

(2015) 07 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8869 of 1999

Dina Nath Verma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Citation : (2015) 07 PAT CK 0001

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Chgitaranjan Sinha, Senior Advocate and Basant Kr. Singh, for the Appellant; Ranjan Kumar, AC to AAG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Chakradhari Sharan Singh, J.—This writ application has been filed seeking quashing of an order dated 17.07.1999 issued by the Deputy Managing Director (Administration), Bihar State Cooperative Land Development Bank, Patna under the orders of the Administrator of the Bank, whereby, punishment of dismissal from service of the Bank has been imposed upon the petitioner. By the said order, petitioner's absence from duties for the period 08.01.1997 to 11.06.1998 has been treated to be unauthorized absence and as regards the period during which the petitioner was under suspension, a decision has been taken by the impugned order that the petitioner will be entitled for the subsistence allowance only. The report of the Inquiry Officer, finding the charges framed against the petitioner to have been proved dated 20th May, 1999, which is the basis for imposition of punishment on the petitioner, is also under challenge in the present writ application.

2. The petitioner seeks to challenge the said impugned order imposing punishment upon him on various grounds including the ground that there has been procedural irregularities inasmuch as, the petitioner was not given due opportunity of presenting his case in course of the departmental enquiry and the disciplinary authority and without taking into account, the grounds taken by the

petitioner in course of disciplinary proceeding, the disciplinary authority imposed the said punishment of dismissal from service of the Bank upon him.

3. I need not go into all such grounds as indicated above, for the purpose of deciding the present case as it has been contended on behalf of the petitioner and which fact has not been disputed that no presenting Officer was appointed to present the case of the Bank before the Inquiry Officer, who was appointed to inquire into the allegation of misconduct levelled against the petitioner. In this background, it has been contended on behalf of the petitioner that the Inquiry Officer failed to act as an independent quasi-judicial functionary and assumed the role of an investigator and prosecutor at the same time for the purpose of reaching to a finding that charge against the petitioner in the departmental enquiry stood proved. It is the plea that the conduct of the Inquiry Officer, assuming the role of an investigator and prosecutor at the same time in course of departmental enquiry amounts to breach of the principles of natural justice. I find force in the said submission as I am of the view that the enquiry officer, on its own, without any representation from the side of employer cannot prove in a departmental enquiry as he is required to act as an impartial and fair quasi judicial functionary and in that capacity he cannot assume the role of prosecutor.

4. This view supported by a Division Bench of this Court in case of Narayan Prasad Sah Vs. The Union of India and Others, (2008) 2 PLJR 581 . In that case, the Division Bench of this Court quashed the entire disciplinary proceeding on the solitary ground of non-appointment of a Presenting Officer, holding the findings, to be in violation of principles of natural justice. Similar view has been taken by this Court in case of Sudhanshu Shekhar Deo Vs. Union of India and Others, (2013) LabIC 4272 : (2014) 1 PLJR 297 as well as in case of Ganesh Chandra Prasad Vs. The State of Bihar and Others, (2014) 1 PLJR 753 .

5. In my opinion, appointment of a presenting Officer to present the case on behalf of employer, before an Inquiry Officer in the departmental proceeding is basic requirement otherwise, either there will be no person to pursue the case before the Inquiry Officer on behalf of the Department/employer or the Inquiry Officer will himself be assuming the role of prosecutor/investigator. In the first situation, there will be no evidence or material placed on behalf of the employer before the Inquiry Officer and the charge shall fail on the basis of no evidence. In the other case, when the Inquiry Officer, in the absence of a presenting Officer, proceeds with the departmental enquiry, he will be assuming the role of a prosecutor whereas, he is expected to act as an independent quasi-judicial functionary. This is an admitted fact that no presenting Officer was appointed in the present case and the Inquiry Officer apparently, assumed the role of a prosecutor while holding that the charge of misconduct against the petitioner stood proved. In my opinion, in such circumstance, the entire disciplinary proceeding vitiates.

6. Accordingly, the order dated 17.07.1999 (Annexure-48) passed by the disciplinary authority imposing upon the petitioner punishment of dismissal from

service of the Bank being based on such departmental enquiry cannot be sustained. The said order dated 17.07.1999 is accordingly, set aside.

7. It will, however, be open to the disciplinary authority to proceed afresh from the stage of framing of charge against the petitioner, in accordance with law after appointing a presenting Officer. If the Respondent-Bank decides to proceed against the petitioner in the light of this observation, it must be started forthwith and the proceeding must be completed within a period of six months from the date of receipt/production of a copy of this order, by taking a final decision in this regard, in accordance with law. If no decision is taken within six months from the date of receipt/production of a copy of this order in the light of the present order passed in this case, the petitioner shall be entitled to all consequential benefits, in terms of payment of full salary and allowance for the period during which he remained out of service because of operation of the order of dismissal, which has been set aside by the present order.

8. It is indicated that the petitioner must cooperate in the proceeding, if continued pursuant to the present order and if he fails to do so, the Respondent Bank shall be at liberty to proceed ex parte.

9. This application is accordingly, allowed.

10. There shall, however, be no order as to costs.