

(2001) 04 PAT CK 0006

In the Patna High Court

Case No : Letters Patent Appeal No. 36 of 2001

Bihar State Sugar Corporation Limited

APPELLANT

Vs

Madan Gopal Singh and Others

RESPONDENT

Date of Decision : 17-04-2001

Acts Referred:

Citation : (2001) 04 PAT CK 0006

Judgement

S.N. Jha, J.—Heard counsel for the Appellant in the limitation matter. In the facts and circumstances the delay in filing the appeal is condoned.

2. This Letters Patent Appeal arises from the judgment of learned single Judge allowing the writ petition of Respondent No. 1 hereinafter called Respondent.

3. The Respondent preferred writ petition, CWJC No. 9279/99, for quashing the order of his dismissal from service dated 29.11.97. The charge against the Respondent was that as Provident Fund Clerk he had forwarded the claim of a deceased employee, Kashi Nath Pandey, in Form No. 19 instead of Form 20 resulting in excess payment. As per the charge such conduct was collusive and fraudulent in nature. On- 8.2.96 Respondent was placed under suspension and asked to show cause. As the show cause was not found, to be satisfactory a regular departmental proceeding was initiated. The Enquiry Officer vide his report dated 29.10.97 found the Respondent guilty of the charge. On 29.11.97 the impugned order of dismissal was passed by the Managing Director. The learned Single Judge took the view that in terms of the Standing Order the disciplinary power was vested in the Manager, the exercise of the disciplinary power by the Managing Director has deprived the Respondent of his right to appeal. The learned Judge relied on a decision of the Supreme Court in Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others,

4. The case of the Appellant Bihar State Sugar Corporation is that the disciplinary power in respect of Class III employees to the extent of imposing major penalty has been vested in the Managing Director of the Corporation by the Board of Directors vide Annexure 1 to the Supplementary affidavit and, therefore, the

Managing Director was fully competent to pass the impugned order. As regards the appeal, the Appellant's case is that against the order of the disciplinary authority appeal lies to the Board of Directors.

5. The sheet anchor of the case of the Respondent is the Standing Order applicable to various units of the Appellant Corporation including the new Sawan Unit in which the Respondent was employed. The provisions of the Standing Order relied upon are those contained in Clauses 51 and 57. No doubt there is indication in those Clauses that the Manager is competent to award the punishment but it does not mean that an officer superior in rank cannot take such action. The power of the Management to take disciplinary action cannot be doubted. In the Standing Order the term "management" has been defined to include, amongst others, the Managing Director, Proprietor, Partner etc. There being a specific delegation of disciplinary power in favour of; the Managing Director by the Board of Directors, the repository of all powers, his jurisdiction cannot be disputed. Counsel for the Respondent, it may be stated, does not challenge the correctness of the delegation, Annexure 1; he simply contends that this was not brought to the notice of the Single Judge and, therefore, the Appellant should have filed petition for review. This submission has been noticed only to be rejected.

6. The delinquent cannot be permitted to say as to who shall be the disciplinary authority or to challenge its jurisdiction unless it is shown that he has suffered any prejudice. The prejudice alleged in the instant case is that by reason of such exercise of power by the Managing Director the Respondent has been deprived of his, right of appeal. The provision with regard to appeal is contained in Clause 57 which may be noticed as under:

The decision of the Manager upon any question arising out of, in connection with, or incidental to these orders, shall be final, provided that the workman aggrieved by the Manager's decision, shall have the right of appeal within fourteen days of the communication of the Manager's decision to the Management who shall pass orders on the appeal within twenty-one days of its being made. This shall be without prejudice to any right of redress the workman may have under the existing law for the time being in order.

From bare perusal of the above Clause it would appear that against the Manager's decision (read Managing Director) the delinquent still has right of appeal to the Management. The definition Clause apart, management undoubtedly vests in the Board of Directors. The Board of Directors being the highest body of which the Managing Director is a part it cannot be said that by reason of the Managing Director imposing the penalty, Respondent is deprived of his right of appeal.

7. In the instant case it appears that the Respondent preferred appeal against the impugned order of the Managing Director which, according to him, was dismissed by order contained in Annexure 23 on 14.7.99. The specific case of the

Appellant in this regard, however, is that the order dated 14.7.99 contained in Annexure 23 is not the appellate order, it is simply the noting by the authority in the file. Nothing has been stated in the memo of appeal or supplementary affidavit as to whether the appeal has been considered and decided by the Board of Directors. In this situation, the order that commends itself to us is to direct the Board of Directors of the Appellant Corporation to consider and decide the appeal of the Respondent within two months of receipt/production of a copy of this order. It is made clear that as the appeal is directed against the order of Sri Anjani Kumar Singh as Managing Director, he should not participate in the deliberation of the Board, but in case some other Managing Director has taken over in the meantime, it; will be open to him to do so.

8. In the result, the judgment and order of the learned Single Judge is modified to this extent and the writ petition and this appeal are disposed of accordingly.

I.P. Singh, J.

9. I agree.