

(2002) 10 PAT CK 0051
In the Patna High Court
Case No : C.W.J.C. No. 1143 of 2000

Sumitra Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 51 BLJR 80 : (2003) 2 LLJ 193

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Navin Sinha and Sujeet Kumar Sinha, Shailesh Kumar Sinha and Binod Bihari Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—This writ application was earlier filed by Hira Prasad (hereinafter referred to as the writ petitioner). After his death, his legal heirs i. e. wife and other children have been substituted in his place and allowed to prosecute this writ application. This application has been filed for issuance of an appropriate writ for quashing the order dated 30th of January, 1999 whereby the writ petitioner, who was an employee of the State of Bank of India (hereinafter referred to as the Bank) has been dismissed from service. Further prayer is to quash the order dated 18th September, 1999 (Annexure-23) whereby the appeal preferred by writ petitioner against the order of dismissal passed by the disciplinary authority, has been dismissed.

2. The case has a chequered history, writ petitioner was an employee of the State Bank of India (for short the Bank). A departmental enquiry was initiated against him for having granted bank loan to large number of persons without proper documentation and without verifying their credit worthiness and for obtaining illegal gratification in that connection. The Inquiry Officer submitted the report holding the writ petitioner guilty. The disciplinary authority agreeing with the conclusion of the Inquiry Officer and following the procedure passed the

order of dismissal from service. Writ petitioner filed C.W. J.C. No. 1979 of 1988 before this Court impugning the order of dismissal. This Court by order dated 8th of July, 1988 found the order of dismissal to be bad in law and consequently set aside the same. While doing so, this Court observed as follows:--

"This does not mean that the petitioner should be got scot free. He must face enquiry, Sufficient time has already lapsed. The enquiry must be concluded as early as possible. The petitioner will appear before the Enquiring Officer (to be nominated in the meantime) at Patna on 2nd August, 1988 and the prosecution will produce the witness examined on his behalf for cross examination, After the cross examination is over the petitioner will also produce the witnesses which he may like to examine, This should be done without any adjournment and the proceeding should be conducted day to day so that it may be concluded as early as possible. With this observation this writ application is disposed of.

3. In view of observation referred to above the Bank proceeded to hold enquiry and ultimately the petitioner was again dismissed from service. Challenge to the order of dismissal passed by the Bank by the writ petitioner in C. W. J.C. No. 3430 of 1991 failed. Aggrieved by the same, he moved the Supreme Court. The Supreme Court in its judgment dated 2-3-1993 in the case of Heera Prasad v. State Bank of India and Ors. (1993(1) BLJ R 703) found the order of the dismissal to be bad in law. While setting aside the order of dismissal, the Supreme Court observed as follows:--

"(12) Having regard to all that has transpired, we think that it is in the fitness of things that the order of dismissal dated 23rd October, 1989 should be quashed and another Enquiry Officer should be appointed by the respondent who should allow the appellant the opportunity of examining as his witnesses the three persons referred to by the earlier Enquiry Officer in the paragraph of the "Additional enquiry report" subtitled "Conclusion." He should give to the respondent and the appellant the opportunity of a hearing. He should then apply his mind to the material on record without in any way being influenced by the earlier enquiry report, and make his own enquiry report accordingly,"

4. Thereafter the enquiry was held and ultimately by order dated 30th of January, 1999 writ petitioner was visited with the penalty of dismissal from service. He preferred the present writ application in 31-1-2000. During the pendency of the application he died and by order dated 4-12-2001 his widow and children have been allowed to be substituted in his place. During the pendency of the writ petition appellate authority had passed the order on 18th of September, 1999 dismissing the appeal and by way of amendment prayer of the petitioners is also to quash the said order.

5. Mr. Shailesh Kumar Sinha, Senior Advocate appearing on behalf of the respondent-Bank raises a preliminary objection in regard to the maintainability of the writ application in face of remedy of review being available to the petitioner. He refers to Rule 69 (3) of the State Bank of India Officers Service Rules

(hereinafter referred to as the Rules) and contends that in the face of availability of remedy of review, taking recourse to the remedy of the writ application is inappropriate. Mr. Navin Sinha however appearing on behalf of the petitioners submits that the delinquent employee is already dead and relegating his widow and children to the remedy of review shall not be justified in the facts and circumstances of the case. It is relevant here to State that this writ application was preferred more than two and half years ago and when the matter is taken up for disposal finally, I am not inclined to dismiss the writ application and relegate the petitioner to the remedy of review. It is well settled that alternative remedy is not a bar to the jurisdiction of this Court but a rule of discretion. Hence, I overrule the preliminary objection.

6. Mr. Navin Sinha appearing on behalf of the petitioner submits that the enquiry report submitted by the Enquiry Officer is vitiated on account of the fact that the copy of the brief filed by the Presenting Officer was not given to him. Mr. S.K. Sinha however submits that Rule 68 (xviii) of the Rules provides for submission of the written brief and does not contemplate that copy of the written brief is to be given to the other side. In any view of the matter, he points out that non-supply of the written brief to the delinquent employee has not caused any prejudice and on that account the enquiry report cannot be said to be vitiated in the eye of law.

7. Having appreciated the rival submission, I do not find any substance in the submission of learned Counsel for the petitioners. Rule 68(2) (xviii) of the Rules which is relevant for the purpose reads as follows:--

"(68) (2) (xviii). The Inquiring Authority may after the completion of the production of the evidence, hear the Presenting Officer, if any, appointed and the officer or his representative, if any or permit them to file written briefs of their respective cases within 15 days of the completion of the production of evidence, if they so desire."

