

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1112 of 2017

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Ravi Shankar Sinha, S/o Anil Kumar Sinha resident of mohalla - Dhaniya
Baghicha, Delha, P.O. Gaya R.S., P.S. Delha, District - Gaya.

... .. Petitioner/s

Versus

1. The State Bank of India
2. The Chairman-cum-Managing Director, State Bank of India, Corporate Centre, State Bank Bhawan, Madam
3. The Deputy General Manager Cum Appellate Authority, Zonal Office, State Bank of India, Bhagalpur.
4. The Regional Manager-cum-Disciplinary Authority, Regional Business Office, State Bank of India, Gay
5. The Chief Manager cum Enquiry Officer, State Bank of India, Local Head Office, Patna.
6. The Presenting Officer, Regional Business Office, State Bank of India, Gaya.
7. The Chief Manager, State Bank of India, Bodh Gaya Branch, Gaya.
8. The Concurrent Auditor, State Bank of India, Bodh Gaya Branch, Gaya.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 1665 of 2017

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Vijay Ram, S/o Late Baraho Ram, Resident of Village- Bhagwanpur, P.O.
Bodh Gaya, P.S. Bodh Gaya, District- Gaya.

... .. Petitioner/s

Versus

1. The State Bank of India
2. The Chairman-cum-Managing Director, State Bank of India, Corporate Centre, State Bank Bhawan, Madam
3. The Deputy General Manager Cum Appellate Authority, Zonal Office, State Bank of India, Bhagalpur.
4. The Regional Manager, Cum Disciplinary Authority, Regional Business Office, State Bank of India, Ga
5. The Chief Manager Cum Enquiry Officer, State Bank of India, Local Head Office, Patna.
6. The Presenting Officer, Regional Business Office, State Bank of India, Gaya.
7. The Chief Manager, State Bank of India, Bodh Gaya Branch, Gaya.
8. The Concurrent Auditor, State Bank of India, Bodh Gaya Branch, Gaya.



... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 1039 of 2017

Nagendra Singh S/o Late Keshari Singh, resident of Govardhan Vihar, P.O. - Chandchoura, P.S. - Vishnupad, District - Gaya.

... .. Petitioner/s

Versus

1. The State Bank of India
2. The Chairman-cum-Managing Director, State Bank of India, Corporate Centre, State Bank Bhawan, Madam
3. The Deputy General Manager Cum Appellate Authority, Zonal Office, State Bank of India, Bhagalpur.
4. The Regional Manager cum Disciplinary Authority, Regional Business Office, State Bank of India, Gay
5. The Chief Manager cum Enquiry Officer, State Bank of India, Local Head Office, Patna.
6. The Presenting Officer, Regional Business Office, State Bank of India, Gaya.
7. The Chief Manager, State Bank of India, Bodh Gaya Branch, Gaya.
8. The Concurrent Auditor, State Bank of India, Bodh Gaya Branch, Gaya.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case Nos. 1112, 1665 and 1039 of 2017)

For the Petitioner/s : Mr.Gautam Kumar Kejriwal
Advocate
Mr. Atal Bihari Pandey
Advocate
Mr. Alok Kumar Jha
Advocate

For the Respondent/s : Mr.Kaushlendra Kumar Sinha
Advocate
Mr. Sanjiv Kumar
Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
CAV JUDGMENT

Date : 01-05-2019



1. All the above writ petitions have been heard together and are being disposed off by this common order.

2. Heard the learned counsel for the petitioners and the Respondent/Bank in all the writ petitions.

3. The petitioners have challenged the orders dated 09.06.2016 passed by the Regional Manager-cum-Disciplinary Authority, Regional Business Office, State Bank of India, Gaya as well as the orders dated 14.11.2016/15.11.2016 respectively, passed by the Deputy General Manager-cum-Appellate Authority, Zonal Office, State Bank of India, Bhagalpur, whereby the petitioners, who had served as Assistants in Bodh Gaya Branch of the State Bank of India, have been removed from service with superannuation benefits as would be due otherwise (under the rules or regulations prevailing at the relevant time) and without disqualification from future employment in terms of paragraph 5(j) of the Memorandum of Settlement dated 10th of April, 2002 for ward staff in bank and the period of suspension to be treated as such i.e. not on duty; which orders of punishment have been upheld and affirmed by the appellate authority respectively.



