

**(1998) 12 PAT CK 0001**

**In the Patna High Court**

**Case No : C.W.J.C. No's. 8857 and 9884 of 1997**

Umesh Prasad Singh

APPELLANT

Vs

Munghyr Kshetriya Gramin Bank and Another

RESPONDENT

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**Date of Decision : 10-12-1998**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (1999) 1 PLJR 282**

**Hon'ble Judges : Radha Mohan Prasad, J**

**Bench : Single Bench**

**Advocate : Anil Kumar Sinha, for the Appellant; Sadanand Jha and Indu Bhushan Singh, for the Respondent**

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## **Judgement**

Radha Mohan Prasad, J.—In the first writ petition (C.W.J.C. No. 8857/97) the prayer is to issue writ of mandamus or any other appropriate writ, order or directions commanding the Respondents to pay all consequential promotional benefits to the Petitioner with effect from 4.12.1987 and to pay the present scale of Senior Manager pursuant to promotion given under the direction of this Court in C.W.J.C. No. 78 of 1989, and in the second writ petition (C.W.J.C. No. 9884/97) the prayer is to quash the order, contained in letter No. HC/VIG/DA/07/97 dated 7.10.1997 (Annexure 5) purporting to suspend the Petitioner in contemplation of a disciplinary proceeding for alleged unauthorised withdrawal of Rs. 1,15,830/-from Sundry Debtor Account of Beldour Branch, which, according to the Respondent-Bank, tantamounts to criminal breach of trust.

2. Since fate of the first writ petition may have some bearing for consideration of the relief sought for in the second writ petition, they have been heard together for final disposal, as agreed, and are being disposed of by this common judgment/order.

3. In short, the relevant facts are that the Petitioner, who joined in Munger Kshetriya Gramin Bank (hereinafter referred to as the "Respondent-Bank") as a Manager in Scale Grade I, on denial of due promotion, moved this Court in

C.W.J.C. No. 781 of 1989 as his juniors were promoted. This Court, vide judgment and order dated 8th January, 1996, contained, in Annexure 1, found that the Petitioner was senior to Respondent No. 8 and was more qualified than him. As such, this Court did not find any justification for denying promotion to the Petitioner in the rank of Area Manager/Senior Manager and, accordingly, allowed the writ petition with a direction to the Respondent-Bank to consider his case vis-a-vis the case of Respondent No. 8 of the said case afresh for promotion with effect from the date the said Respondent was promoted and issue necessary orders within three months of the receipt of a copy of the said judgment.

4. However, it is alleged that the Respondent-Bank wilfully disobeyed the judgment and denied promotion to the Petitioner, whereafter he (Petitioner) preferred contempt application bearing M.J.C. No. 1100 of 1993 before this Court. The Respondents thereafter granted promotion to the Petitioner with effect from 4.12.1987, vide order dated 12.9.1996 (Annexure-2) with clear stipulation that all consequential promotional benefits will be given by the Bank separately.

5. By virtue of the said promotion, the Petitioner started discharging the duties of Senior Branch Manager/Area Manager in Scale Grade II at Beldour Branch and later was transferred to Sangrampur Branch on the same post vide order dated 5.8.1997. However, though he was made to discharge the duties of the said higher post which he performed efficiently but was not being paid the scale applicable to the said post and thereby he was denied of the consequential monetary and material benefits, which, according to the Petitioner, comes to amount Rs. 1,55,000/-. It is stated that the Petitioner made several representations to the authorities demanding the same but no heed was paid which compelled him to file the first writ petition.

6. However, in the meanwhile, the Petitioner in his representation dated 21.6.1997 to the Bank stated that he is in dire need of money as he had to perform the marriage of his daughter. But being desperate with inaction on the part of the Respondent and due to exigency, he withdrew a sum of Rs. 1,15,830/- from the Sundry Debtor account under intimation to the Bank by his letter dated 4.9.1997. The Petitioner made it clear that if the aforesaid withdrawal will not be approved by the Bank authority, he would refund the same with Bank interest to the Bank or the same may be adjusted towards the payments due to him.

