

(2014) 10 PAT CK 0032

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7099 of 1998

Bhab Nath Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227

Citation : (2015) LabIC 503

Hon'ble Judges : S.P. Singh, J

Bench : Single Bench

Advocate : Gajendra Kumar Jha, Bam Bahadur Jha and Sushil Kumar Jha, Advocates for the Appellant; Din Bandhu Singh, G.P. Satyeshwar Prasad, AC to GP and Purushottam Jha, Advocates for the Respondent

Judgement

S.P. Singh, J.—Heard learned counsel for the petitioner, Rohika Central Co-operative Bank Limited and the State. The petitioner was an employee of Rohika Central Co-operative Bank Limited which is a registered co-operative Bank working as Clerk-cum-Cashier in its Bisfi Branch. The allegation is that in the year 1992-93, the petitioner in league with one Mritunjay Jha another Clerk-cum-Cashier, Kanhaiya Ram Sah, Assistant, Managing Director of the Bank and Inspector Weavers Co-operative Society, misappropriated a huge amount by advancing loans to different fake Co-operative societies/persons against the Bye-laws of the Bank. The petitioner was subjected to three charges, as contained in the charge memo issued in the month of November, 1994 (Annexure-3). The petitioner submitted his written statement on 29.3.1995 denying the charges (Annexure-4). The Enquiry Officer absolved the petitioner of charge No. 1, whereas he held him guilty of charge Nos. 2 and 3. Second show cause notice was issued on 5.5.98 (Annexure-8). Being aggrieved, the petitioner filed CWJC No. 3554/1998. In the meanwhile, as the petitioner did not file any reply to the second show cause, a dismissal order dated 28.5.1998 was passed against him by the disciplinary authority. This Court by order dated 3.8.1998 dismissed the writ application as withdrawn, with liberty to the petitioner to file a fresh writ

application against the order of dismissal.

2. The petitioner has filed the instant writ application against the order of dismissal dated 28.5.1998. The petitioner has assailed the impugned order on the ground that no documents were supplied to him nor any witnesses were examined in the proceedings, nor copy of the enquiry report was given to him. He submitted that audit report has cleared him of charge Nos. 3 (Kha), (Ga), 4 and 5 (Annexure-4). The copy of the audit report and order of the District Co-operative Officer-cum-C.O. Madhubani is contained in Annexures 4 and 6.

3. A Counter-affidavit and a supplementary counter affidavit have been filed by the Rohika Central Co-operative Bank Limited. Mr. Purushottam Jha, learned counsel for the Bank submits that the writ application itself is not maintainable as the Bank is a Co-operative Society and also in view of the judgment of the Full Bench of this Court in the case of Ram Sevak Yadav Vs. The State of Bihar and Others, . He next submits that as per internal audit, a sum of Rs. 13 lacs and odd was misappropriated by this petitioner, Mritunjay Jha, Kanhaiya Ram Sah, Managing Director and the Weavers Inspector. He submits that the Bank proceeded departmentally against the petitioner, Kanhaiya Ram Sah and Mritunjay Jha as they were its employees, whereas it referred the matter with respect to the Managing Director and the Weavers Inspector to the Government as they were officials of the State Government. Nonetheless the increments of all these five persons were stopped.

4. He next submits that the petitioner never raised any objection with respect to non-supply of any document in the proceedings. He submits that the petitioner has wrongly submitted that no copy of enquiry report has been given to him. He has drawn my attention to specific statement made in this regard in para-7 of the supplementary counter affidavit dated 22.9.2014.

5. He further submits that one Mritunjay Jha who was proceeded similarly like the petitioner more or less on the same charges was dismissed from service after conclusion of the departmental proceeding. A writ application against the order of dismissal, CWJC No. 804/1998 was dismissed by a reasoned order of this court dated 9.3.1999. He next submits that one Kanhaiya Ram Sah, who was also dismissed from service filed CWJC No. 3558/1998. However, during the pendency of the writ application, he died and his substituted heirs did not press the writ application.

6. I find that no foundational facts have been laid before this Court to come to a conclusion that the Bank would be either State or an authority within the meaning of Article 12 of the Constitution of India to attract provisions of Articles 226 and 227 of the Constitution of India. Nonetheless, without going into the aforesaid issue, as the writ application is of the year 1998 and had been admitted since then, I proceed to decide the issue on merit.

7. With respect to the first contention of the petitioner that he has not been supplied with the relevant documents which would have enabled him to file an

effective reply, I find that the petitioner has not brought any document on the record in support of his contention that he has asked for some documents. Furthermore, no list of any specific document has been mentioned in this writ application, which was sought during the proceeding. Besides this, the petitioner has not been able to demonstrate as to how he has been prejudiced by non-supply of such documents. Thus the proceedings cannot be held to be vitiated on the ground that the relevant documents were not supplied to the petitioner.

8. The other contention of the petitioner is that a copy of the enquiry report was not supplied to him while issuing the second show cause notice. I find from Annexure-8 dated 5.5.1998 that earlier also a show cause notice dated 1.4.98 was issued after conclusion of enquiry to which he did not file reply by 4.5.1998 and as such he was given another opportunity by letter dated 5.5.1998. It appears that the petitioner, instead of filing reply to the second show cause notice, moved this Court by filing CWJC No. 3554/1998. During the pendency of the writ application, the petitioner was dismissed from service by the departmental authority. The writ application was permitted to be withdrawn on 3.8.1998 with liberty to challenge the order of dismissal by filing a fresh writ application which is impugned in the instant writ application.

9. The petitioner submits that he was not served with a copy of the enquiry report while serving him the second show cause notice. On the other hand, there is specific averment in the counter affidavit of the Bank in para-7 that a copy of the enquiry report was served upon the petitioner.

10. As the issue is one of fact, it would be difficult for this Court to accept the submission of the petitioner that he was not served with a copy of the enquiry report. The petitioner has also not brought on record any document in proof of his submission that a copy of the enquiry report was not served upon him. I further find that the Enquiry Officer has duly adjudicated the matter and has given reasons for his findings. This Court in exercise of its power of judicial review in matters of disciplinary proceedings has a limited scope of correcting the error of procedure and law and grave miscarriage of justice. It is not for this Court to look into the sufficiency or otherwise of the materials on which the disciplinary authorities have recorded their findings. The Court would be equally reluctant to substitute its own view for the view of the disciplinary authority. In the facts and circumstances of the case, I do not find any infirmity with the findings of the disciplinary authorities.

11. The petitioner lastly contended that the punishment of dismissal would be too harsh as the role of the petitioner in the alleged misappropriation was limited and in a narrow compass.

12. Without expressing any opinion on the merits of the matter, in case the petitioner files a representation before the disciplinary authority for reconsideration of the quantum of punishment, the same may be disposed of within a period of four months. The Court has not expressed any opinion on the

merits of this matter. With the aforesaid observations, this writ application is dismissed.