(2000) 07 PAT CK 0077

In the Patna High Court

Case No : C.W.J.C. No. 10807 of 1999

Ramesh Chandra Tiwary APPELLANT

Vs

Bihar State Sugar Corporation Ltd. and Others RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:
Bihar State Sugar Corporation Standing Orders — Section 50, 57

Citation : (2000) 48 BLJR 1941 : (2000) 87 FLR 803 : (2001) 3 LLJ 1053 : (2000) 4 PLJR 715

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Judgement

R.M. Prasad, J.—Heard learned counsel for the parties.

2. In this writ petition, the petitioner is aggrieved by the order of punishment dated April 6, 1999 (Annexure-24), whereby he has been dismissed from service. The said order has been passed by the Managing Director of the Bihar State Sugar Corporation Limited (hereinafter to be called as "the Corporation").

3. Learned counsel for the petitioner has raised a short question, namely, that by passing of the said order, the Managing Director has deprived the petitioner of the statutory remedy by way of appeal against the order of punishment. It is submitted that Clause 50 of the Standing Orders for the Workmen of the Corporation provides that if misconduct is alleged against an employee the Manager or a person vested with such powers by the Manager before taking any action will issue a charge-sheet to him, and call upon him to submit written explanation within a period of not less than 48 hours. If the explanation is found to be unsatisfactory, he will be further called upon to attend an inquiry which will be held by an officer or officers appointed for the purpose. It has further been submitted that under Clause 57 of the said Standing Orders the decision of the Manager upon any question arising out of, in connection with, or incidental to these orders, is to be final, provided that the worker aggrieved by the Manager''s decision, has the right of appeal within fourteen days of the communication of

the Manager''s decision to the Management who shall pass orders on the appeal within 21 days of its being made. The word "Management" has been defined in Sub-clause (iv) of Clause 2 of the said Standing Orders. According to the said definition, Management means Mills'' Managing Director, Managing Agents, Proprietor or Proprietors, Partner or Partners or such other person or persons or body or bodies as may be authorised in this behalf. Thus, it is submitted that in the present case, the Managing Director of the Corporation was appellate forum available to the petitioner under the said Standing Order. Having regard to the fact that the said order has been passed by the Managing Director, the petitioner has been denied of the said forum which itself vitiates the impugned order (Annexure-24).

4. In support of his contention, the learned counsel for the petitioner has referred to various decisions, namely, in the cases of Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, , Rama Kant Sharma v. Pataliputra Central Co-operative Bank and Ors. 1999 BBCJ 289 and Pradyuman Prasad v. Bihar State Financial Corporation & others 1996(2) All PLR 849.

5. In the case of Surjit Ghosh (supra), the Apex Court has held as follows in para 6 of its judgment in Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, :

"6. An employee cannot be deprived of his substantive right. What is further when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate-authority should exercise the powers of the disciplinary authority. The higher appellate-authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases the right of the employee depends upon the choice of the higher/ appellate authority which patently results in discrimination between an employee and employee. Surely, such a. situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate-authority chooses to exercise the power of the disciplinary authority it should be held that there is no right of appeal provided under the Regulations cannot be accepted."

6. In view of the said principle decided by the Apex Court, the impugned order (Annexure-24) cannot be sustained as the petitioner has been denied of his substantive right of appeal which alone vitiates the impugned order. The Apex Court in the said case aid not consider it expedient to remit the matter back to the disciplinary authority as the Appellate Court which is the higher authority had already taken a decision in the matter and that it cannot be expected that the lower authority shall take a different view. Thus, the Apex Court in the case of

Surjit Ghosh (supra) on consideration of the fact directed that the appellant should be paid compensation of Rs. 50,000/- in lieu of his claim of his arrears of salary and he should be reinstated in service with continuity in service without any loss in seniority. Since the facts of the case are more or less similar, this Court considers it expedient to follow the said directive of the Apex Court in the instant case also.

7. The writ application is thus allowed and the impugned order contained in Annexure-24 is hereby quashed. This Court, in the facts and circumstances, directs that the petitioner should be paid compensation of Rs. 50,000 in lieu of his claim for arrears of salary and that he be reinstated in service with continuity in service without loss in seniority. In the facts and circumstances, there shall be no order as to cost.

