(2005) 04 JH CK 0017

In the Jharkhand High Court

Case No : CWJC No. 3562 of 1999 (R)

Ashok Chandra Deogharia APPELLANT

Vs

Ranchi-Khunti Central Co-operative Bank Ltd. Main Branch and Others RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:
Constitution of India, 1950 — Article 14, 21, 311

Citation : (2005) 3 JCR 103

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : M.K. Habib, for the Appellant; R.R. Tiwari and Vishal Kumar Tiwari, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ application, the petitioner has prayed for quashing the order dated 15.10,1999 (as contained in Annexure-19 to the writ application) passed by the respondent No. 3 whereby the petitioner has been dismissed from service and for a further writ/order directing the concerned respondents to reinstate the petitioner and to pay his salary for the period from 28.11.1994 to 15.7.1998 deducting the amount of subsistence allowance paid to the petitioner and further salary of the petitioner from 15.7.1998 to 15.10.1999, i.e., between the two dismissal orders during the period the petitioner had worked.

2. The petitioner had been working as an Assistant Accountant in the Ranchi-Khunti Central Co-operative Bank Ltd. (respondent No. 1). In the year 1994, a first information report was lodged by the respondent No. 2, alleging misappropriation of huge amount by the petitioner. The petitioner was put under suspension by an order dated 28.1.1.1994. A show cause notice dated 9.12.1996 followed. The petitioner was asked to explain about the same. The petitioner filed a detailed reply dated 23.12.1996. Respondent No. 2, by his order dated

19.3.1997, directed the petitioner to join his duty. Petitioner, accordingly, gave his joining on 21.3.1997. He was not allowed to work. Again a show cause notice dated 14.5.1998 was issued to the petitioner by respondent No. 3 asking him as to why he should not be dismissed according to the report of the Joint Registrar dated 22.11.1997. By order dated 15.7.1998, passed by the Deputy Development Commissioner-cum-Administrator, Ranchi-Khunti Central Co-operative Bank Ltd. the petitioner was dismissed from his service. It is relevant to mention herein that a departmental inquiry was held by the Joint Registrar and in the said inquiry the petitioner was not found guilty of any misappropriation, vide enquiry report dated 11.7.1998 (Annexure-13). The petitioner, thus, challenged the said order of dismissal dated 15.7.1998 in writ application, CWJC No. 2920 of 1997 (R). By order dated 10.3.1999, the Patna High Court, Ranchi Bench (as then was) quashed the said order of dismissal. It was also observed therein that the disciplinary authority would proceed in accordance with law with respect to back wages and any other order. The respondents assailed the said order in L.P.A. No. 103 of 1999 (R), but, by order dated 6.8.1999, the same was dismissed. The petitioner, thereafter, submitted his joining, which was not accepted. However, after several representations to the authorities, he was ultimately allowed to join on 8.5.1999. On 16.6.1999, the petitioner received yet another show cause notice by letter No. 212 dated 15.6.1999 issued by the Administrator, Ranch-Khunti Central Cooperative Bank (hereinafter to be referred to as ''the bank''). In the said show cause notice, the petitioner was asked to explain as to why his service should not be terminated on account of the charges by differing with the enquiry report. The petitioner submitted his detailed reply dated 26.9.1999, stating inter alia, that in no way he can be held responsible for any defaulcation as he has not been found guilty in the enquiry. On 23.10.1999, the petitioner received the impugned order of dismissal from service by letter No. 563, dated 15.10.1999 (Annexure-19 to the writ application). The said punishment order has been challenged in this writ application.

3. According to the petitioner, it was he who had informed the concerned authority about the misappropriation of the fund of the bank by one Lal Ravindra Nath Sahadeo, the then Development Officer, which was also found in Audit Report of the year 1993-94, 1994-95. But in the first information report lodged by the respondent No. 2, the petitioner was made an accused on the allegation that he had misappropriated the huge amount. The petitioner was also proceeded against departmentally, but was not found guilty of the charges leveled against him by the Enquiry Officer. Even then, the Enquiry Officer recommended for withholding of two future annual increments of the petitioner. Ignoring the finding of the Enquiry Officer the petitioner was arbitrarily awarded punishment of dismissal. That dismissal order was quashed in CWJC No. 2920 of 1997 (R) and the respondents were directed to proceed in accordance with law for payment of back wages etc. The petitioner''s grievance is that the respondents, out of mala fide, has again passed the order of dismissal without

