

(2022) 05 PAT CK 0041

In the Patna High Court

Case No : Letters Patent Appeal No. 1434 Of 2018 In Civil Writ Jurisdiction Case No. 17012 Of 2014

Chairman, Uttar Bihar Gramin Bank

APPELLANT

Vs

Ramendra Prasad Gauro

RESPONDENT

Date of Decision : 20-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2022) 05 PAT CK 0041

Hon'ble Judges : Rajan Gupta, J; Mohit Kumar Shah, J

Bench : Division Bench

Advocate : Ajay Kumar Sinha

Final Decision : Dismissed

Judgement

Re : I.A. no. 7634 of 2018

The present interlocutory application has been filed for condoning delay of about 145 days in filing the present appeal against the order dated 04.04.2018, passed in C.W.J.C. no. 17012 of 2014.

For the reasons mentioned in the present petition which is not seriously opposed by the learned counsel for the respondent, we deem it fit and proper to condone the delay in filing the appeal.

I.A. no. 7634 of 2018 stands allowed.

Re : L.P.A no. 1434 of 2018

1. The present appeal has been filed against the order dated 04.04.2018, passed in 17012 of 2014, whereby and whereunder the order dated 12.01.2013, passed by the Chief Manager, Uttar Bihar Gramin Bank, Muzaffarpur, by which the writ petitioner has been imposed with the punishment of dismissal from service, as also the appellate order dated 04.03.2014 have been quashed, with a further

direction to the appellants herein to reinstate the petitioner in service with all consequential benefits and 50% back wages, however liberty has been granted to the disciplinary authority to proceed afresh.

2. The learned Senior counsel for the appellants Sri Ajay Kr. Sinha, at the outset, has submitted that since the matter has been remanded back to the disciplinary authority to consider the inquiry report as well as the reply of the petitioner against the findings of the Inquiry Officer and to pass a fresh order, the appellants are not assailing that portion of the impugned order dated 04.04.2018 whereby and whereunder the punishment Order has been quashed, however the appellants are only aggrieved with that part of the impugned order by which the writ petitioner-respondent herein has been granted 50% back wages. In this connection, the learned Senior counsel for the respondent has referred to a judgment rendered by the Hon'ble Apex Court in the case of ECIL, Hyderabad and others v. B. Karunakar and others reported in (1993) 4 SCC 727. It would be apt to refer to paragraphs no. 30(v) and 31 of the said judgment herein below :-

" 30. Hence the incidental questions raised above may be answered as follows:

'[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual.

The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.'

31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the

employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/ Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

3. Per contra, the learned counsel appearing for the respondent has also referred to certain judgments which are being referred to along-with their relevant paragraphs herein below :-

(I) Judgment rendered by the Hon'ble Apex Court in the case of Gowramma C. (Dead) By Lrs. Versus Manager (Personnel) Hindustan Aeronautical Ltd. & Anr., reported in 2022 SCC OnLine SC 310, paragraph no. 13 whereof is reproduced herein below:-

"13. The most important question is whether the employee is at fault in any manner. If the employee is not at all at fault and she was kept out of work by reasons of the decision taken by the employer, then to deny the fruits of her being vindicated at the end of the day would be unfair to the employee. In such circumstances, no doubt, the question relating to alternative employment that

the employee may have resorted to, becomes relevant. There is also the aspect of discretion which is exercised by the Court keeping in view the facts of each case. As we have already noticed, this is a case where apart from the charge of the employee having produced false caste certificate, there is no other charge. Therefore, we would think that interests of justice, in the facts of this, would be subserved, if we enhance the back wages from 50% to 75% of the full back wages, which she was otherwise entitled. The appeals are partly allowed. The impugned judgments will stand modified and the respondents shall calculate the amount which would be equivalent to 75% of the back wages and disburse the amount remaining to be paid under this judgment within a period of six weeks from today to the additional appellants."

(II) Judgment rendered by the Hon'ble Apex Court in the case of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, reported in (2013) 10 SCC 324, paragraphs no. 38, 38.1 to 38.7, 39 and 40 whereof, are reproduced herein below:-

"38. The propositions which can be culled out from the aforementioned judgments are :

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/ workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/ Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/ workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the

punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/ Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works (P) Ltd. v. Employees* [(1979) 2 SCC 80].

