

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9387 of 2012

- 1.1. Punam Keshri Wife of Late Anil Kumar Keshri Permanent Resident of- B-603, Saket Plaza, Jamal Road, P.O.- G.P.O., P.S.- Gandhi Maidan, District- Patna.
- 1.2. Aatish Son of Late Anil Kumar Keshri Permanent Resident of- B- 603, Saket Plaza, Jamal Road, P.O.- G.P.O., P.S.- Gandhi Maidan, District- Patna.
- 1.3. Mahima Daughter of Late Anil Kumar Keshri Permanent Resident of- B-603, Saket Plaza, Jamal Road, P.O.- G.P.O., P.S.- Gandhi Maidan, District- Patna.. .. Petitioner/s

Versus

1. Bihar State Financial Corporation through its Managing Director, Fraser Road, Patna.
 2. Board Of Directors Of Bihar State Financial Corporation, through Its Chairman, Fraser Road, Patna
 3. Managing Director, Bihar State Financial Corporation, Fraser Road, Patna
 4. The Assistant General Manager-Cum-Conducting Officer, Bihar State Financial Corporation, Fraser Road, Patna Respondent/s
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Appearance :

For the Petitioner/s : Mr.Subhash Chandra Bose, Advocate
For the Respondent/s : Mr.Raju Giri, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 23-04-2024

Heard learned counsel for the petitioners and Mr.
Raju Giri, learned counsel appearing for the respondent-Bihar
State Financial Corporation.

2. This writ application has been filed for the following reliefs:

(a) For issuance of writ in the nature of writ of certiorari or any other appropriate writ/writs, order/orders, direction/directions quashing order dated 27.11.2009 passed by the Managing Director-cum-Disciplinary Authority and



communicated to the petitioner vide nemo no.1518 whereby petitioner has been awarded punishment of reduction in basic pay from Rs.12,600/- to Rs.12,275/- withholding of payment of arrears of salary to the extent of 50% for the period commencing from the order of compulsory retirement till the date of reinstatement in service without benefits increments fallen due during the period.

(b) For quashing the appellate order dated 15.2.2011 communicated to the petitioner vide H.O. letter no.2161 dated 14.3.2011 whereby petitioner's appeal preferred against the order of Disciplinary Authority has been rejected.

(c) For other consequential relief/reliefs may be deemed fit and proper in the facts circumstances of the case.

3. During the pendency of the writ petition, sole petitioner (Anil Kumar Keshri) who died on 18.04.2021 and his legal heirs, wife and children of the sole petitioner substituted vide order dated 19.02.2024.

4. Learned counsel for the petitioners submits that husband of petitioner No.1.1 (hereinafter referred to as the original petitioner) joined services of the Bihar State Financial Corporation (hereinafter referred to as the "Corporation") in the year 1981 on the post of Accounts Officer redesignated as



Assistant Manager and promoted to the post of Deputy Manager in the year 1986. Learned counsel for the petitioners submits that while the original writ petitioner who posted Hazaribagh Branch of the respondent Corporation, departmental proceeding was initiated against original writ petitioner vide charge sheet dated 17.10.1996 for his alleged misconduct committed by him while he was posted in Patliputra Branch of the Corporation in 1988-89. The chargesheet did not contain the dates or period of alleged misconduct nor any supporting papers listed as memo of evidence was made available alongwith charge sheet. Sri R.P. Singh, Officer-on-Special Duty was appointed as Conducting Officer to hold the enquiry.

5. Learned counsel for the petitioners submits that while the 1st departmental proceeding was in progress a second departmental proceeding was also initiated by serving of charge sheet dated 09.04.1997. Sri Ashok Kumar, A.G.M. was appointed as Conducting Officer to hold the enquiry.

6. Learned counsel for the petitioners submits that upon transfer of Sri R.P. Singh, Officer-on-Special Duty, who is Conducting Officer in first enquiry, Sri Ashok Kumar, A.G.M. was appointed the Conducting Officer in 1st case and both the enquiries were concluded by said Sri Ashok Kumar, who



proceeded in a premeditated manner and without ensuring that the documents required by the original writ petitioner to set up his defence were made available and the finding of guilt was recorded based upon no evidence in both the enquiries and from the bare perusal of the enquiry report dated 31.05.1997 made available to the original writ petitioner by the Managing Director of the Corporation vide his letter dated 03.10.1997 and second enquiry report dated 22.01.1998 made available to the original writ petitioner by the Managing Director of the Corporation vide his letter dated 28.01.1998 for his reaction and comment. Learned counsel for the petitioners submits that it would be evident from the aforesaid that neither any documents were proved nor any witnesses were examined in support of the charges and the Conducting Officer had sought to prove the charges by conjecture and surmises and placing reliance on previous statement of witnesses which were neither produced or made available to the original writ petitioner nor the witnesses whose previous statements were relied upon were examined by the Presenting Officer depriving the original writ petitioner his valuable right of cross examination.

