
(2008) 02 PAT CK 0033
In the Patna High Court

Mahendra Swarup Shrivastav

APPELLANT

Vs

Bihar State Co-Operative Marketing Union Ltd. and Others

RESPONDENT

Date of Decision : 28-02-2008

Acts Referred:

Citation : (2008) 02 PAT CK 0033

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—The petitioner is aggrieved by his dismissal from the post of Depot Manager in Bihar State Co-operative Marketing Union Limited (hereinafter referred to as the "BISC DMAUN" for the sake of brevity) (respondent No. 1) by order dated 28.06.2001 (annexure-1) passed by the Administrator, BISCMAUN, Patna (respondent No. 2) and also seeks quashing of the entire departmental proceeding initiated against him.

2. A preliminary objection raised on behalf of the respondents is that as per the Staff Regulation of BISCMAUN there is a provision of appeal against the final order of dismissal and hence there being an efficacious alternative remedy available to the petitioner, this writ petition is not maintainable. It is not in dispute that BISCMAUN is a Co-operative Society registered under the Bihar Co-operative Societies Act, 1935 managed by a Managing Committee-as per Section 14 of the Act, but subsequently on 31.07.1988 it was superseded u/s 41 of the Act and an Administrator was appointed to carry on the business of the Society. No doubt, when BISCMAUN was earlier managed by its Managing Committee, it was neither any instrumentality nor an agency of the State and hence it was not amenable to the writ jurisdiction of this Court as has been held in case of Harender Narain Banker Vs. The State of Bihar and Others, , but after the Managing Committee of BISCMAUN was superseded and an Administrator was appointed in the year 198 8 by the State of Bihar to manage the affairs of BISCMAUN, it has become the authority as per the provision of Article 12 of the Constitution of India amenable to the writ jurisdiction of the High Court a; per the decision of this Court in case of Nand Kishore Rai and Others Vs. The State of

Bihar and Others, . Reference in this regard may also be made to a Full Bench Decision of this Court in case of Rajendra Prasad Sah and Anil Kumar Ojha Vs. State of Bihar and Others, . In the said circumstances, it is held that the action of the Administrator of BISOOMAUN while passing the impugned order in the departmental proceeding is subject to judicial review by this court.

3. The petitioner was appointed as a Sales-cum-Account Assistant under BISCOAUN on 17.06.1994 and his service was confirmed on 19.06.1966 and he was subsequently promoted to the rank of Depot Manager with effect from 10.06.1973 in which capacity he was posted at Gumla during 1984-85. After audit for the said period by the Auditor, the petitioner was found to have defalcated/misappropriated fertilizer and seeds worth Rs. 2,05,365.90 Paise and accordingly audit report was submitted by the Auditor on 05.09.1987. On the basis of the said audit report, the petitioner was put under suspension on 06.03.1989 and a departmental proceeding was initiated against him. For the same reasons, Gumla P.S. Case No. 79 of 1989 was instituted against him for offences punishable under Sections 409, 420 and 460 of the Indian Penal Code and furthermore Award Case No. 119 of 1989 was also initiated against him.

4. After considering the charges, show cause, report of the Auditor and the report of the Enquiry Officer service of the petitioner was terminated by order dated 07.11.1989 (annexure-7) passed by the Administrator, BISCOAUN. However, it was mentioned in the said order that the petitioner will be entitled to subsistence allowance for the period he remained under suspension. Against the said order, the petitioner filed an appeal on 08.11.1990 before the Registrar, Cooperative Societies, Bihar, Patna in which the subsequently filed a petition on 23.8.1993 which was numbered as Miscellaneous Case No. 194 of 1993. After considering the matter, the learned Registrar, Cooperative Societies, Bihar, Patna by order dated 14.07.1995 (annexure-8) found it necessary that the petitioner be given an opportunity of hearing before the disciplinary authority and hence the case was remanded to the Administrator, BISCOAUN for passing appropriate order after giving proper opportunity to the petitioner for being heard. The petitioner was also directed to cooperate with the disciplinary authority in that regard.

