

(2010) 03 PAT CK 0178
In the Patna High Court
Case No : C.W.J.C. No. 3612 of 2010

Dilip Kumar Prasad

APPELLANT

Vs

Kosi Kshetriya Gramin Bank (Now Uttar Bihar Gramin Bank)
and others

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Citation : (2010) 03 PAT CK 0178

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard learned Counsel for the petitioner and the Counsel for Uttar Bihar Gramin Bank, who has filed counter affidavit which is taken on record.

2. Petitioner at the relevant time served Kosi Kshetriya Gramin Bank, hereinafter referred to as "the Bank", which has since been merged with the Uttar Bihar Gramin Bank, has filed this writ application questioning memo dated 8.5.2002, Annexure-2, whereunder General Manager of the Bank has found the petitioner unfit for confirmation and terminated his services under Clause 8(3)(a) of the Service Regulations of the Bank as also has given him cheque for payment of one month salary in lieu of notice. It is submitted on behalf of the petitioner that the aforesaid termination order/notice is contrary to the Service Regulations as prior to the service of the termination notice, Petitioner was served with memo dated 8.3.2002 highlighting the misconduct alleged against him and with reference to the said misconduct the General Manager of the Bank was directed by the Chairman to serve notice under Clause 8(3)(a) of the Regulations terminating his services w.e.f. 18.3.2002, the date on which he was to complete his probation.

3. It is submitted on behalf of the petitioner that had the petitioner been given opportunity to defend himself, he would have satisfied the competent authority that the twelve allegations, which have been referred to in the memo dated 8.3.2002 are non-existent in view of reports received from time to time from the Branch Manager of the Branch where the petitioner served during his probation period. In this connection it is pointed out, that Petitioner was appointed in the

Bank on probation under appointment letter, dated 2.9.2000, Annexure-3. In response to the said appointment letter Petitioner submitted his joining in the head office whereafter under memo dated 20.9.2000, Annexure-4 he was directed to join Chhatarpur Branch of the Bank on 22.9.2000. Perusal of the Memo dated 20.9.2000 directing the petitioner to join Chhatarpur Branch would indicate that copy of the said memo was also given to the Branch Manager and the Area Manager who were directed to monitor the working, conduct and attendance of Petitioner as also to maintain his personal file with further direction to submit report on his conduct, attendance and working at the end of every month. In compliance of the direction, contained in memo dated 20.9.2000 Petitioner submitted his joining in the Chhatapur Branch, Supaul, and his work in the Branch was found satisfactory, the Branch Manager and the Area Manager submitted satisfactory report, which is dated 3.10.2000, 18.11.2000 and 8.6.2001, contained in Annexure-5 series.

4. It is further submitted on behalf of the petitioner that even after receipt of satisfactory report about the working and conduct of the petitioner from the Branch Manager and the Area Manager, as contained in Annexure-5 series, the Chairman of the Bank on some extraneous consideration issued memo dated 17.2.2001, Annexure-6, observing that Petitioner was appointed on probation and if his conduct is not found satisfactory, he will be discharged from service and the memo be treated as warning and his probation be extended by six months from 18.9.2001. Later copy of the memo dated 8.3.2002, Annexure-1, was served on the petitioner whereunder direction was given to the General Manager to serve termination notice on the petitioner, terminating his services w.e.f. 18.3.2002 on the ground that his work and conduct as an employee of the Bank was unsatisfactory. Memo dated 8.3.2002 clearly stated that the attendance, conduct and work of the petitioner remained not only unsatisfactory but he is incapable, unfaithful and cannot be relied upon for Bank work.