4. Two of the allegations on which the petitioners were put to departmental proceeding were that while working as Single Window Operators at the counter of Bodh-Gaya Branch of State Bank of India, during the period from 25.08.2014 to 29.04.2014, the petitioners had received cash towards bank commission against receipt of Bihar Government Staff Selection Commission fees/application money. The total amount of commission which was to be deposited into Commission Account was less in varying degrees respectively than what was collected. Hence, it was alleged that the petitioners had misappropriated such amount, which was subsequently deposited by them after they were served with a memorandum in that regard later. The other charge was that since the full amount of commission was not deposited by the petitioners on the same date of receipts, but only later, so the bank was out of such funds for the intervening period. It was, thus, charged against the petitioners that the aforesaid two acts constituted mala fides and breach of trust in performance of duties, which was highly prejudicial to the interest of the bank and it tantamounted to "*Gross Misconduct*" in terms of



paragraph 5(j) of the Memorandum of Settlement dated 10th April, 2002.

5. The aforesaid orders have been challenged primarily on the ground of non-application of mind to the grounds urged; differential treatment having been meted out to them as compared to other employees, namely, Kunal Bhushan and Kumari Megha Gupta who have been let off with minor punishment; and most importantly, the sentences being disproportionate vis a vis the charges levelled against them.

6. It has been submitted on behalf of the petitioners that the procedure involved in passing of *challans* and acceptance of cash from an applicant consisted of a number of stages and there was every likelihood of some of the *challans* having escaped the attention of the petitioners while depositing the amount in the commission account of the bank.

7. It was also averred on behalf of the petitioners that while handling the Single Window Operating System, they were looking at several works and because of heavy volume of work in the Branch, if any lapse was committed, it was immediately rectified and the petitioners ought not to have



been saddled with the maximum punishment for having committed a misconduct.

8. It has further been argued that in cases of other employees, namely, Kunal Bhushan and Kumari Megha Gupta, different / lesser punishment has been given, even though the charges against them as compared to the petitioners are absolutely similar. The appellate authority, it was urged, did not at all advert to the disproportionality of the sentence awarded by the disciplinary authority vis a vis the charge. En passant, learned counsel for the petitioners has also drawn the attention of this Court to various other lapses in conducting the departmental proceeding, suggesting lack of transparency and fairness.

9. As opposed to the aforesaid submissions, learned counsel appearing for the respondent / Bank has defended the orders by arguing that the explanation offered by the petitioners are highly unsatisfactory and that as officers of the bank, their conduct is expected to be absolutely above-board and when the same was found lacking, the punishment of



removal from service given to them, cannot be said to be excessive.

10. It was further argued on behalf of the Bank that the petitioners only deposited the balance amount on being asked to do so and that the cases of Kunal Bhushan and Kumari Megha Gupta are substantially different from the cases of the petitioners and the argument that the sentences not being in parity with the punishment given to the aforesaid two employees is without any substance. Precisely for this reason, the other employees, namely, Kunal Bhushan and Kumari Megha Gupta have only been punished with the lowering of the scale of pay of one year without cumulative effect in terms of Clause 6(e) of the Memorandum of Settlement dated 10.04.2002 for Workman Staff. Even the quantum of money which was not deposited by the aforesaid two employees was much less.

11. The learned counsel appearing for the respondent/Bank further laid stress on Clause 5(j) of the Bipartite Settlement dated 10.04.2002, which defines "gross misconduct" as follows:



"doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss".

12. Since the bank was kept out of the aforesaid amount, which was deposited by the petitioners only later and there was a possibility of recurrence of this kind of lapse, it was urged that the petitioners were rightly removed from service.

13. It was lastly argued that if at all the petitioners are aggrieved by the order of punishment, they could well approach the Labour Court as they, by the dispensation of their work, are workmen and the Bank is an industrial undertaking under the Industrial Development Act, 1947.

14. Since the petitioners are workmen within the meaning of Section 2(s) and the Bank being an industrial undertaking as defined under Section 2(J) and dispute being in the nature of an industrial dispute, which has been defined under Section 2(k) of the Industrial Disputes Act, 1947 respectively, the petitioners are required to exhaust their remedies before the Labour Court/Tribunal, which is an efficacious remedy for such workmen. While saying so, this



Court has also considered that it is not such a case where writ petition can be entertained straight after the disciplinary proceeding.

15. Without referring to the merits of the contentions raised on behalf of the parties, this Court directs the petitioners to exhaust the alternative remedy available to them under the Industrial Disputes Act, 147.

16. With the aforesaid observation/direction, these writ petitions stand disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
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