7. However, it is alleged that soon after the filing of the first writ petition, the Chairman of the Respondent Bank in order to victimise the Petitioner and as a counterblast for having approached this Court suspended him vide letter No. HO/VIG/DA/07/97 dated 7.10.1997 (Annexure 5 to the second writ petition), the validity of which has been assailed in the second writ petition.

8. Counter affidavits have been filed on behalf of the Respondents in both the writ petitions, in which it is stated that the case of the Petitioner was not unusual

one and, therefore, they have referred the matter to the sponsor Bank for final decision on the question of grant of consequential promotional benefits. It is however, pleaded that in the order of this Court there is no clearcut direction as to the consequential benefits and hence the Respondents in their wisdom referred the matter to the sponsor Bank (UCC. Bank). It is stated that the letter of the sponsor Bank was received in the office of the Respondents on 7.9.1997 and accordingly on 12.9.1997 the writ Petitioner was advised various benefits in terms of the order of promotion. The Petitioner was granted notional promotion with increment with effect from 4.12.1987 and the actual payment on promotional post was extended to him with all increments etc. with effect from 12.9.1996. It is however, contended that the Petitioner without any authorisation as well as authority withdrew Rs. 1,15,830/- from the Sundry Debtor Account of the Bank as if the money of the Bank is his personal property and as such, it is contended that he is not at all entitled to adjustment of the amount embezzled by him on the pretext that consequential promotional benefit is due from 4.12.1987.

9. It is, however not disputed that the Petitioner was entitled for quite substantial amount by way of arrear on account of consequential benefits arising from the judgment of this Court, but it is stated that on receipt of the Petitioner's representation he was informed that appropriate action will be taken only after the clarification from the sponsor Bank. It is alleged that the conduct of the Petitioner is highly reprehensible and a gross misconduct and, accordingly, for his misconduct and criminal breach of trust, he was put under suspension in contemplation of a departmental proceeding and that the letter dated 4.9.1997 cannot justify the illegal act of the Petitioner and on this score alone the writ petitions are fit to be dismissed.

10. Learned Counsel for the Petitioner contended that non-payment of the dues of the Petitioner towards arrears of salary as a consequence of his promotion with effect from 4.12.1987 was wholly unconstitutional, arbitrary, illegal and without jurisdiction besides being mala fide and contrary to the direction of this Court in view of the settled law that even in the case of an employee, in whose case sealed cover procedure was adopted during the pendency of criminal/disciplinary proceeding, on exoneration, cannot be deprived of any benefits, including salary of promotional post.

11. Dr. Jha, learned Counsel appearing for the Bank has not disputed that this Court has found no justification for denying promotion to the Petitioner in the rank of Area Manager/Senior Manager prior to Respondent No. 8 of the said writ case and, accordingly, directed to consider his case vis-a-vis the case of Respondent No. 8 afresh with effect from the date Respondent No. 8 was promoted but he, however, tried to invoke the principle of "no work no pay" which, in my opinion, is not applicable in such case.

12. The Supreme Court in the case of Union of India v. K.V. Jankiraman, reported in AIR 1991 S.C. 2020. while dealing with the case of sealed cover procedure

held that normal rule of "no work no pay" is not applicable to such cases where the employee although is willing to work is kept away from the work by the authority for no fault of his. The Apex Court held that this is not a case where the employee remains away from work for his own reasons, although the work is offered to him. The Supreme Court while not approving last sentence in the first Sub-paragraph after Clause (iii) of paragraph 3 of the Memorandum, viz. "but no arrear of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion" replaced it by the following sentence:

However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.

It is not the case of the Respondents that the Petitioner was in any manner at fault for not holding the higher post of Area Manager/Senior Manager.

Neither there is any rational explanation for not granting promotion to the Petitioner. Dr. Jha placed reliance on a decision of the Apex Court in the case of State of Haryana Vs. R.K. Aggarwal, .

