

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.874 of 2018

In

Civil Writ Jurisdiction Case No.4021 of 2011

Mukti Nath Rai, Ex- Clerk cum Cashier (Dismissed), Punjab National Bank, Janta Bazaar Branch, Son of Late Heera Lal, Resident of Village - Sahasarwan, P.O.-Sahasarwan Via Bhagwanpurhat, P.S.-Bhagwanpur, District-Siwan.

... .. Appellant/s

Versus

1. The Punjab National Bank, Through The Chairman Cum Managing Director and Ors
2. The General Manager HRD, Punjab National Bank, New Delhi,7-Bhikiji Cama Place, New Delhi.
3. The Chief Vigilance Officer, Punjab National Bank, Bihar and Jharkhand, R-Block, Chanakya Place, Di
4. The General Manager Field, Punjab National Bank, Bihar and Jharkhand, the then Zonal Manager, Pun
5. The Deputy Zonal Manager of the then Integrated Zonal Office, Patna, Punjab National Bank, R-Block,
6. The Manager-HRD of the then Integrated Zonal Office, Patna, Punjab National Bank, R-Block, Chanaky
7. Circle Head, Punjab National Bank, the then Sr. Manager/Regional Manager, Punjab National Bank, Muz
8. The Chief Manager, Circle Office Muzaffarpur, Pankaj Market, Saraiyaganj, now at Aghoria Bazar, Dis
9. The Zonal Manager, First Appellate Authority of Central Public Information Officer, Punjab National
10. The Central Public Information Officer, Punjab National Bank, Circle Office Muzaffarpur, Pankaj Mar
12. The Branch Manager, Punjab National Bank, Bhagwanpur Hat Branch, Siwan, DSistrict-Siwan.
13. The Branch Manager, Punjab National Bank, Janta Bazar Branch, Chapra, District-Siwan.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. S.B.K. Mangalam, Advocate
For the Respondents/Bank : Mr. Suryakant Kumar, Advocate



CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 16-01-2023

In the present L.P.A., appellant has assailed the order of the learned Single Judge dated 05.01.2018 passed in C.W.J.C. No. 4021 of 2011. The appellant - *Mukti Nath Rai* was involved in parallel proceedings on the allegations of defalcation of respondent – Bank's money. The departmental inquiry concluded with imposition of penalty of dismissal from service on 30.09.2003. Thereafter, he preferred appeal and the same was rejected by the appellate authority on 16.02.2004. In the result, he has invoked remedy before this Court by filing C.W.J.C. No. 3060 of 2010 and it was decided against him on 12.03.2010. Insofar as challenge to the order of dismissal and appellate authority's order, it has attained finality. However, in respect of some other issue a direction has been given to consider his representation. When things stood thus on 11.05.2007 in the criminal proceedings, he has been acquitted. In the result, he had submitted representation on 23.08.2007 to re-consider the punishment order of dismissal and it was rejected on 05.03.2008. Hence, C.W.J.C. No. 4021 of 2011 was filed after a lapse of four years.



2. Learned counsel for the appellant vehemently contended that having regard to the fact that appellant has been acquitted in a criminal case in respect of identical charges, respondent – Bank were duty bound to revisit the dismissal order and re-consider imposition of penalty of dismissal from service. It is further submitted that similarly seven persons were involved and they have been punished with a penalty other than dismissal. It is further submitted that such of those persons who are similarly situated persons have been examined in the departmental inquiry. In other words, co-accused Bank employees have been examined in the departmental inquiry.

3. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that at the outset, writ petition C.W.J.C. No. 4021 of 2011 is not maintainable insofar as imposition of penalty and its confirmation by the appellate authority on the score that order of the learned Single Judge passed in C.W.J.C. No. 3060 of 2010 decided on 12.03.2010 has attained finality. The appellant has failed to question the validity of the order of learned Single Judge dated 12.03.2010. In the result, the present L.P.A. is not maintainable.