7. Learned counsel for the petitioners submits that the original writ petitioner submitted his second show cause and



comments on 17.12.1997 on the first enquiry report dated 31.05.1997 and on 10.02.1998 on the second enquiry report dated 22.01.1998. The Managing Director of the Corporation passed a bald and common order in respect of both the enquiries on 27.03.1998 whereby original writ petitioner was awarded punishment of compulsory retirement of the original writ petitioner from the services of the Corporation. Aggrieved by the aforesaid action of the Managing Director of the Corporation, the original writ petitioner filed statutory appeal against the order of punishment on 25.05.1998 before the Appellate Authority, i.e. the Board of Directors of the Corporation but the same was rejected vide order dated 16.07.2003 and communicated to the original writ petitioner vide letter dated 01.08.2003.

8. Learned counsel for the petitioners submits that the original writ petitioner filed a writ petition bearing C.W.J.C. No. 6635 of 2005 challenging the legality of order of the disciplinary authority dated 27.03.1998 awarding punishment of compulsory retirement as well as Appellate order dated 16.07.2003 communicated to the original writ petitioner vide letter dated 01.08.2003 and this Hon'ble Court after hearing the parties has been pleased to quash both the orders as aforesaid vide order



dated 21.07.2008 and remit back the matter to the Enquiry Officer with the inter alia to hold enquiry from the stage of adducing of evidence both oral documentary. Pursuant to order dated 21.07.2008 passed in C.W.J.C. No. 6635 of 2005 the original writ petitioner vide letter dated 31.07.2008 submitted his joining along with copy of the order of this Hon'ble Court. The Managing Director of the Corporation accepted the joining of the husband of petitioner No.1.1 and issued an office order No.09/2008-09 dated 08.09.2008 appointing Sri C.S. Prasad, Assistant General Manager to hold enquiry as per direction of this Court and Sri Krishna Prasad, Dy. Manager (G&V) appointed as Presenting Officer. The Conducting Officer fixing the date of commencement of the enquiry on 10.02.2009 at 11.30 A.M. with a direction to the Presenting Officer for his presence on the date and time of commencement of enquiry along with two copies of charge sheet duly signed by the competent authorities and all the relevant exhibits duly attested and countersigned by the Presenting Officer in duplicate. The original writ petitioner vide his letter dated 10.02.2009 addressed to Conducting Officer requested 7 nos. of documents that he required for his defence and giving him opportunity to cross examine the Corporation's witnesses. The Presenting



Officer in compliance of the direction of the Conducting Officer vide his letter dated 12.02.2009 sent copies of two documents to original writ petitioner, (1) copy of standing order No. 6 of 1983-84 and (2) copy of petitioner's report dated 01.07.1989 on examination of Books of accounts of M/s Atlantic Oil Industries, Patna, but it appears from the letter dated 10.02.2009 was made available to the original writ petitioner that none of the papers and documents required by the original writ petitioner which was made available to the original writ petitioner. The original writ petitioner presented himself on dates fixed for hearing and the Presenting Officer failed to lay evidence and produce any witnesses for their cross examination and Conducting Officer vide letter dated 20.04.2009 issued direction to the Presenting Officer to produce evidence/witness and fixed 27.04.2009 for next date of hearing. On 27.04.2009 the date fixed for enquiry, no enquiry could be held as Presenting Officer failed to adduce evidence instead the original writ petitioner was erroneously asked to give questionnaire which he would like to put to the witnesses and the petitioner had told that questions would be put to witnesses and giving questionnaire for consideration of conducting officer was futile. In view of the aforesaid, it appears that no enquiry was conducted by the Conducting Officer and he



has submitted report on 21.05.2009 erroneously placing reliance on old enquiry reports which had become irrelevant upon commencement of fresh enquiry from the stage of adducing of evidence as per direction of this Hon'ble Court dated 21.07.2008 passed in CWJC No.6635 of 2005. Learned counsel for the petitioners submits that from a bare perusal of the report it is clear that the Conducting Officer had not held any enquiry and had given ground for submission of enquiry report extract of which is reproduced below:-

"While on one hand the witnesses are not being produced by the Presenting Officer/BSFC/Proceedee for being cross examined by the proceedee before the Conducting Officer as per order of Corporation submission Hon'ble Court, on the other hand Corporation has issued several reminders for submission of enquiry report with an observation that the departmental enquiry has been delayed abnormally which is undesirable and this should be completed without further delay".