5. During pendency of the said departmental proceeding, the petitioner filed CWJC No. 12431 of 2000 for direction to the respondents to pay arrears of salary from 01.01.1989 and also to pay current salary according to prevalent scale applicable to Depot Manager as the proceeding was not continuing. The said writ petition was allowed with cost of Rs. 10,000.00 by order dated 12.12.2000 (annexure-3) with directions that subsistence allowance should be paid to the petitioner and that the proceeding should be concluded within two months of the receipt of copy of that order keeping in mind the principles laid down by the Hon'ble Apex Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, . Two aspects of the aforesaid order, namely payment of subsistence allowance and awarding of cost was challenged by the BISCOAUN

in LPA No. 171 of 2001 which was allowed in part vide order dated 06.09.2001 (annexure-4) by which the Division Bench of this Court held that since, in compliance of the order passed in the writ case, the departmental proceeding has come to an end vide order dated 28.6.2001, according to which the services of the petitioner have been terminated, which was not the subject matter of that appeal, the recovery of amount of cost of Rs. 10,000.00 from the authorities was found to be not justified and that part of the order of the Hon"ble Sing e Judge was set aside, whereas the authorities were directed to pay amount of subsistence allowance to the petitioner by 12.11.2001.

6. it is apparent from the records that in view of order dated 12,12.2000 passed in the writ case the departmental proceeding was expedited and immediately after receipt of a copy of the said order the enquiry officer started considering the matter. The petitioner was also specifically directed to cooperate in the proceeding, but he did not appear during its pendency although he had full knowledge of the said proceeding as a notice dated 17.02.2001 along with the charge sheet was sent to the petitioner, whereafter on 23.02.2001 and 24.02.2001 (Annexures-A and B to the counter affidavit) the petitioner and his counsel sent letters to the Administrator that the said new counsel would be appearing for the petitioner in the proceeding, but he or his counsel never appeared before the Enquiry Officer due to which the authority concerned had no option but to decide the departmental proceeding ex parte on 28.06.2001 in view c f the specific directions of this Court mentioned above.

7. It is quite apparent that the petitioner intentionally did not take any step in the inquiry as the date of his superannuation, i.e. 30.06.2001 was reaching fast, whereafter the departmental proceeding could not have continued as per the Staff Regulation of BISCOAUN. Furthermore, once the matter had been remanded by a court for fresh consideration on the ground of violation of principles of natural justice and equity the petitioner cannot raise the question again as this time he had full knowledge and information of the proceeding, but the petitioner or his lawyer did not appear in the proceeding intentionally only to delay the matter.

8. So far as the question of subsistence allowance is concerned, it is the specific claim of the respondents that the petitioner never appeared before the authorities to collect his subsistence allowance, nor he ever joined the head Office during the period of his suspension. The Special Officer lastly on 30.5.2001 (annexure-C to the counter affidavit) directed the petitioner to join the head office immediately to cooperate in the departmental proceeding and take his subsistence allowance, but inspite of that he never appeared either to collect the amount of subsistence allowance or even to contest the departmental proceeding and hence the authorities sent the bank draft of the amount of subsistence allowance to the petitioner by post.

9. From the materials on record and the various orders of the authorities concerned, it is quite apparent that the impugned order has been passed by the

authority concerned after full consideration of the entire materials on record and also after realizing that there was nothing to show any illegality or error in the audit report, whereas the charges against the petitioner with respect to misappropriation/ defalcation were fully proved by the materials on record. It is also apparent that the criminal case bearing G.R. No. 272 of 1989 (Gumla P.S. Case No. 79/89) against the petitioner was dismissed by the Sub-Divisional Judicial Magistrate, Gumla on 17.08.1998 (annexure-5) only because the prosecution failed to produce relevant papers in court, hence the petitioner was given benefit of doubt.

10. Furthermore, Award Case No. 119 of 1989 initiated against the petitioner was also dismissed by Joint Registrar vide order dated 30.07.1989 (annexure-6) only due to non-production of the audit report by the authorities concerned and no order was passed on merit. In both the cases orders passed by the authorities concerned had no bearing on the findings of the inquiry report and the final order passed in the departmental proceeding which was clearly based upon the materials available on the record of the proceeding.

11. In the aforesaid facts and circumstances, this Court neither finds any illegality in the impugned order of the authority concerned nor it finds even any irregularity in the proceeding in question and accordingly this writ petition is dismissed.