any fresh inquiry or without any fresh material on record. According to the petitioner he has been made victim of mala fide and illegally punished for disclosing the scandal involving an amount of rupees, more than a crore by the Officers of the Bank. Although, in the impugned order (Annexure- 19) it has been mentioned that the Deputy Development Officer has differed from the inquiry report, yet no cogent reason has been assigned for differing with the inquiry report and coming to a different conclusion. The order is also not based on any material or any evidence on record and the same is based on mere assumptions and presumptions. According to the petitioner, the order is wholly baseless, illegal, arbitrary and violative of principles of natural justice. It has been further stated that the respondent No. 3 is the appellate authority and he has awarded the punishment bye-passing the disciplinary authority and on that score also the impugned order is bad and unsustainable. None of the charges leveled against him has been proved and there is absolutely no material on record to come to any contrary findings and hold the petitioner guilty. The conclusion of the respondent No. 3 is thus wholly whimsical, arbitrary and without jurisdiction.

4. The respondents contested the petitioner''s writ application by filing a counter-affidavit and stating, inter alia, that the petitioner was in connivance with Lal Ravindra Nath Sahadeo and others and had, intentionally and dishonestly, withdrawn the amount, but the same was not deposited in the Bank. The petitioner was a party in misappropriating the amount of the bank alongwith the said persons. The Joint Registrar, who was the Inquiry Officer, had suggested for withholding of two increments and to exonerate the petitioner of the charges. However, the final order is to be passed by the disciplinary authority. The Administrator-cum-Deputy Development Commissioner, thus, issued a second show cause notice but by his reply he could not satisfy the respondent No. 3. It was stated that the petitioner was a co- signatory of the cheques by which the amounts were withdrawn. According to the Audit Report for the year 1995-96, the money was defaulcated in the previous year. In that way, the petitioner is some how involved in the defaulcation. The petitioner had to prove his innocence before the Inquiry Officer and to satisfy the disciplinary authority, but he could not succeed and as a result, the said order of dismissal was passed by the respondent No. 3 which is correct and legal and there is no merit in the writ application.

5. The petitioner filed a rejoinder to the said counter affidavit denying the allegations made therein. It was contended that the order of dismissal was quashed due to the infirmities, but the respondent No. 3 again passed the same illegal order absolutely without any basis. Rule 49-E (iv) (amended) by the Bye-Laws provides that Managing Director is the disciplinary authority and not the Administrator-cum-Deputy Development Commissioner. The petitioner denied that he was a co-signatory. He was allegedly forced by the Managing Director to sign the cheques against the nature of his duty. The petitioner denied the allegation of conniving with Lal Ravindra Nath Sahadeo and stated that the respondents failed to substantiate any charge against him and the impugned

order has been illegally passed by the Administrator-cum-Deputy Development Commissioner who is an appellate authority and cannot'' award punishment, bye-passing the disciplinary authority. The second dismissal order against the petitioner, after working about seven months and without any fresh material or inquiry, is wholly illegal and unjust.

6. Mr. M.K. Habib, learned counsel appearing on behalf of the petitioner reiterated and supported the grounds taken in the petition as well as the petitioner''s rejoinder to the counter-affidavit and further submitted that the second order of dismissal without any further inquiry or fresh material is wholly unsustainable. He submitted that according to the guidelines, only the officers of the bank, namely, the Managing Director, General Manager, Sr. Divisional Officer, Sr. Development Officer and; Development Officer can be made signatory for signing or issuing any cheque and the petitioner who was an assistant was maliciously and deliberately made a co-signatory. He further submitted that by letter dated 17.10.1993 written by the Senior Auditor, it is evident that the petitioner has been made a victim of the conspiracy only because he had discovered the said defaulcation which irked the interested persons who had taken advantage of the transaction. All the cheques were encashed by Lal R.N. Sahadeo in connivance of the Managing Director. The petitioner was not in the know of the transfer of the amounts made by Shri Sahadeo. The respondents falsely shown the petitioner as Assistant Manager, whereas the petitioner is an Assistant. Learned counsel emphasized that the petitioner has been treated in most arbitrary manner and has been illegally dismissed though he was not found guilty in the enquiry. The order of dismissal was once quashed in CWJC No. 2920 of 1997(R). Thereafter, there was no further inquiry but again the dismissal order has been passed. Learned counsel relied on a decision of the Supreme Court in Indian Telephone Industries Ltd. and Anr. v. Prabhakar H. Manjare and Anr. 2003 (1) JCR 83 (SC) and submitted that the fresh order of dismissal cannot be passed without any further inquiry. The Administrator-cum-Deputy Development Commissioner, who is the appellate authority, has passed the impugned order contrary to law, snatching the valuable right to appeal. He relied on the decisions of the Supreme Court, as also of this Court in Rama Kant Sharma v. The Patliputra Central Co-operative Bank and Ors., reported in 1993 (3) PLJR 47 , Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, and also in Baidnath Prasad @ Baidyanath Sah and Another Vs. State of Bihar,

7. Mr. Habib submitted that in another inquiry, Lal Ravindra Nath Sahadeo has been held guilty of defaulcation of the entire amount and he has been ordered to refund the defaulcated amount to Rs. 1,38,78,000/- and in that view also the petitioner cannot, by any stretch of imagination, be held liable and guilty and that too without any legal basis. He urged that the impugned order of dismissal is not based on any material or evidence on record and the order has been passed only on mere "belief of respondent No. 3" and the same is wholly perverse, illegal and without jurisdiction and is liable to be quashed with

compensatory costs and with all consequential benefits including the entire back wages.