13. In my opinion, the principle laid down therein is not applicable to the facts of the present case.

14. In the case before the Apex Court, there was rational explanation for not granting promotion to the Respondent during the impugned periods. It was because the litigation was pending in relation to inter se seniority of various concerned officers and was, therefore, not clear who would be ultimately promoted.

15. In the present case, the Petitioner assailed the validity of the promotion of Respondent No. 8 in the earlier writ petition on the ground that he was senior and more qualified than Respondent No. 8 and this Court upholding the said contention found no justification to deny him promotion from due date and, accordingly, issued direction.

16. Dr. Jha, learned Counsel appearing for the Bank also tried to support the action of Respondent-Bank by contending that while granting promotion to the Petitioner it was made clear that notional date of promotion from 4.12.1987 was only for the purpose of counting the seniority in the Area Manager/Senior Manager's cadre. As such, according to him, the Petitioner is bound by the said direction and cannot claim salary with effect from 4.12.1987.

17. I am unable to accept the said submission of Dr. Jha. The Supreme Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, which was affirmed in the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , held that when

an employee is asked by the employer to work against a post on certain terms, the employee concerned, by reason of the unequal bargaining position, cannot object to the terms and conditions of service. In fact, the employees are bound to accept whatever terms were offered to them.

18. In view of the said principle, I am unable to accept the said submission on Dr. Jha, learned Counsel appearing for the Respondent-Bank, especially in the light of specific direction of this Court in the writ petition filed by the Petitioner earlier to consider his case vis-a-vis the case on Respondent No. 8 for promotion with effect from the date Respondent No. 8 was promoted. In fact, in my opinion, the action of the Bank in keeping the Petitioner denied of his due payment is wholly arbitrary, mala fide and circumventing the judgment of this Court which amounts to gross contempt.

19. Under such circumstances, in my opinion, the first writ petition is fit to be allowed with heavy cost as against the Respondent-Bank. However, in view of the fact that the Petitioner on account of did need of money to perform the marriage his daughter had withdrawn a sum of Rs. 1,15,830/- from Sundry Debtor Account under intimation to the Bank by his letter dated 4.9.1997, though may not be legally justifiable, I am of the view that the Bank also cannot be held to be wholly justified in placing the Petitioner under suspension in contemplation of a department proceeding for his aforesaid act. Under such circumstances, the Petitioner may also not be awarded heavy costs as against the Respondent-Bank.

20. The Supreme Court repeatedly asked such employer to act as a model employer. In a welfare State where the Government is one of laws not of men, the role of a model employer is not at all compatible with its action in the present case wherein such objections are raised to deny the due of the employee for no fault of his. The Petitioner is being compelled to approach this Court for justice on refusal to get the due from the Bank on mere technicality. Under Article 226 of the Constitution of India, this Court has to act in consonance with the equitable principle as the Apex Court has done it so many times.

21. The Supreme Court in the case of Gurbax Singh Vs. The Financial Commissioner and another, at page 440, has observed as follows:

We feel that while this Court is to administer justice according to law there may be scope for doing justice and equity between the parties. In such a situation we remember what the institutes of Justinian, *De Jusfitia Et Jure*", in "*Liber Primus*" Tit. I said: "*Jus-ticia est constans et perpetua voluntas jus suum cuique tribuendi.*" Justice is the constant and perpetual wish to render every one his due"(emphasis added).

Thus, I am of the view that in the facts and circumstances of this case, in order to do justice, the Respondent Bank should not be allowed to proceed any further pursuant to the order dated 7.10.1997 (Annexure-5 to the second writ case) and get the entire dues of the Petitioner, including the arrears of salary with effect

from 4.12.1987, calculated and if on calculation it is found that there is any excess withdrawal made by the Petitioner from the Sundry Debtor Account of Beldour Branch, then the said amount may be recovered from the Petitioner with interest at the Bank rate. However, in case it is found that any further amount is payable to the Petitioner, then the same shall be paid within a fortnight of the receipt/production of a copy of this judgment/order.

22. The writ petitions, accordingly, stand disposed of.