

(2013) 07 PAT CK 0013
In the Patna High Court
Case No : CWJC No. 15028 of 2007

Ashok Kumar Upadhya

APPELLANT

Vs

The Bhojpur Rohtas Gramin Bank and Others

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 4 PLJR 688

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Anil Kumar Mishra, for the Appellant; M.N. Parbat, for the Respondent

Judgement

Rakesh Kumar, J.—Heard Sri Anil Kumar Mishra, learned counsel for the petitioner and Sri Mahesh Narain Parbat, learned counsel appearing on behalf of respondent/Madhya Bihar Gramin Bank (hereinafter referred to as "Bank"). The petitioner, while invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of an order contained in letter No. 135 dated 29.6.2005 (Annexure "10" to the writ petition), whereby, he was awarded punishment of withholding of his four increments of salary (with one stagnation salary increment, if any) with immediate effect and also it has been held that petitioner will not be given salary for 515 days for the period during which, he remained absent.

2. Short fact of the case is that on serious charges, the petitioner was asked for filing show cause. After the receipt of cause, shown by the petitioner, a departmental proceeding was initiated by appointing conducting officer. The Conducting Officer, after conducting inquiry and giving opportunity to the petitioner, submitted his report, in which, charges leveled against the petitioner were found true. After receipt of the Inquiry report, the disciplinary authority, vide Annexure "8" to the writ petition on 1st June, 2005, issued show cause notice to the petitioner on proposed punishment. The punishment was proposed

to demote the petitioner from M.M.G. Scale-II to O.J.M.-I, which was replied by the petitioner and finally, the disciplinary authority, after receipt of the second show cause of the petitioner, took lenient view in the matter and imposed punishment, as indicated above. The order of punishment was passed on 29th June, 2005. Thereafter, the petitioner approached this Court in the month of November, 2007 by filing the present writ petition. In the present writ petition, the respondent/Bank has filed counter affidavit and in the counter affidavit, a stand was taken that though there was statutory remedy of appeal, available to the petitioner, the petitioner bypassing the same, has directly approached this Court. Thereafter, the petitioner filed a rejoinder to the counter affidavit and in rejoinder, a stand has been taken that he has filed an appeal on 21.9.2007, but the appellate authority has taken no decision on his appeal.

3. Sri Mishra, learned counsel for the petitioner submits that even during departmental inquiry, it was noticed by the conducting officer that the petitioner, for his leave, had sent applications for grant of leave and those applications were available on record, even then, charge of unauthorised absence has been proved against the petitioner. He submits that once the petitioner had applied for sanction of leave, it will be deemed that authority had approved leave and as such, according to Sri Mishra, charge of unauthorised absence has not proved, even then, the conducting officer had found the charges to be proved. He further submits that in case of some other employees, though charges were serious against them, no such severe punishment was imposed against them. However, the Bank has proceeded maliciously against the petitioner. According to him, the order impugned is liable to be set aside.

4. Sri Mahesh Narain Parbat, learned counsel appearing on behalf of respondent/Bank has opposed the prayer of the petitioner. He submits that neither in the writ petition nor in the rejoinder to the counter affidavit or even at the time of hearing before this Court, the petitioner has pointed out any illegality or irregularity committed during the departmental inquiry conducted against the petitioner. He submits that while exercising power of judicial review, this Court may not examine the case on its merit. Had there been any illegality or irregularity in the departmental proceeding, the petitioner would have got a case for interference. However, in absence of any such illegality or irregularity, there is no point for interference with the order of punishment. Moreover, he submits that though the punishment order was passed in the year 2005 and there was statutory remedy for filing the appeal within 45 days before the disciplinary authority, the petitioner did not file any appeal and directly approached this Court and accordingly, writ petition is fit to be rejected.

5. Besides hearing learned counsel for the parties, I have also perused the materials available on record. I have also examined the charges and inquiry report submitted during departmental proceeding. From the record, it is evident that full opportunity was given to the petitioner. Even after receipt of the inquiry report, the disciplinary authority had given second show cause notice to the

petitioner on proposed punishment. The proposed punishment was severe, however; the disciplinary authority, taking lenient view in the matter, has passed the impugned order, as indicated above. In absence of any illegality or irregularity in the departmental inquiry, it would be difficult for this Court to interfere with the order of punishment. Moreover, the petitioner has approached this Court at a belated stage, that too without availing alternative remedy in time."

6. I do not find any ground for interference with the impugned order. The writ petition stands dismissed.