5. In compliance of the instruction given by the Chairman under memo dated 8.3.2002 the General Manager served the termination notice under Clause 8(3) (a) of, the Bank Regulation and terminated the service of the petitioner w.e.f. 18.3.2002. Aforesaid termination notice was served on the petitioner during the pendency of the earlier writ petition bearing C.W.J.C. No. 5214 of 2002 and while disposing of the aforesaid writ application under order dated 14.9.2007, Annexure-7 this Court granted liberty to the petitioner to challenge the same by filing another writ case. The said order was challenged in appeal and the matter became final only after order dated 26.11.2008 was passed by the Hon'ble Supreme Court in Review Petition (C) 1927 of 2008, Annexure-10. As per the liberty granted by this Court the petitioner challenged the termination notice dated 8.3.2002 by filing the present writ application.

6. Learned Counsel for the petitioner submitted that the termination notice is preceded by memo dated 8.3.2002 in which allegations have been raised against the working and conduct of the petitioner. As such the termination of probation

of the petitioner is not simplicitor rather it is on the basis of misconduct, alleged against the petitioner and as the probation has been terminated on the basis of allegations of misconduct it is incumbent upon the authorities of the Bank to conduct a departmental proceeding enabling the petitioner a chance to defend himself. As Petitioner has not been provided with opportunity to defend the allegations levelled against him under memo dated 8.3.2002, Annexure-1, on the basis of the satisfactory report, Annexure-5, received from the Branch Manager and the Area Manager in compliance of the direction contained in the joining letter dated 20.9.2000, the termination notice, Annexure-2, is fit to be quashed on the ground that it is violative of the relevant provisions of the Service Regulation which provides that in the event of termination of service of the Bank employee may be probationer on the grounds of misconduct, a proceeding is required to be initiated and concluded.

7. In support of the aforesaid submission learned Counsel for the petitioner relied upon judgment in the case of Jagdish Mitter Vs. The Union of India (UOI), paragraph-21, Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, (paragraphs 20 and 21) : 1998 (81) FLR 687 (SC), and V.P. Ahuja Vs. State of Punjab and Others,

8. Learned Counsel for the Bank has opposed the prayer made in the writ application with reference to the averments made in the counter-affidavit filed on behalf of the Bank. He states that Petitioner was appointed as Clerk-cum-Cashier on sympathetic ground on probation with effect from 19.9.2000. In Paragraph-7 of the counter-affidavit it has been submitted that from perusal of memo dated 8.3.2002, Annexure-1 to the writ application it is evident that the work and behaviour of the petitioner was unsatisfactory during the probation period and in appreciation of such fact instruction was given in the same memo to terminate his probation as he was found incapable unfaithful and unreliable for Bank work. He further contended that as memo of termination is in the nature of termination simpliciter, this Court should not go behind the same with reference to memo dated 8.3.2002, Annexure-1.

9. Having perused the termination notice dated 8.5.2002, Annexure-2. and the contents of memo dated 8.3.2002, Annexure-1, I am satisfied that the probation of the petitioner has been terminated on the grounds of misconduct as the Chairman of the Bank was not satisfied about the attendance, conduct and work of the petitioner as it has been categorically stated therein that Petitioner is incapable, unfaithful and cannot be relied upon for Bank work. It is thus obvious that the termination of the petitioner is on the grounds of misconduct and ought to have been made only after conducting a departmental proceeding against him giving him opportunity to defend his conduct in the light of the satisfactory report submitted by the Branch Manager and the Area Manager of the Bank dated 3.10.2000, 18.11.2000 and 8.6.2001, Annexure-5 series in compliance of the instructions of the Chairman contained in memo dated 20.9.2000, Annexure-1 Accordingly, I set aside the termination notice dated 8.5.2002,

Annexure-2, and grant liberty to the Bank to initiate a departmental proceeding against the petitioner so as to give him an opportunity to defend himself on the allegations which are levelled against him under memo dated 8.3.2002, Annexure-1. In the event the Bank decides to initiate a proceeding against the petitioner he be allowed current salary until disposal of the departmental proceeding but the arrears of salary for the period between 8.5.2002 till the date of termination shall be subject to the result of the proceeding. In case the Bank does not initiate a proceeding against the petitioner, then the petitioner be paid the entire arrears of salary within one month.