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* [(2007) 2 SCC 433] that on reinstatement the employee/ workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [*Hindustan Tin Works (P) Ltd. v. Employees*, (1979) 2 SCC 80], [*Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*, (1980) 4 SCC 443] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

39. Reverting to the case in hand, we find that the management's decision to terminate the appellant's service was preceded by her suspension albeit without

any rhyme or reason and even though the Division Bench of the High Court declared that she will be deemed to have rejoined her duty on 14-3-2007 and entitled to consequential benefits, the management neither allowed her to join the duty nor paid wages. Rather, after making a show of holding inquiry, the management terminated her service vide order dated 15-6- 2007. The Tribunal found the action of the management to be wholly arbitrary and vitiated due to violation of the rules of natural justice. The Tribunal further found that the allegations levelled against the appellant were frivolous. The Tribunal also took cognizance of the statement made on behalf of the appellant that she was not gainfully employed anywhere and the fact that the management had not controverted the same and ordered her reinstatement with full back wages.

40. The learned Single Judge agreed with the Tribunal that the action taken by the management to terminate the appellant's service was per se illegal but set aside the award of back wages by making a cryptic observation that she had not proved the factum of non- employment during the intervening period. While doing so, the learned Single Judge not only overlooked the order passed by the Division Bench in Deepali Gundu Surwase v. Kranti Junior Adyapak Mahavidyalaya [Deepali Gundu Surwase v. Kranti Junior Adyapak Mahavidyalaya, WP No. 8404 of 2006, order dated 21-3-2007 (Bom)] , but also Rule 33 which prohibits an employee from taking employment elsewhere. Indeed, it was not even the pleaded case of the management that during the period of suspension, the appellant had left the headquarters without prior approval of the Chief Executive Officer and thereby disentitling her from getting subsistence allowance or that during the intervening period she was gainfully employed elsewhere."

4. We have heard the learned counsel for the parties. At this stage, it would be apt to reproduce the relevant portion of the impugned order dated 04.04.2018, herein below:-

"23. The Disciplinary Authority and appellate authority are final authorities on facts and they can appreciate the evidences adduced before the Enquiry Officer, and to take a decision whether there were sufficient evidences adduced by the Management before the Enquiry Officer, upon which the finding of guilt found by Enquiry Officer is proved or not, as such, it is mandatory on behalf of Disciplinary Authority and appellate authority to consider the reply of petitioner against the finding of Enquiry Officer as well as ground of appeal by the appellate authority while passing the order of punishment and both the orders are bereft of such consideration, as such are not sustainable and accordingly quashed. The matter is remitted to the Disciplinary Authority to pass fresh order on the basis of enquiry report as well as considering the reply of petitioner against the finding of the Enquiry Officer while passing the order of punishment/exoneration. The petitioner has exhibited 60 documentary evidences in his defence but neither the Enquiry Officer nor the Disciplinary Authority or the appellate authority has considered defence exhibits in their order nor there is any consideration of written reply submitted by petitioner in the orders passed by departmental

authorities.

24. It has lastly been submitted on behalf of the petitioner that the punishment imposed by the Disciplinary Authority is disproportionate to the gravity of charge, as such, Disciplinary Authority while passing a fresh order should also consider as to even if charges against the petitioners stands proved whether punishment of dismissal is too harsh for the alleged misconduct and shall also consider the quantum of punishment at the time of passing fresh order if Disciplinary Authority finds petitioner guilty of charges. It has been further submitted that there are no allegation of any misappropriation or defalcation of money or any fraudulent act against petitioner and bank has suffered no loss and allegations are only that petitioner has not followed the banking norms. Lastly it has been submitted that petitioner has served the bank with unblemished record and he has been punished with dismissal from service as such his case may be considered sympathetically by the authorities. The disciplinary authority shall take into consideration above aspect also while passing fresh order against the petitioner.

25. The writ petition is allowed. The order passed by Disciplinary Authority (Annexure-6) as well as Appellate Authority (Annexure-11) is quashed. The petitioner is directed to be reinstated in service with all consequential benefits and 50% back wages with liberty to Disciplinary Authority to consider the enquiry report, reply of petitioner against finding of enquiry officer and to pass a fresh order as per observation made in this order at the earliest preferably within six months from date of production/receipt of a copy of order."

