

(2019) 11 PAT CK 0043

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8826 Of 2006

Jai Prakash Singh

APPELLANT

Vs

Uttar Bihar Kshetriya Gramin Bank And Ors

RESPONDENT

Date of Decision : 08-11-2019

Acts Referred:

Citation : (2019) 11 PAT CK 0043

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Arvind Kumar Singh, Mukul Jee, Prabhakar Jha, Amitesh Jha

Final Decision : Dismissed

Judgement

1. Heard Mr. Arvind Kumar Singh, counsel for the petitioner and Mr. Prabhakar Jha, counsel for the respondents.
2. The facts emerging after detailed enquiry is that the petitioner, who was an employee of the Respondent-Bank in the Managerial Cadre, was proceeded against and visited with an order of punishment of removal which was not to be a disqualification for future employment. The order of punishment was dated 07.06.1999. Whereafter, the petitioner moved this Court by filing a writ petition.
3. C.W.J.C. No. 4503 of 2002 filed by the petitioner was allowed by this Court on 12.09.2005. The order of the writ Court is annexed as Annexure-11 to the writ petition.
4. The petitioner's counsel has vehemently argued that this Court had interfered with the order of punishment since the petitioner was deprived of an opportunity to defend himself in the enquiry. It is apparent from the order of the writ Court that the petitioner had suggested/requested two persons for representing him in the proceedings as Defence Representative (DR). The two person suggested/requested by the petitioner for being allowed as DR was, namely, Sudhir Kumar Sinha and Mahendra Prasad Karn. The Bank had deprived the services of the said

two persons as DR by assigning a reason that Sudhir Kumar Sinha was a suspended employee of the Bank and that Mahendra Prasad Karn was an employee inferior to the petitioner being in the Clerical Cadre. With respect to the claim of the petitioner for being represented by Sudhir Kumar Sinha, this Court in the earlier Writ proceedings had expressed a clear finding that mere suspension of Sudhir Kumar Sinha was not sufficient to deny his services as DR, for the reason that even after suspension Sudhir Kumar Sinha continued to be an employee of the Bank. With respect to Mahendra Prasad Karn, this Court did not interfere with the rejection by the Authorities as, admittedly, he was an employee in the Clerical Cadre inferior to the petitioner who was working as Assistant Manager in the Managerial Cadre of the Bank. This Court, had, therefore, concluded that since Sudhir Kumar Sinha was not disqualified from being a defence representative, on account of being an employee of the Bank, the Authorities had wrongly denied the petitioner the assistance of Sudhir Kumar Sinha. It was in the circumstances, that the Court interfered with the order of punishment and directed for reinstatement of the petitioner. The liberty, however, was granted to the Respondent-Bank to proceed against the petitioner subsequent to the stage of framing of charge.

5. The charge memo, as per submission of the petitioner's counsel, thereafter, was submitted afresh on 05.01.2006 setting the ball in motion, as a consequence of the liberty granted by the Writ Court. At the very outset, in the proceedings, petitioner again made a request for allowing assistance of the same Sudhir Kumar Sinha as a defence representative.. The proceedings dated 22.02. 2006 before the Enquiry Officer manifests that the petitioner was informed that Sudhir Kumar Sinha has since been dismissed, he does not continue to be an employee of the Bank, and, therefore, his assistance as Defence Representative cannot be extended to the petitioner. The petitioner, thereafter, again requested for appointment of the same Mahendra Prasad Karn for whom he had earlier made a request which was denied.

6. The claim of the services of Mahendra Prasad Karn as Defence Representative which was denied by the Respondent-Bank earlier was not interfered with by this Court in order dated 12.09. 2005 passed in C.W.J.C. No. 4503 of 2002. The refusal of the Bank to allow his assistance by assigning a reason that Mahendra Prasad Karn was an employee inferior to the petitioner was not interfered with by this Court, though, the issue was specifically raised in the earlier proceedings. This Court would, therefore, refuses to interfere with the same in the instant proceedings also.

7. In the circumstances, this Court would proceed to examine whether the claim for assistance of Sri Sudhir Kumar Sinha, as Defence Representative, has rightly been rejected or could have been claimed by the petitioner at all. The fact that Sudhir Kumar Sinha had stood dismissed prior to 22.02.2006 is not disputed/controverted by the petitioner. He only submits that Sudhir Kumar Sinha continued to be Member of the Union of the Bank. The composition of the Union

is not something which is amenable to the Bank. The Union and its Members have no connection with the hierarchy of the Bank. If the Union is allowing persons to become its Members, that cannot be taken to conclude that the person is in the employment of the Bank. The admitted position that emerges is that the Sudhir Kumar Sinha was not an employee of the Bank. In the circumstances, knowing fully well that he could not have been allowed as a Defence Representative, having regard to the decision in the case of the petitioner in the earlier writ petition vide C.W.J.C. No. 4503 of 2012, the petitioner had again sought appointment of the same Sudhir Kumar Sinha as Defence Representative.

8. In the circumstances, it is quite apparent that being conscious that both persons were disqualified for being Defence Representative, the petitioner has claimed their assistance as Defence Representative. This Court has put specific query as to whether the petitioner thereafter had participated in the proceedings or sought permission for any other third person as DR not, to which, counsel for the petitioner submits that no such request was advanced by the petitioner. Irresistible conclusion is that the petitioner had no intention of participating in the enquiry. Though specific opportunity was granted to him, he has sought assistance of Defence Representative who were ineligible. Thereafter, he has not sought the assistance of anyone else as a Defence Representative. It is specific stand of petitioner before this Court that the petitioner has chosen not to participate in the enquiry and avail of the opportunity granted to him. The law, as declared by the Apex Court in the case of Board of Director, Himachal Pradesh Transport Corporation vs. K.C.Rahi reported in (2008)11 SCC 502 is that the same is amount to waiver of natural justice. The Apex Court, in the said judgment, has clearly held when the conduct of the employee is manifest of the fact that he chooses not to participate in the proceedings, in such circumstances, natural justice cannot be applied as straitjacket formula. Such conduct of the petitioner, which is emanating from the records, gives no scope for this Court to interfere with the order of punishment awarded to the petitioner as a result of the Enquiry where he chooses not to participate.

9. The writ petition is devoid of merit and the same is dismissed.