

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6286 of 2016

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Bhogendra Nath Jha Son of Late Tara Kant Jha, resident of village- Awari,
P.S.- Saharghat, District- Madhubani at present Joint Registrar, Cooperative
Societies, Koshi Division, Saharsa

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Cooperative Department,
Bihar, Patna.
2. The Registrar, Cooperative Societies, Bihar, Patna
3. The Deputy Secretary Vigilance Cooperative Department, Government of
Bihar, Patna
4. The Bihar Public Service Commission, Patna.
5. The Secretary, Bihar Public Service Commission, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rakesh Kumar Jha, Advocate
For the BPSC	:	Mr. Sanjay Pandey, Advocate
		Mr. Nishant Kr. Jha, Advocate
For the State	:	Mr. Sarvesh Kr. Sinha, AAG 13
		Mr. Arya Achint, AC to AAG 13

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 08-07-2024

Heard Mr. Rakesh Kumar Jha, learned counsel
appearing on behalf of the petitioner; Mr. Sanjay Pandey along
with Mr. Nishant Kr. Jha, learned counsels for the BPSC and
Mr. Sarvesh Kr. Sinha, learned AAG 13 along with Mr. Arya
Achint, learned AC to AAG 13 for the State.

2. Petitioner has *inter alia* prayed for following
reliefs in the paragraphs No.1 of the writ petition:-

(A) *Quashing the notification
contained in memo no.3722 dated 06.11.2015 whereby
and whereunder the following penalties have been*



imposed on the petitioner :(i) reduction to four lower stage in time-scale of pay, (ii) he shall not earn increments in pay during the period of such reduction and (iii) during the period of suspension he shall not get anything except the subsistence allowance.

(B) Directing the respondents to make enhance or suitable payment to the petitioner for the period of suspension (05.02.2014 to 06.11.2015) in terms of Rule 10(1)(I) read with Rule 11(5) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005).

(C) Any other relief / reliefs to which, in the facts and circumstances of case, the petitioners are entitled to.”

3.The facts in brief giving rise to the present writ petition are as under:

The petitioner was posted as Managing Director of the Patliputra Central Co-operative Bank from 19.06.2003 to 01.08.2007. During the said period, computerization of Bank took place and financial irregularities were detected and complicity of the petitioner in the said irregularities was *prima facie* established on the basis of vigilance inquiry calling for registration of P.S. Case No.49 of 2010 on 02.07.2010. Petitioner is facing criminal prosecution for the alleged financial irregularities committed by him, while posted as Managing Director of the Patliputra Central Co-operative Bank. Based on



the said allegation, the petitioner was served a show cause dated 12.08.2015 and faced disciplinary proceeding for the main allegation that Chairman of the Board had advised the petitioner to adopt certain process, which ultimately benefited the Contractor company running in the name and style of NELITO System, causing financial loss to the Bank and at the same time, the petitioner had issued a cheque in favour of the NELITO System, amounting to Rs.25,60,000/- on 30.07.2007. Based on the said allegation, disciplinary proceeding was conducted against him by serving him a charge memo, containing 12 charges; inquiry officer was appointed and inquiry was held and inquiry officer found all the charges proved against the petitioner. Disagreeing with the inquiry report on certain conclusion, the disciplinary authority served the petitioner second show cause. Petitioner replied and his reply was found unsatisfactory and thereafter the disciplinary authority *vide* impugned order contained in memo No.3722 dated 06.11.2015 imposed penalties after consent of the State Government. Aggrieved by the said penalty order, the petitioner has filed the present writ petition.

4. Mr. Rakesh Kumar Jha, learned counsel appearing on behalf of the petitioner submitted that the



petitioner is aggrieved by the penalty order to the extent that the same *de hors* the provision of Rule 14(vii) read with Explanation (vi) of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as C.C.A. Rules, 2005) by imposing penalty from retrospective date. At the same time, petitioner has also sought quashing of the order to the extent that during the period of suspension, petitioner would not get anything except subsistence allowance. In support of his contention, learned counsel has relied upon a judgment of this Court in the case of **Raj Kishore Sinha Vs. The State of Bihar through Principal Secretary, R.C.D. & Ors.**, reported in **2018(3) PLJR 805**, in which learned Single Judge following the law laid down by the Apex Court in the case of **R. Jeeva Ratnam vs. the State of Madras** reported in **AIR 1966 SC 951** has finally concluded that the order of punishment cannot be imposed from a retrospective date and the said proposition has been reiterated by the Apex Court in the case of **State Bank of Patiala and Ors. Vs. Ram Niwas Bansal (Dead) through L.Rs**, reported in **2014 (2) PLJR 458 (SC)**. Learned counsel in these backgrounds submits that the order is not in consonance with the provision contained in Rule 14 of the CCA Rules, 2005, as well as, the law laid down by the



Apex Court and, as such, the same is required to be set aside and quashed. He further submitted that as the order is without jurisdiction, the petitioner is entitled for the relief, as prayed for in the present writ petition.