4. Heard learned counsels for the respective parties.



5. The appellant while working as Clerk-cum-Cashier, among others he has alleged to have misappropriated a sum of Rs. 9 lakhs. In this regard, an FIR was lodged on 13.08.1997. Similarly on 16.12.1999, departmental inquiry was initiated by the respondent - Bank in framing Article of charges. In other words, parallel proceedings have been initiated against the appellant and others insofar as alleged misappropriation of a sum of Rs. 9 lakhs. Departmental inquiry was concluded insofar as appellant is concerned on 30.09.2003 to the extent of imposition of penalty of dismissal from service and it was confirmed by the appellate authority on 16.02.2004. Both the orders were subject matter of writ petition C.W.J.C. No. 3060 of 2010 and it was decided against appellant on 12.03.2010. The appellant did not agitate further before the L.P.A. Bench insofar as questioning the validity of the order of the learned Single Judge dated 12.03.2010 passed in C.W.J.C. No. 3060 of 2010. When things stood thus the appellant was acquitted in a criminal proceedings on 11.05.2007. He has submitted representation to reconsider imposition of penalty of dismissal from service and its confirmation by the appellate authority on 23.08.2007 and it was rejected on 05.03.2008. In this backdrop, question of once again examining the validity of the imposition of penalty of dismissal from service and its



confirmation by the appellate authority dated 30.09.2003 and 16.02.2004 respectively, those orders have attained finality before the learned Single Judge in C.W.J.C. No. 3060 of 2010 decided on 12.03.2010. Any development like acquittal in a criminal proceedings is required to be examined independently as held by the Apex Court in the case of ***State Bank of India vs. K.S. Vishwanath***, Civil Appeal No. 3490 of 2022 decided on **20.05.2022**. Assuming that if any statute provides to revisit of departmental penalty on acquittal, even then the appellant had a remedy of filing review of the order dated 12.03.2010 passed in C.W.J.C. No. 3060 of 2010. The appellant has not pointed out any provision of law in the settlement on the industrial disputes between certain Banking companies and their workmen dated 19.10.1966 to the extent that in the event of acquittal of an employee, the employer is permitted to revisit the penalties imposed in a departmental inquiry.

6. Learned counsel for the appellant submitted that the respondent Bank had discriminated among the employees while imposing penalty in respect of alleged misappropriation of Rs. 9 lakhs. In other words, co-employees have been punished other than dismissal. Thus, there is a discrimination. Further, such of those persons who were also involved in the very same case were



examined in the departmental inquiry and it is not permissible. The question of discrimination is required to be examined by the disciplinary authority/appellate authority. The appellant has failed to apprise the aforesaid issues in C.W.J.C. No. 3060 of 2010 insofar as discrimination in imposition of penalty among the appellant and others in the very same case insofar as alleged misappropriation of a sum of Rs.9 lakhs, examination of co-accused (employees) in a departmental inquiry is also required to be examined by the disciplinary authority and appellate authority. For the first time such of the contentions are being urged in the present case insofar as challenging the order of dismissal and appellate authority's order. Technically this Court cannot examine the aforesaid contentions of the appellant for the reasons that appellant had already suffered an order before this Court in C.W.J.C. No. 3060 of 2010 *vide* order dated 12.03.2010. Hence, the aforementioned contentions of the appellant is hereby rejected.

7. Recently Apex Court in the case of ***State of Rajasthan and others vs. Heem Singh*** reported in **(2021) 12 SCC 569** held under what circumstances acquittal in a criminal case is bearing in a departmental proceedings. Even the principles laid down in the aforementioned judgement would assist the appellant.



8. In view of these facts and circumstances, no interference is called for insofar as order of the learned Single Judge dated 05.01.2018 passed in C.W.J.C. No. 4021 of 2011. Accordingly, L.P.A. stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

GAURAV S./-

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CAV DATE	
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