From a plain reading of the aforesaid Rule it is apparent that it gives discretion to the Enquiry Officer to hear the Presenting Officer and the delinquent employee or to permit them to file written briefs of their respective cases. The rule in terms has not provided for service of the written brief on the other side but in my opinion the same has to be read in it. Provision for filing written brief is in lieu of hearing of the Presenting Officer and the delinquent employee and in case the written brief is not given to the other side it would amount to hearing of the case in the absence of other side. The position would be different if the written brief is given for assisting the Inquiry Officer after he hears the presenting officer or the delinquent employee. I am of the opinion that fair play demands that the copy of the written brief be made available to other side. But its non supply itself shall not vitiate the enquiry report. Said written brief was made available to the writ petitioner and nothing has been pointed out to demonstrate that he in any way was prejudiced by that. Thus service of written brief on the other side may flow and can be read in the language of the rule to meet the requirement of the

principle of natural justice but its breach itself shall not render the inquiry report illegal in the absence of any prejudice.

8. Mr. Sinha then assails the order of the appellate authority and submits that the order passed by it is without application of mind and in a mechanical way and on that ground alone the order of the appellate authority is fit to be set aside. In support of his submission learned Counsel has placed reliance on a Division Bench decision of this Court in the case of Sada Shiva Pandey Vs. State Bank of India and Others and my attention has been drawn to paragraph 12 of the judgment, which reads as follows:--

"(12) It was then submitted that the appellate authority did not apply its mind to the facts and circumstances of the case and in a mechanical manner rejected the appeal. I have earlier reproduced the two appellate orders passed in these two writ petitioners. They are virtually in the same terms. There is no discussion, however brief, to satisfy the Court that the appellate authority had applied its mind to the facts and circumstances of the case. One cannot lose sight of the fact that the appellate authority has authority to go into questions of fact as also questions of law. It is open to it to consider the legality and propriety of the order passed by the disciplinary authority and the appellant sets out his grounds in support of the appeal, the appellate authority is expected to apply its mind to the representations made by the appellant, and in the light of those representations consider the legality and propriety of the order passed by the disciplinary authority. It was indeed contended on behalf of the petitioner that in large number of other cases the appellate authority has passed its orders in identical terms, which supports the contention that the appellate authority has acted in a mechanical manner and passed its orders without applying its mind to the facts and circumstances of the case. The submission cannot be brushed aside. The appellate orders are in identical terms. They do not disclose the reasoning of the appellate authority. While the appellate authority is not expected to write a detailed judgment, it is at least expected to record its reasons, even if briefly, to satisfy the Court that it had considered the relevant aspects of the matter before reaching its conclusion. I cannot say that the appellate orders in these writ petitions satisfy that test. I am, therefore, of the view that the appellate orders must be quashed and the appellate authority be directed to reconsider the appeals and pass orders in accordance with law."

9. Learned Counsel has also drawn my attention to Rule 69(2) of the Rules which according to him obliges the appellate authority to render its opinion on the finding of guilt as also the adequacy of the punishment. Mr. S.K. Sinha however appearing on behalf of the respondent-Bank submits that the disciplinary authority being aggrieved with the conclusion of the enquiry inflicted the punishment which has been affirmed by the appellate authority and on that count no detailed reasoning is required to be given by the appellate authority.

10. Having appreciated the rival submission, I do not find any force in the submission of the learned Counsel for the petitioners. The order of the appellate

authority reads as follows.

"Shri Prasad preferred an appeal against this order of the Appointing Authority on 30-3-1999. I have carefully considered the points raised by the appellant and gone through the records of the case. I observe that the appellant has failed to bring in any new point of fact which was not considered earlier at the proceedings stage by the Disciplinary/Appointing Authority".

Rule 69(2) of the Rules which is relevant for the purpose reads as follows:--

"69(2). An appeal shall be preferred within 45 days from the date of receipt of the order appealed against. The appeal shall be addressed to the Appellate Authority and submitted to the authority whose order is appealed against. The officer may, if he so desires submit an advance copy to the Appellate Authority. The authority whose order is appealed against shall forward the appeal together with its comments and records of the case to the Appellate Authority. The Appellate Authority shall consider whether the findings are justified and/or whether the penalty is excessive or inadequate and pass appropriate orders, The Appellate Authority may pass an order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such directions as it deems fit in the circumstances of the case."

XX XX XX

Here in the present case, as stated earlier, the inquiry officer has found the delinquent guilty of the charges. The disciplinary authority agreeing with the conclusion of the inquiry officer had passed the order of dismissal from service. Said order of the disciplinary authority has been affirmed by the appellate authority. From reading of the order of the appellate authority it is evident that he has applied his mind and it cannot be said that the order has been passed mechanically. In that view of the matter, the order of the appellate authority cannot be said to be illegal and the authority relied on is clearly distinguishable.

11. In view of my answer to the aforesaid submission of the learned Counsel for the petitioners, other submission that on account of death of the delinquent employee the respondent-Bank not be allowed to proceed with the enquiry any further is academic. Aforesaid submission was made on the premise that the enquiry report is vitiated in the eye of law and the order passed by the appellate authority is illegal.

12. Having found no merit in the submission advanced on behalf of the petitioner, this writ application is dismissed. No costs.