(2007) 07 JH CK 0005

In the Jharkhand High Court

The Ranchi Khunti Central Co-operative Bank Ltd. and Others APPELLANT

Vs

Ashok Chandra Deogaria and Another RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:
Constitution of India, 1950 — Article 14, 21, 311

Citation : (2007) 4 JCR 142

Hon'ble Judges : M.Y. Eqbal, J;Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal under Clause 10 of the Letters Patent is directed against the judgment dated 13.4.2005 passed in CWJC No.

3562 of 1999(R) whereby the learned single Judge allowed '' the application, quashed the order of dismissal of respondent No. 1 (writ petitioner)

from services and further held that the writ petitioner is entitled to salary for the period of his suspension.

2. The facts of the case lie in a narrow compass:

The writ petitioner (respondent No. 1 herein) was working as Assistant Accountant in Ranchi Khunti Central Cooperative Bank Ltd. (in short ''the

Bank''). In 1994 the writ petitioner informed the Bank that the Development Officer, namely, Lal Rabindra Nath Sahdeo, started misappropriating

the Bank money after obtaining his signature on the cheque. Consequent thereupon, a First Information Report was lodged by appellant No. 2-

Managing Director of the Bank alleging misappropriation of huge amount of the bank. The writ petitioner was put under suspension by order dated

28.11.1994 followed by a show-cause notice. After consideration of his explanation, the writ petitioner was directed to join his duty. The writ

petitioner accordingly joined on 21.3.1997. However, again a show-cause notice dated 14.5.1998 was issued to the writ petitioner by appellant

No. 3 - Deputy Development Commissioner-cum-Administrator of the Bank asking him as to why he should not be dismissed from service. On

the basis of the report of the Joint Registrar, the Deputy Development Commissioner-cum-Administrator of the Bank vide order dated 15.7.1998

dismissed the writ petitioner from service, although in the departmental enquiry, he was not found guilty of any misappropriation.

3. The writ petitioner challenged the said order of dismissal by filing a writ petition being CWJC No. 2920 of 1997 (R). By judgment dated

10.3.1999, this Court (Ranchi Bench of the Patna High Court as it then was) quashed the order of dismissal giving liberty to the appellant-Bank to

proceed in accordance with law with respect to back wages and for passing any other order. Aggrieved by the said order, the appellant-Bank

challenged the same by filing LPA No. 103 of 1999(R) which was ultimately dismissed on 6.8.1999. The writ petitioner was, therefore, allowed to

join his duty, but again another show-cause notice dated 15.6.1999 was issued by the Administrator of the bank asking the writ petitioner to

explain as to why his services should not be terminated on account of the aforementioned charges. The writ petitioner again submitted his reply on

26.9.1999 stating inter alia that in no way he can be held responsible for any defalcation as he has not been found guilty in the departmental

enquiry.

4. The appellant-Bank having not satisfied with the explanation of the writ petitioner, again dismissed him from service by order of dismissal dated

15.10.1999. The writ petitioner again challenged the said order of dismissal by filing the aforementioned writ petition being CWJC No. 3562 of

1999(R) which has been allowed by the learned single Judge and the order of dismissal has been quashed. The learned single Judge after

considering the facts of the case and after hearing the parties, came to the following findings as mentioned in paragraphs 9 and 10 of the judgment:

9. After hearing the parties and considering the rival contentions and materials on record, I find that inquiry officer, after conducting the inquiry,

came to the conclusion that the amount was not defalcated by this petitioner.

Though the charges of defalcation against the petitioner was not found

proved, the disciplinary authority held the petitioner guilty and awarded punishment of dismissal. The said punishment order was assailed in CWJC

No. 2920 of 1997(R) and after hearing the parties, was quashed. Thereafter, there was no fresh inquiry, no further evidences were brought on

record. Only a show cause was issued to the petitioner to which, the petitioner replied pleading that there was no material or/evidence on record to

establish the charge and the inquiry officer has rightly come to his finding and held him not guilty of the charges and in that view he was entitled to

be exonerated. The respondent No. 3, without any legal basis again held the petitioner guilty and awarded punishment of dismissal. From going

through the order of the respondent No. 3, it is evident that his order is based on inferences, assumptions and presumptions as he has used the

words ''ought'' and ''ought not'', ''expected'' and ''not expected'' in coming to the conclusion and there is no discussion of any evidence or materials

on record to support his findings. It is relevant to mention that earlier order of dismissal was quashed due to such inherent illegality, yet except by

issuing a show cause, nothing further was done and again the order has been passed in a casual manner. The said decision making process has no

legal sanction and the same is violative of Articles 14, 21 and 311 of the Constitution. The impugned order of dismissal of the petitioner from

services as contained in Annexure-19 is, thus, quashed.

10. Ordinarily, the matter of this nature requires to be remanded to the disciplinary authority for a fresh consideration, but since the matter is

concerned with an allegation of about twenty years ago and the respondents were already given another opportunity to proceed in accordance

with law whiling quashing the earlier order of dismissal of the petitioner in CWJC No. 2920 of 1997(R) and since the respondents have again dealt

with the matter arbitrarily and illegally, it would not be in the interests of justice to allow the respondents to start a fresh inquiry against the petitioner

after so many years. More so, when in another proceeding the said Lal Ravindra Nath Sahadeo has been held guilty of entire defalcation and made

liable for recovery of the total defalcated amount. This writ is, thus, allowed. The petitioner is held entitled to receive his salary for the period of his

suspension from 28.11.1994 to 15.7.1998 after deducting the amount of subsistence allowance paid to him, as also the salary for the period

between 15.7.1998 to 15.10.1999, i.e. between the two dismissal orders in view of the quashing of the dismissal orders and the petitioner shall be

also entitled for the other consequential benefits. The said monetary dues must be paid to the petitioner within a period of three months failing

which the unpaid amount will carry interest at the rate of 10% per annum till the date of actual payment. However, in the circumstances of the case,

there shall be no order as costs.

