

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14312 of 2012

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Brij Kishore Singh S/O Late Indradeo Singh R/O Village- Narharpur, P.S.-
Marhaura, Distt.- Saran

... .. Petitioner/s

Versus

1. The State Bank Of India through the Chief General Manager, Local Head Office, Patna
2. The General Manager (One), Local Head Office, State Bank Of India, Patna
3. The Deputy General Manager Zonal Office, State Bank Of India, Muzaffarpur
4. The Assistant General Manager State Bank Of India, Region-V, Zonal Office, Muzaffarpur
5. The Deputy General Manager Appeal And Review Null Appeals And Review, Corporate Centre, Mumbai

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shekhar Singh, Advocate
For the Respondent/s	:	Mr. Binod Bihari Sinha, Advocate
		Mr. Anirudh Prasad Singh, Advocate
		Mr. Ajay Dutt Mishra, Advocate
		Mr. Amarjeet Choudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 01-07-2024

Heard Mr. Shekhar Singh, learned counsel appearing on behalf of the petitioner; Mr. Binod Bihari Sinha, along with Mr. Anirudh Prasad Singh, Mr. Ajay Dutt Mishra and Mr. Amarjeet Choudhary, learned counsel for the State Bank of India.

2. Mr. Binod Bihari Sinha, learned counsel appearing



on behalf of the State Bank of India raises a preliminary objection that the present writ petition is not maintainable for having been filed after delay of more than 7 years seeking quashing of punishment order dated 18.01.2005, appellate order dated 02.08.2005 and revisional order dated 06.06.2006.

3. Mr. Shekhar Singh, learned counsel appearing on behalf of the petitioner, has submitted that the technical ground raised by the respondents cannot come in a way of the petitioner in challenging the penalty order, which the petitioner has suffered and has been affirmed by the appellate authority, as well as, revisional authority.

4. Learned counsel submitted that the petitioner was inflicted by order of punishment by reduction to a lower stage in time scale pay by three stages for three years without cumulative effect. In reply to the preliminary objection raised on behalf of the respondents, learned counsel submitted that he has given information in paragraph no.11 of the writ petition that delay has been caused in filing the writ petition is not deliberate, rather the petitioner has given information that the petitioner was not well and he was suffering from several diseases and at the same time, he had also suffered bereavement in his family and these facts are not denied by the respondent



authorities. Assailing the order passed by the disciplinary authority, learned counsel submitted that there is complete non-consideration of the show cause reply filed by the petitioner and without following due procedure and giving any reasons, the order of penalty cannot be sustained. Learned counsel in support of his submission has relied upon paragraph no.44 of the law laid down by the Apex Court in the case of **Ravi Yashwant Bhoir Versus District Collector, Raigad & Ors.** reported in **2012(4) SCC 407**.

5. In these backgrounds, learned counsel submitted that the order impugned dated 18.01.2005 (Annexure 4) passed by the disciplinary authority is vitiated in the eye of law as no case of alleged misconduct is made out against the petitioner. The charge levelled against the petitioner committing of financial irregularity is not established in absence of the specific finding that the petitioner has benefited himself or has put the bank at loss. At the best, the petitioner can be held for procedural lapses which is not misconduct.

6. *Per contra*, learned counsel appearing on behalf of the State Bank of India had submitted that the writ petition is not maintainable on the ground of delay and laches considering the fact that the penalty order was passed on 18.01.2005 and



thereafter petitioner preferred appeal and the appellate authority rejected his appeal vide order dated 02.08.2005 affirming the order of penalty and thereafter the petitioner had preferred review against the appellate order, which was also dismissed by the reviewing authority vide order dated 06.06.2006. The writ petition has been filed in the year 2012, nearly after delay of six years. Learned counsel further submitted that even on merits, the order of penalty cannot be interfered by this Court and don't call for judicial review. Minor punishment has been inflicted after following all the prescribed procedure and penalty order was passed following the principle of natural justice on the basis of materials on record. The records also show that the opinion formed by the disciplinary authority is based on evidence giving the cogent reasons. Learned counsel in these backgrounds, submitted that the writ petition don't call for any interference by this Court.

