
(2001) 02 PAT CK 0087
In the Patna High Court
Case No : Civil Review No. 275 of 1998

Sharda Devi

APPELLANT

Vs

Bank of India and Others

RESPONDENT

Date of Decision : 22-02-2001

Acts Referred:

Citation : (2001) 02 PAT CK 0087

Final Decision : Dismissed

Judgement

Shashank Kr. Singh, J.—The present application has been preferred for review of order and judgment dated 26-8-1998 passed in L.P.A. No. 749 of 1998 affirming the order of the writ Court dated 17th April, 1998 in C.W.J.C. No. 1217 of 1996 whereby the writ petition filed by the petitioner had been dismissed.

2. Contention of learned Counsel for the petitioner is that the writ Court while dismissing C.W.J.C. No. 1217 of 1996 failed to consider the fact that the disciplinary authority had applied its mind to the inquiry report without serving a copy of the same on the petitioner and had differed with the Inquiring Officer and come to his own findings holding the petitioner guilty on those charges also, behind the back of the petitioner. As such, there was violation of the principles of natural justice as the disciplinary authority had passed the order behind the back of the petitioner.

3. From the order passed in L.P.A. No. 749 of 1998, dated 26-8-1998 review of which order has been sought in the present application, a Division Bench of this Court taking into consideration that the Inquiring Officer in his report found two of the charges proved against the petitioner, two of them partly proved and the remaining five not proved, and the fact that the disciplinary authority having considered the report of the Inquiry Officer and the material available on record while agreeing with the finding of the Inquiring Officer in respect of charge Nos. 2, 4, 5, 7, 8 and 9, though differed with his report as far as charge Nos. 1, 3 and 6 were concerned, after serving notice on the petitioner of the proposed punishment so far it related to charge Nos. 1, 3 and 6 along with copies of the

findings of the Inquiring Officer as well as his own reasoning for coming to a different conclusion, also afforded the petitioner an opportunity of hearing, as it transpires from the order that personal hearing was also afforded to the petitioner on 17-4-1995, a fact which has been discussed in detail in the judgment of the writ Court dated 17th April, 1989 passed in C.W.J.C. No. 1217 of 1996, dismissed the L.P.A. and affirmed the order of the writ Court.

4. By the order under review dated 26-8-1998 passed in L.P.A. No. 749 of 1998 the submission of learned Counsel for the petitioner is that once the disciplinary authority did not agree with the report of the Inquiry Officer the whole case reopens from the very inception of the inquiry and a fresh inquiry (de novo) is required to be conducted and as the same had not been followed the L.P.A. Court erred in dismissing the appeal upholding the order of the writ Court relying on the judgment of the Supreme Court in the case of State of Rajasthan Vs. M.C. Saxena, , wherein it was held that de novo inquiry was not needed if the disciplinary authority disagrees with the inquiry report.

5. The contention of the petitioner's Counsel is that the aforesaid judgment already stands overruled by the Supreme Court though the aforesaid fact was not known to the petitioner's Counsel on the day on which the appeal was heard and the orders passed, as the judgment of the Supreme Court overruling the abovementioned judgment was reported subsequently to the disposal of L.P.A. it has further been contended that as the subsequent judgment of the Supreme Court had not been considered while disposing of the Letters Patent Appeal, the judgment was erroneous and as such, the same should be reviewed.

6. As I have already discussed above, the whole judgment/order under review is said to be on the ground that the merit of the case has not duly been appreciated by the writ Court which has been concurred by the L.P.A. Court.

7. The petitioner who is a dismissed employee of the Bank was facing serious charges of financial irregularities. There were nine different charges of misconduct against the petitioner for misappropriation of customers money and temporary embezzlement. The writ Court had considered in detail the allegation providing opportunity of show cause to the petitioner, show cause had been filed, inquiry had been conducted, inquiry report had been submitted, disciplinary authority had agreed with the inquiry report differing with regard to some of the findings, allowing the petitioner opportunity of being heard and even personal hearing and taking the gravity of charges into consideration passing the order of dismissal and again opportunity of second show cause and then the final order had been affirmed. The appellate authority had also concurred with the finding of the disciplinary authority. The writ Court did not find any infirmity with the same. The L.P.A. Bench also affirmed the order. Now virtually a second appeal had been preferred attacking the order of L.P.A. Court on merit in the garb of review application. The same cannot be allowed for agitating the matter afresh. The Supreme Court while considering the scope of review in the case of Delhi Administration Vs. Gurdip Singh Uban and Others, held that there was a real

distinction between a merely erroneous decision and a decision which can be characterised as vitiated by "error apparent". Review is not an appeal in disguise.

8. In view of judgment in the case of Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, , it was held that there was a real distinction between erroneous decision and a decision which could be characterised as vitiated by "error apparent" and though a "review" was by no means an "appeal" in disguise. The aforesaid legal position had been reiterated in subsequent judgments of the Supreme Court.

9. In the facts of the present case, as i have already discussed above, no error apparent could be brought on record for review of the order passed in L.P.A. No. 749 of 1998 dated 26-8-1998 rather the whole arguments have been made to persuade the Court that the judgment under review was an erroneous judgment requiring review by this Court as I have already discussed above and in view of several judgments of the Supreme Court, the scope of review is for review of "error apparent" only and not to review the judgment/order even if the parties are in a position to satisfy the Court that the order under review is an erroneous order.

10. In the result, the present review application is devoid of merit and is accordingly, dismissed.

11. There shall be no order as to costs.

Ravi S. Dhavan, C.J.

12. I agree.