allegation is that petitioner is stated to have manipulated the Bank records in so far as number of account holders, while creating fictitious credit entry and misappropriated Bank customers' money. No doubt it is a serious charge levelled against the petitioner, at the same time, there are legal lacunas in initiation of enquiry.

In the light of legal issues that charge-memo is not consisting of statement of imputation, list of documents and list of witnesses and further proceedings are vitiated, Apex Court in the case of ***Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant & Others*** reported in ***(2001) 1 SCC 182*** in which para 22 reads as under:-

"22. The sixty-five page Report has been sent to the Managing Director of the Nigam against the Petitioner recording therein that the charges against him stand proved - what is the basis? Was the enquiry officer justified in coming to such a conclusion on the basis of the charge-sheet only? The answer cannot possibly be in the affirmative; if the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records - unfortunately there is not a whisper in the rather longish report in that regard. Where is the presenting officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but



unfortunately no answer is to be found in the rather longish report. But if one does not have it - can it be termed to be in consonance with the concept of justice or the same tantamounts to a total miscarriage of justice. The High Court answers it as miscarriage of justice and we do lend our concurrence therewith. The whole issue has been dealt with in such a way that it cannot but be termed to be totally devoid of any justifiable reason and in this context a decision of the King's Bench Division in the case of *Denby (William) and Sons Limited v. Minister of Health* may be considered. Swift, J. while dealing with the administrative duties of the Minister has the following to state:

" I do not think that it is right to say that the Minister of Health or any other officer of the State who has to administer an Act of Parliament is a judicial officer. He is an administrative officer, carrying out the duties of an administrative office, and administering the provisions of particular Acts of Parliament. From time to time, in the course of administrative duties, he has to perform acts which require him to interfere with the rights and property of individuals, and in doing that the courts have said that he must act fairly and reasonably; not capriciously, but in accordance with the ordinary dictates of justice. The performance of those duties entails the exercise of the Minister's discretion, and I think what was said by Lord Halsbury in *Sharp v. Wakefield* (A.C. at p. 179) is important to consider with reference to the exercise of such discretion. He there said:

"Discretion" means when it is said that something is to be done within the discretion of the authorities that that something is to



be done according to the rules of reason and justice, not according to private opinion: *Rookes case*; according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself."

In view of these factual aspects, petitioner has made out a *prima facie* case so as to interfere with the impugned orders dated 22.05.2002 (Annexure- 14) and 13/16.05.2003 (Annexure-19). Accordingly, they are set aside.

The present petition stands allowed.

C.W.J.C. No. 14700 of 2005

In the instant petition petitioner has prayed for following reliefs:-

"I. A writ in the nature of mandamus or any other appropriate writ or order be issue commanding the respondent authorities to pay the whole amount of employees Provident fund i.e. Rupees one lakh twenty eight thousand eight hundred forty and thirty seven paise only.

II. A writ in the nature of mandamus be issued the respondent authorities to pay the statutory interest to whole amount of employees provident fund till the date of payment of employees Provident fund.

III. Any other relief to which the petitioner may be found entitled."



The grievance of the petitioner shall be considered in the light of the order passed in C.W.J.C. No. 6839 of 2003 within a period of four months from the date of receipt of this order. In the event petitioner is not entitled, in such circumstances, a detailed speaking order shall be passed as to why petitioner is not entitled to E.P.F. along with interest.

Accordingly, the present petition stands disposed of.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28.03.2023
Transmission Date	N.A.