7. Heard the parties.

8. The facts in brief giving rise to the present writ petition are that the appointing authority had passed the order of punishment on 18.01.2005 holding that the petitioner was found to have committed lapses /irregularities while authorizing the opening of SB Account No.01190010729 of Shri Sanjeev



Kumar Singh; the depositor and the introducer were not properly interviewed; no letter of thanks was sent to the account holder at his recorded address with a view to verify the correctness of his address and three cheques amounting to Rs.73,785/- drawn on Central Bank of India, New Delhi presented by the depositor on 10th September, 2002 were not routed through “S” Book and the cheques were presented through clearing to Central Bank of India, Gopalganj on 11th September, 2002 and the proceeds thereof were credited to depositor’s account on the same day and it was later observed that the depositor was not the actual payee of the said cheque who managed to withdraw/defraud the Bank putting loss of Rs.73,500/-. The petitioner was given liberty to submit his explanation and his explanation was not accepted. Thereafter, the petitioner was served upon the “Statement of Imputation of Lapses” and called upon him to submit his written defence in terms of Rule 68(4)(i) of State Bank of India Officers’ Service Rules within 15 days after receipt of the said letter, falling which it will be presumed that he has no defence to offer and the Bank shall proceed in the matter.

9. In terms of the said letter, the petitioner had submitted his show cause on 10th August, 2004, denying all the



charges/allegations made against him as he claimed that he had not failed to take any possible steps to protect the Bank's interest and had discharged his duties with utmost devotion and diligence in terms of Rule 50(4) of the State Bank of India Officers' Service Rules.

10. The appointing authority being not satisfied by the reply found misconduct on the part of the petitioner in terms of Rule 50 (4) of the State Bank of India Officers' Service Rules and General manager (NW-I)/appointing authority *vide* order dated 18.01.2005 imposed the penalty of "Reduction to a lower stage in time Scale of pay by 3 stages for 3 years without cumulative effect" under Rule 67(e) of the State Bank of India Officers' Service Rules under the heading of minor penalty. The petitioner was given liberty to prefer appeal. Accordingly, the petitioner filed an appeal before the Chief General Manager/Appellate Authority on 07.03.2005. The appellate authority after examining the records of the case and concurring with the findings of the appointing authority, dismissed the appeal *vide* order dated 02.08.2005, affirming the punishment imposed upon the petitioner. Thereafter, the petitioner preferred a review petition on 23.09.2005. The reviewing committee rejected the review petition *vide* order dated 06.06.2006,



affirming the punishment inflicted upon him with the finding that the petitioner has not raised any notable points of merit to rebut the allegations as held as proved, while acting as Accountant.

11. Before I proceed to decide the writ petition on merit, whether the writ petition which has been filed after delay of nearly six years and the petitioner having availed all the remedies can it be entertained?

12. It is well settled law laid down by the Apex Court that if it is found that the writ petitioner is guilty of delay and laches, the High Court should dismissed it at the threshold. Close to the facts of this case, the Apex Court in **“C. Jacob Versus Director of Geology and Mining and Other** reported in **(2008) 10 SCC 115**, having found that the employee suddenly brought up a challenge to the order of termination of his services after 20 years and claimed all consequential benefits, held that the relief sought for was inadmissible. The legal position in this regard was laid out in the following terms:-

“10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that



the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action."

13. Reiterating the aspect of delay and laches would dis-entitle the discretionary relief being granted, the Apex Court in the case of **Chennai Metropolitan Water Supply & Sewerage board V. T.T. Murali Babu**, reported in (2014) 4 SCC 108 has held in paragraph no.16 which is reproduced hereinafter :-

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an



aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis”

14. Present is not the case, where the petitioner was prohibited from availing the remedies and more flexible approach is required to be adopted by this Court in considering the grievance of the petitioner on the point of equity. The factual aspect would reflect that the petitioner was aware of all the developments. The appointing authority had passed the order on 18th January, 2005, the Appellate authority had passed the order on 02.08.2005 and the Reviewing committee had passed the order on 06.06.2006. The petitioner challenged the said orders in the year 2012 after delay of six years and, as such, the present writ petition on this score is fit to be dismissed.