5. *Per contra*, learned counsel appearing on behalf of the State submitted that the order of punishment has been passed following the strict provision of Rule 14 of the CCA Rules, 2005 and petitioner has not been able to make out a case as of in what manner, the order is perverse and there is any procedural lapse by not following the provision of Rule 17 of CCA Rules, 2005. He further submitted that the judgment relied on by the petitioner passed by the Apex Court in the case of **R. Jeeva Ratnam (Supra)** and **State Bank of Patiala (Supra)** is not applicable in the case of the petitioner, as the same has been passed in different context.

6. Heard the parties.

7. Having heard the rival submissions made on behalf of the parties, as well as, taking careful consideration of the charge memo served against the petitioner, I find that the only evidence which has been brought against the petitioner relates to charge no.9, relating to the allegation that the petitioner was transferred on 23.07.2007 and he had



intentionally not complied the order of transfer immediately and remained in the office unauthorizedly with a view to benefit NELITO System by issuing cheque amounting to Rs.25,60,000/- on 30.07.2007 as an advance, in spite of the fact that the company has not applied for any advance. So far as the other charges are concerned, the petitioner has no role in publishing the tender notice or holding of the tender in respect of the eight quotations received. The petitioner was found to have favoured the NELITO System in spite of the fact that the settlement was made with NELITO System which was the fourth lowest and the company named onward had quoted the first lowest and it was found upon inquiry that there was 45% difference in rate from first and fourth lowest.

8. Now the question arises whether from the report submitted by the vigilance department contained in letter dated 29.05.2009 to the Superintendent of Police (Investigation Bureau), wherein specific report has been submitted that for computerization and for holding of tender wide publicity was required and for the same, the vigilance has held the petitioner guilty and can that absolve the petitioner from the act of misconduct?

9. It is gainful to quote the definition of misconduct



defined 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".

10. In the case of **M.M. Malhotra Vs. Union of India** reported in **(2005) 8 SCC 351**, it was held that “the range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct. It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. But at the same time, though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the day. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve.”

11. It is well-settled by the Apex Court that, "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 or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through."

12. Following the law laid down by the Apex Court, the charge levelled against the petitioner would constitute misconduct. The petitioner has been found to have benefited the NELITO System by not informing the Chairman of the Bank for issuance of tender notice for holding auction after much publication and instead of that, he has only suggested that larger participation is required for competitive bidding. The bidding was held and NELITO System to whom the petitioner has benefited was fourth lowest bidder and the vigilance has found rate difference of 45% from the first and fourth one. Disciplinary Authority held the charge against the petitioner to be proved by discussing the fact that the petitioner had issued cheques in favour of the NELITO System company in absence of any advance money requested by the said company and in this way, finding recorded by the disciplinary authority cannot be faulted, however, taking into consideration the technical plea



as per provision of Rule 14(vii) explanation (vi) of the CCA Rules, 2005, that the order of punishment cannot be passed from retrospective date, it would be apt to reproduce Rule 14(vii) explanation (vi) of the CCA Rules, 2005:

"14(vii). Reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or service from which he or she was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

Explanation (vi) Replacement of the services of a Government servant, whose services had been borrowed from a State Government or an authority under the control of a State Government, at the disposal of the State Government or the authority from which the services of such Government servant had been borrowed."

13. The petitioner has relied on the judgment of this Court in the case of **Raj Kishore Sinha (Supra)** and in the said judgment, the learned Single Judge has relied upon the judgment of **R. Jeeva Ratnam (Supa) and State Bank of Patiala (Supra)**. In the facts of the case, the punishment order dated 06.11.2015 does not specify any period as also for the reason that no separate order with regard to pay and allowance to be paid to the petitioner for the period during which he remained under suspension has been passed under Section of Rule 97 of Bihar Service Code. I am of the opinion in light of the judgment passed by the Apex Court, as referred to above, and for the aforesaid reason, the impugned order of punishment



dated 06.11.2015 is hereby set aside and quashed for the aforesaid reason. In the light of the law laid down by the Apex Court in the case of **B.C.Chaturvedi V. Union of India & Ors.** reported in **(1995) 6 SCC 746**, the matter is remitted back to the Disciplinary Authority to proceed afresh in accordance with law.

14. The writ petition stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.07.2024
Transmission Date	NA