9. Learned counsel for the petitioners submits that the Managing Director of the Corporation issued second show cause notice dated 14.08.2009 enclosing a copy of the enquiry report



dated 21.05.2009 which was based upon the relying on own enquiry report which was set aside by this Court in the aforesaid writ proceeding. Learned counsel for the petitioners submits that the original writ petitioner vide his reply dated 27.08.2009 to second show cause notice pointed out inter alia that the Presenting Officer had failed to produce any witnesses in support of the charge in spite of several opportunity given to him and the enquiry report was submitted by the Conducting Officer without holding any enquiry and the Conducting Officer had relied upon the earlier enquiry report and based upon the previous enquiry report the punishment was awarded by the Corporation and the same was held to be bad and quashed by this Hon ble Court. Learned counsel for the petitioners submits that the two departmental proceedings were initiated against original writ petitioner by issuing charge memo dated 17.10.1996 and charge memo dated 09.04.1996 though the first charge the original writ petitioner charged with grave misconduct, serious irregularities, gross negligence of duties and responsibilities and acting in a manner detrimental to the interest of the Corporation in discharge of his duties as Dy. Manager of erstwhile Patliputra Branch, Patna while dealing with the loan file of M/s Subhandra Engineering Mithapur, Patna. The original



writ petitioner during processing of disbursement of the proposal of loan to M/s Subhandra Engineering Mithapur, Patna had allowed Rs.0.59 and lakhs as advance in cash knowing fully well the cash advance was not allowed and had thus violated the Standing Order No.6 of 83-84 and so far as second charge Memo dated 09.04.1997 was concerned the original writ petitioner was charged with grave misconduct, serious irregularities, gross negligence of duties and responsibilities and acting in a manner detrimental in the interest of the Corporation in discharge of duties as Deputy Manager of the Erstwhile Branch Patliputra, Patna while dealing with the loan file of M/s Atlantic Oil Industries, Patna the charges levelled against him that he allowed the concerned investment towards advance of Rs. Two Lacs only in place of Rs.2.45 Lacs. He connived with fraudulently promoter and the fake machine supplier ignoring inadequacy of advance and fraudulent disbursement of loan to the concerned with ulterior motive. Although the original writ petitioner assailed the aforesaid order before this Hon'ble Court in CWJC No.6635 of 2005, the writ application was allowed in favour of original writ petitioner vide order dated 21.07.2008 and remanded the matter back to the Inquiry Officer, which is the direction to take evidence in the matter in front of the



original writ petitioner and also give him an opportunity of cross-examining the evidence. In compliance of the direction of this Hon'ble Court fresh proceeding was initiated against the original writ petitioner from the stage of production of witness by the parties in support of their cases. Non producing of witness either by the Presenting Officer/BSFC or by the original writ petitioner nor the original writ petitioner giving questionnaires to the Conducting Officer to examine the relevancy and justification of the question to prove his innocence the Conducting Officer had no option but not to differ the earlier enquiry report dated 14.01.1998 submitted by the previous Conducting Officer and after considering all the facts the Disciplinary Authority in view of the gravity of the charges and the loss occurred to the Corporation and also considering that the original writ petitioner was out of service from quite of long period and was due to superannuate, awarded the following punishment in accordance with provisions of Regulation 39(I) of Bihar State Financial Corporation (Staff) Regulations 1965, which is as follows:-

(I) Shri A.K.Keshri, Dy Manager is reduced from his present stage of Rs. 12,600- to the lower stage



of Rs.12,275 in his incremental scale of his present grade of Dy. Manager (Rs. 10,000/-325-15,200/-).

(ii) Considering the fact that the proceedee has been held guilty of the charges and loss to Corporation occurred due to his conduct as also the proceedee was out of work during the period of compulsory retirement, the salary for the period between the date of order of compulsory retirement till the date of acceptance of his joining shall be @ 50% of salary last paid at the time of his compulsory retirement without giving any incremental benefits for the said period.

10. Having heard the parties and perused the material on the record it appears that the respondent authority has passed the order which was based upon the previous inquiry report and the same was set aside by this Court vide order dated 21.07.2008 passed in CWJC No.6635 of 2005 and the same is violation of the petitioner's fundamental right under Articles 14, 16 and 21 of the Constitution of India and without any material impugned order has been passed, the order dated 27.11.2009 (Annexure-16) and appellate order dated 15.02.2011(Annexure-18) are set aside and the Corporation is directed to pay all the



consequential benefits including arrears of salary and retirement benefits to the wife of original writ petitioner within a period of eight weeks from the date of receipt/production of a copy of this order as she is entitled to get all the consequential benefits.

11. This writ application is allowed.

(Rajesh Kumar Verma, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.05.2024
Transmission Date	NA