15. Now, I proceed to deal with whether the other act of the petitioner constitute a misconduct.



16. 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".

17. In the case of **M.M. Malhotra Vs. Union of India** reported in **(2005) 8 SCC 351**, the Apex Court 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.”



18. 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."

19. The record reveals that the petitioner had failed to take sincere steps to protect the interest of the Bank and to discharge his duties with utmost devotion and diligence and petitioner having held responsible for the financial loss caused to the Bank which comes under misconduct, as the petitioner was found to have committed lapses /irregularities while authorizing the opening of SB Account No.01190010729 of Shri Sanjeev Kumar Singh; the depositor and the introducer were not properly interviewed; no letter of thanks was sent to the account holder at his recorded address with a view to verify the correctness of his address and three cheques amounting to Rs.73,785/- drawn on Central Bank of India, New Delhi presented by the depositor on 10th September, 2002 were not routed through "S" Book and the cheques were presented through clearing to Central Bank of India, Gopalganj on 11th



September, 2002 and the proceeds thereof were credited to depositor's account on the same day and it was later observed that the depositor was not the actual payee of the said cheque who managed to withdraw/defraud the Bank putting loss of Rs.73,500/-.

20. In the light of the above settled judicial pronouncement, I find that the act of the petitioner cannot constitute negligence rather the same constitute misconduct committed with the malafide intention.

21. In above view of the fact, I find that the reliance placed by the petitioner to the law laid down by the Apex Court in the case of **Ravi Yashwant Bhoir (supra)** is of no help to the petitioner. It will be gainful to reproduce paragraphs no. 13, 15, 16, 18 and 19:

"13. Mere error of judgment resulting in doing of negligent act does not amount to misconduct. However, in exceptional circumstances, not working diligently may be a misconduct. An action which is detrimental to the prestige of the institution may also amount to misconduct. Acting beyond authority may be a misconduct. When the office-bearer is expected to act with absolute integrity and honesty in handling the work, any misappropriation, even temporary, of the funds, etc. constitutes a serious misconduct, inviting severe punishment. (Vide Disciplinary Authority-cum-Regl. Manager v. Nikunja Bihari Patnaik [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] , Govt. of T.N. v. K.N. Ramamurthy [(1997) 7 SCC 101 : 1997 SCC (L&S) 1749 : AIR 1997 SC 3571] , Inspector Prem Chand v. Govt. of NCT of Delhi [(2007) 4 SCC 566 : (2007) 2 SCC (L&S) 58] and SBI v. S.N. Goyal [(2008) 8 SCC 92 : (2008) 2 SCC (L&S) 678 : AIR 2008 SC 2594] .)

15. In M.M. Malhotra v. Union of India [(2005) 8 SCC 351 : 2005 SCC (L&S) 1139 : AIR 2006 SC



80] , this Court explained as under : (SCC p. 362, para 17)

“17. ... 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 duty. 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.”

A similar view has been reiterated in Baldev Singh Gandhi v. State of Punjab [(2002) 3 SCC 667 : AIR 2002 SC 1124] .

16. Conclusions about the absence or lack of personal qualities in the incumbent do not amount to misconduct holding the person concerned liable for punishment. (See Union of India v. J. Ahmed [(1979) 2 SCC 286 : 1979 SCC (L&S) 157 : AIR 1979 SC 1022] .)

18. The expression “misconduct” has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, wilful in character. It may be synonymous as misdemeanour in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces.

19. Further, the expression “misconduct” has to be construed and understood in reference to the subject-matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest."

22. In this regard, the Apex Court in paragraph no. 15 of the said judgment has relied upon the law laid down in ***M.M. Malhotra (supra)*** as the conduct of the petitioner cannot amount to lack of personal quality rather the conduct of the



petitioner is detrimental to the public interest. In this regard, a reference can also be made to the law laid down by the Apex Court in case of *General Manager, Appellate Authority, Bank of India & Anr. vs. Mohd. Nizamuddin* reported in (2006) 7 SCC 410.

23. In these backdrops of the above discussed facts and law, I don't find any illegality in the order passed by the authorities and accordingly the writ petition is dismissed.

24. There shall be no order as to costs.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.07.2024
Transmission Date	NA

