
(2003) 03 PAT CK 0063
In the Patna High Court
Case No : C.W.J.C. No. 11221 of 2002

Shyama Charan Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-03-2003

Acts Referred:

Citation : (2003) 51 BLJR 778 : (2003) 97 FLR 784 : (2003) 2 PLJR 407

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—Heard Mr. Ram Janam Prasad for the petitioner, Mr. S.N. Pathak for the respondent Bank and its functionaries, and learned Junior Counsel to Additional Advocate General No. I for the State of Bihar.

2. According to the writ petition, the petitioner superannuated from the services of the Bihar State Co-operative Bank Limited, Patna, with effect from 30-11-1997, while functioning as Deputy General Manager. The petitioner complains before this Court that the respondent Bank has deducted a sum of Rs. 30,000/- from his post-retirement benefits for the reason that, while in service, he stood guarantor to a loan granted to the borrower. The borrower did not repay the loan and, therefore, the amount had been deducted from the petitioner's post-retirement benefits in the capacity of a guarantor.

3. The petitioner assails the validity of the impugned action, inter alia, on the ground that the respondent Bank did not take steps to realise the money from the borrower, and has instead chosen to realise it from the petitioner, the guarantor. He relies on the following decisions/orders of this Court as contained in Annexures 5,6 and 7;

(i) Order dated 21-4-2000, passed on CWJC No. 5962 of 1999 (Md. Mahmoodul Haque Mallick v. The Bihar State Co-operative Bank Limited and Ors.),

(ii) Order dated 2-8-2002, passed on CWJC No. 4691 of 2001 (Shiv Narayan Choudhary v. The State of Bihar and Ors.),

(iii) Order dated 31-7-2002, passed on CWJC No. 3170 of 2001 (Nagesjwar Prasad v. The State of Bihar and Anr.).

4. Learned Counsel for the respondents have supported the impugned action.

5. I have considered the materials on record and the submissions of learned Counsel for the parties. I am of the view that the respondents authorities are justified in deducting the amount of Rs. 30,000/- on the ground that the petitioner had stood as a guarantor while he was in service to repayment of the loan. This was undoubtedly a serious indiscretion on the part of the petitioner to stand as guarantor while still in service. This Court is no doubt that the petitioner misused his official position in getting the loan to the petitioner by adding his weight to the borrower's application. The very fact that that he was on a senior position in the Bank and till then serving may have also come in the way of recovery of the loan amount. In one sense, he was the lender and the borrower in the same transaction which cannot be countenanced. I am in this connection supported by the Judgment of five Judges Bench of this Court reported in 1996 (1) PLJR 633 (Anirudh Prasad Choudhary v. The High Court of Judicature at Patna and Ors.). The petitioner was the Registrar General of this Court and was not granted the benefit of extension of service from 58 years to 60 years. This Court refused to entertain his writ petition on the ground that he had misused his official position by using the official documents of which he was the custodian. This aspect of the matter has been dealt with in Paragraphs 151 to 155 of judgment which are set out hereinbelow for the facility of quick reference :

"151. At this stage, I would also like to briefly examine the manner in which the writ petition has been drafted and the documents which have been enclosed with it as annexures. The writ petition contains detailed statements regarding the deliberations made and the decisions taken in the various meetings of the Evaluation Committee and the Full Court. Similarly High Court records and confidential documents for which there is no reason to go into private hands have been freely used as annexures to the writ petition. From Annexure 3 at page 55 to Annexure 21 ending at page 167, there are numerous confidential records of the High Court which are enclosed as annexures. Annexure 3 and Annexure 4 series are the extracts from the petitioner's character roll; Annexure 5 Series are the photostat copies of the confidential remarks about the petitioner recorded by the different Inspecting Judges of the High Court; Annexure 5/5 is the remark dated 28-5-1994, entered in the Green Book volume 3, by the then Chief Justice of the High Court; Annexure 6 is a copy of the minutes of the proceeding of the Evaluation Committee held in the chamber of the Hon'ble the Chief Justice of Patna High Court on November, 12, 1993; Annexure 6/1 is the proceeding of the Full Court meeting held on October, 1, 1994. There are also annexures which are copies of the character rolls of several other Judicial Officers who, according to the petitioner, were retained in service though with an inferior

service record than the petitioner. The list of annexures goes on and on and there appears to be no document which the petitioner might have considered too confidential to be bared in public."

"152. For over two decades, it has become customary to file writ petitions in this High Court enclosing documents from the Government Departments as annexures. Quite often the photostat copy of the entire relevant Government file is brought before the Court as an annexure to a writ petition. The Court has become used to consider those documents without asking any question as to how they were procured".

"153. However, this is the first time, in my knowledge that the confidential records of the High Court have been purloined and openly used and that also by a person who in his official capacity, was supposed to be the custodian of those records. / must painfully record that in doing so the petitioner dearly misused his official position."

"154. I have given this matter my most anxious consideration and after taking into account all aspects of the matter I find myself unable to overlook the petitioner's action. For, overlooking it at this stage would amount to telling all the Judicial Officers that there is nothing wrong in procuring the confidential records of the High Court by whatever means and they may do so with the assurance that as and when they would use them, no questions would be asked as to how those records were procured."

"155. I am, therefore, of the view that by this action, the petitioner has disentitled himself to the discretionary relief from the High Court under Articles 226 and 227 of the Constitution and it also appears to me that the Full Court showed great perspicacity in assessing him and after all the decision of the Full Court was right and justified, notwithstanding the service record and the character rolls of the petitioner."

6. It is for the reasons stated in the reported judgment that I do not fall in line with the aforesaid Single Judge judgments of this Court which did not consider this aspect of the matter. Secondly, those are not binding precedents within the meaning of Article 141 of the Constitution of India. Thirdly, law is well settled that the choice is with the lender whether to pursue the borrower or the guarantor or both. It is common knowledge that suit is a dilatory and expensive remedy and, therefore, it was open to the lender to exercise the easier and inexpensive option and realise the loan amount from the guarantor who after all undertook to repay the loan amount. I am, therefore, not inclined to exercise the discretionary, prerogative writ jurisdiction in favour of the petitioner.

7. In the result, this writ application is dismissed.