8. Mr. Rajiv Ranjan Tiwari, learned counsel appearing on behalf of the respondents, on the other hand supported the impugned order and urged that there is no infirmity or illegality in the impugned order either procedural or legal. Learned counsel submitted that the petitioner has, himself accepted that he was a co-signatory of the cheques by which the amounts were withdrawn from the bank, which were subsequently misappropriated. The petitioner cannot escape the liability of the said defalcation as he should have objected to the said withdrawal and should not have jointed in withdrawing the amount which was subsequently misappropriated and defaulcated. Learned counsel submitted that though there is no clear evidence on record, yet there are compelling circumstances under which it can safely be concluded that the petitioner was in connivance with the said Lal Ravindra Nath Sahadeo in withdrawing the amount from the bank and defalcating the same. The respondent No. 3 has rightly concluded that the petitioner is guilty of financial irregularity and defalcation of money and is not fit to be retained in service and thus rightly dismissed from service. The respondent No. 3 has also rightly held that if the petitioner is not dismissed from the service, there will always be a possibility of defaulcation in future. Learned counsel further submitted that the petitioner''s designation is Assistant Manager and not the Assistant and for such posts the Administrator-cum-Deputy Development Commissioner is the disciplinary authority and not the Managing Director, as has been alleged by the petitioner and, on that ground, the attack on the order is wholly baseless.

9. After hearing the parties and considering the rival contentions and materials on record, I find that inquiry officer, after conducting the inquiry, came to the conclusion that the amount was not defaulcated by this petitioner. Though the charges of defalcation against the petitioner was not found proved, the disciplinary authority held the petitioner guilty and awarded punishment of dismissal. The said punishment order was assailed in CWJC No. 2920 of 1997 (R) and after hearing the parties, was quashed. Thereafter, there was no fresh inquiry, no further evidences were brought on record. Only a show cause was issued to the petitioner to which, the petitioner replied pleading that there was no material or evidence on record to establish the charge and the inquiry officer has rightly come to his finding and held him not guilty of the charges and in that view he was entitled to be exonerated. The respondent No. 3, without any legal basis again held the petitioner guilty and awarded punishment of dismissal. From going through the order of the respondent No. 3, it is evident that his order is based on inferences, assumptions and presumptions as he has used the words ''ought'' and ''ought not'', ''expected'' and ''not expected'' in coming to the conclusion and there is no discussion of any evidence or materials on record to support his findings. It is relevant to mention that earlier order of dismissal was quashed due to such inherent illegal, yet except by issuing a show cause, nothing further was done and again the order has been passed in a casual manner. The

said decision making process has no legal sanction and the same is violative of Articles 14, 21 and 311 of the Constitution. The impugned order of dismissal of the petitioner from services as contained in Annexure 19 is, thus, quashed.

10. Ordinarily, the matter of this nature requires to be remanded to the disciplinary authority for a fresh consideration, but since the matter is concerned with an allegation of about twenty years ago and the respondents were already given another opportunity to proceed in accordance with law while quashing the earlier order of dismissal of the petitioner in CWJC No. 2920 of 1997 (R) and since the respondents have again dealt with the matter arbitrarily and illegally, it would not be in the interests of justice to allow the respondents to start a fresh inquiry against the petitioner after so many year. More so, when in another proceeding the said Lal Ravindra Nath Sahadeo has been held guilty of entire defalcation and made liable for recovery of the total defaulcated amount. This writ petition is, thus, allowed. The petitioner is held entitled to receive his salary for the period of his suspension from 28.11.1994 to 15.7.1998 after deducting the amount of subsistence allowance paid to him, as also the salary for the period between 15.7.1998 to 15.10.1999, i.e., between the two dismissal orders in view of the quashing of the dismissal orders and the petitioner shall be also entitled for the other consequential benefits. The said monetary dues must be paid to the petitioner within a period of three months failing which the unpaid amount will carry interest at the rate of 10% per annum till the date of actual payment. However, in the circumstances of the case, there shall be no order as to costs.