5. B.P. Pandey, learned senior Counsel appearing for the appellants assailed the impugned judgment passed by the learned single Judge as being

contrary to law, facts and evidence on record. Learned Counsel drawn our attention to Annexure-12 and submitted after the earlier writ

application was allowed and the order of dismissal was quashed, the appellants issued show-cause notice indicating the ground of disagreement

with the Inquiry Report. The Disciplinary Authority assigned the reasons for his disagreement with the Inquiry Report and directed the writ

petitioner to file show-cause. Learned Counsel submitted that pursuant to the aforesaid show-cause notice the writ petitioner submitted reply to the

show-cause wherein he has admitted in paragraph 15 of the show-cause that he also put his signature on the cheques along with Lal Rabindra

Nath Sahdeo, the Development Officer of the Bank. It is contended that the writ petitioner was given opportunity to lead evidence but he did not

choose to adduce any further evidence. On the basis of these evidence on record, the Disciplinary Authority passed the impugned order of

dismissal of the writ petitioner from service. Learned Counsel submitted that these aspects of the matter have not been considered by the learned

single Judge.

6. Mrs. Ritu Kumar, learned Counsel appearing for the writ petitioner (respondent No. 1) on the other hand submitted that writ petitioner was first

put under suspension and after inquiry he was not found guilty and he was allowed to join. Again after few years show-cause notice was issued for

a departmental inquiry. On the basis of Inquiry Report, writ petitioner was again allowed to join and was paid his salary. Thereafter, again after

holding departmental inquiry writ petitioner was dismissed from service and the said order of dismissal was quashed by this Court. Learned

Counsel submitted that writ petitioner never admitted that he misappropriated any amount in connivance with Lal Rabindra Nath Sahdeo. Lastly, it

is submitted that in a departmental proceeding against Lal Rabindra Nath Sahdeo, he alone was found guilty for defalcation of entire amount.

Learned single Judge after considering all aspects of the matter has rightly held that the appellants have failed to prove the charges levelled against

the respondent-writ petitioner.

7. Admittedly, it was only after the respondent-writ petitioner informed the higher officers of the Bank that Lal Rabindra Nath Sahdeo,

Development Officer of the Bank has been misappropriating money by issuing cheques compelling the writ petitioner to sign the cheques, a First

Information Report was lodged with the police. However, since the writ petitioner also signed the cheques, he was put under suspension on

28.11.1994 followed by a show-cause notice. The writ petitioner submitted his explanation which was duly considered by the appellants and the

writ petitioner was allowed to join. Pursuant thereto the writ petitioner joined the Bank on 21.3.1997. But in 1998 again show-cause notice dated''

14.5.1998 was issued by the Deputy Development Officer asking the writ petitioner to show cause as to why he should not be dismissed from

service. Although in the departmental inquiry the writ petitioner was not found guilty of any misappropriation but ignoring the inquiry report writ

petitioner was dismissed from service. The said order of dismissal was challenged by the writ petitioner in CWJC No. 2920/97R and the said

order of dismissal was quashed by judgment dated 10.3.1999. The appellants preferred Letters Patent Appeal being LPA No. 103 of 1999 (R)

but the same was dismissed and the judgment of the learned single Judge was affirmed. The writ petitioner was again allowed to join his duty but

after some time another show-cause notice dated 15.6.1999 was issued by the Administrator of the Bank asking the writ petitioner to explain as to

why his services should not be terminated on account of the above charges. It is pertinent to mention here that first show-cause notice was issued

by the Deputy Development Commissioner of the Bank and on the basis of the inquiry the writ petitioner was dismissed from service. When the

order of dismissal was quashed by this Court, another show-cause notice was issued by the Officer exercising appellate authority and finally show-cause notice resulted in dismissal of the writ petitioner from service.

8. As stated above, learned Counsel for the appellants has drawn our attention to Annexure-13, the show-cause, and submitted that writ petitioner

admitted about misappropriation of money by signing cheques. As a matter of fact, the writ petitioner in the show-cause categorically stated that

each and every cheques bears signature of Lal Rabindra Nath Sahdeo, Development Officer of the Bank and the writ petitioner put his signatures

on these cheques under compulsion. The writ petitioner further stated he recently joined Lohardaga branch and since Lal Rabindra Nath Sahdeo

was a Senior Officer and he had no knowledge about the business of the Bank, he put his signature on the cheques on the instruction of Lal

Rabindra Nath Sahdeo. However, when suspicion came in the mind of the writ petitioner, he immediately pointed out and informed the senior

officers of the Bank and stopped putting signature on any cheque on direction of Lal Rabindra Nath Sahdeo. Besides the above, it has not been

disputed by the learned Counsel for the appellants that in a departmental proceeding against Lal Rabindra Nath Sahdeo, he alone has been found

guilty of defalcation of the entire amount and has been made liable for recovery of total defalcated amount. After considering all these facts, learned

single Judge passed the impugned judgment holding that order of dismissal of the writ petitioner from service is bad in law.

9. We do not find any justification or any reason to differ with the finding recorded by the learned single Judge in the impugned judgment.

However, we are of the view that in the facts and circumstances of the case, the writ petitioner (respondent No. 1 herein) shall not be entitled to

any interest on the amount of salary or other benefits payable to him by the appellants allowed by the learned single Judge.

10. Having regard to the facts of the case and the law discussed herein above, we do not find any merit in this appeal, which is, accordingly,

dismissed with modification indicated hereinabove.

D.G.R. Patnaik, J.

11. I agree.