5. The only issue involved in the present appeal is as to whether the respondent herein is entitled to 50% back wages when the matter has been remanded back to the disciplinary authority for fresh consideration. It would be appropriate to refer to the brief sequence of events leading to filing of the present appeal.

6. The respondent herein was appointed as Clerk-cum-Cashier in Champaran Kshetriya Gramin Bank, East Champaran where he joined on 03.10.1979 and was subsequently, promoted as Officer Scale-1 in the year 1991, whereafter he served the Bank at several places in various capacities and was having an unblemished career, however when he was posted as Branch Manager in Officer Scale-I at Lachhanauta Branch, he was suspended for various laches and irregularities on his part in making reckless advances. A memorandum of charge dated 24.04.2010 was issued by the disciplinary authority and a departmental inquiry was initiated against the petitioner which started on 08.12.2010 and concluded on 17.08.2012. Thereafter, the findings of the Inquiry Officer was communicated to the petitioner vide letter dated 06.09.2012, to which the petitioner submitted his reply vide letter dated 02.11.2012, whereafter the disciplinary authority by an order dated 12.01.2013, inflicted the punishment of dismissal from service upon the petitioner herein. The respondent had then filed an appeal, however the same was also dismissed vide order dated 04.03.2014. The petitioner had then challenged the order of dismissal dated 12.01.2013 and

the appellate order dated 04.03.2014 by filing a writ petition bearing C.W.J.C. no. 17012 of 2014, which has been allowed by the learned Single Judge, resulting in the present appeal being filed by the appellants.

7. We have perused the records of the Writ Court and find that the disciplinary authority, while passing the order of punishment, has failed to consider, much less discuss the reply of the petitioner submitted against the findings of the Inquiry Officer and the same is the situation as far as the order passed by the Appellate Authority is concerned, inasmuch as the Appellate Authority has also not considered any of the grounds raised by the respondent in support of his Appeal and has illegally and arbitrarily rejected the appeal filed by the respondent. On such grounds, the learned Single Judge, by the impugned order dated 04.04.2018, has set aside the order of punishment as also the appellate order, finding the same to have been passed merely on the basis of the case put forth by the appellants herein, dehors the principles of law laid down in a catena of judgments and further holding the same to have not considered the defense put forth by the respondent herein. This aspect of the matter has not been contested by the appellants herein. We thus find that since the employer(s) who are the appellants herein, have admittedly acted in gross violation of the statutory provisions and principles of natural justice as also have not at all considered the defense put forth by the respondent herein, the same has resulted in passing of an illegal order, terminating the services of the respondent herein in a wrongful manner.

8. We, therefore, find that the present case is a case of gross injustice meted out to the respondent herein by the appellants and the materials on record sufficiently demonstrates that the orders passed, both by the disciplinary authority as also by the appellate authority are not sustainable in the eyes of law, as has been held by the learned Single Judge in the impugned order dated 04.04.2018. In such view of the matter, we find that the respondent herein is at least entitled to 50% back wages in light of the principles laid down by the Hon'ble Apex Court in this regard in the case of Deepali Gundu Surwase (supra). It would also suffice to state that the respondent herein has been forced to go through the gamut of litigation, thrust upon him by the appellants herein and now after such a protracted time and energy consuming litigation, during which period, the respondent herein, who has somehow managed to sustain himself, is ultimately told that he would be denied back wages, the same would amount to penalizing him for no fault of his. It would be unfair to the appellants if we do not deal with the judgment referred to by them, rendered in the case of B. Karunakar and others (supra). In this regard, it would suffice to state that the said Judgment deals with a situation where the report of the Inquiry Officer was not furnished to the delinquent and is thus not only distinguishable in the facts and circumstances of the present case but also does not deal with a situation as the present one. On the contrary we find that the present case stands covered by the principle of law laid down by the Hon'ble Apex Court in its subsequent judgments, especially the one rendered in the case of Deepali Gundu Surwase

(supra).

9. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, we do not find any infirmity in the order dated 04.04.2018 passed by the learned Single Judge in C.W.J.C. no. 17012 of 2014. Consequently, the present Letters Patent Appeal stands dismissed.