

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18853 of 2012

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Rabindra Nath Shukla S/O Late Rajkishore Shukla R/O Village- Chainpur, P.O.-Damodarpur,
P.S.-Patahi, District- Muzaffarpur

..... Petitioner/s

Versus

1. The Uttar Bihar Gramin Bank.
2. The Chairman The Uttar Bihar Gramin Bank, H.O.- Kalambag Road,
Muzaffarpur.
3. The General Manager The Uttar Bihar Gramin Bank, H.O.- Kalambag Road,
Muzaffarpur.
4. The Senior Manager Establishment The Uttar Bihar Gramin Bank, H.O.-
Kalambag Road, Muzaffarpur.
5. The Disciplinary Authority Uttar Bihar Gramin Bank, H.O.- Kalambag
Road, Muzaffarpur.

..... Respondent/s

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*Persons with Disabilities Act, 1995—petitioner was patient of Bipolar Disorder Hypo-mania
—Mental Hospital issued certificate of fitness in the year 1999—petitioner had resumed his
duty; and in spite of mental health and bipolar disorder hypo-mania attack, petitioner was
served with a punishment order—Disciplinary proceedings are discriminatory and violative
of principles of the right of persons with disability act, 2016—section 47—first disciplinary
proceeding was initiated against the petitioner in the year 1997; second in the year 2011—
Section 47 protects disabled employees from punitive action on the ground of disability—
impugned orders set aside and quashed—writ petition disposed off with direction.*

(Paras 12, 13, 14, 16 and 19)

*(2021) 15 SCC 125; (2023) 2 SCC 209; (2003) 4 SCC 524; (2001) 8 SCC 397—Relied upon.
Maxim—generalia specialibus non derogant—specific law prevails over a general law in
case of conflict.*

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... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Shashi Bhushan Kumar Manglam, Advocate
For the Respondent Bank: Mr.Prabhakar Jha, Advocate
: Mr. Amitesh Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 14-05-2024

Heard Mr. Shashi Bhushan Kumar Manglam,

learned Counsel appearing on behalf of the petitioner and Mr.

Prabhakar Jha along with Mr. Amitesh Jha, appearing on behalf

of the respondent/s.

2. This Court is not carried by the pleadings made

in the writ petition or in the counter affidavit. The petitioner is

suffering from mental illness, which was detected in medical

terms as Bipolar Disorder Hypo-mania. The petitioner was

treated at the Mental Hospital, Kanke and fitness certificate was

issued on 30.06.1999, giving details that petitioner was admitted



on 14.06.1999 for his mental status examination and treatment. The petitioner was discharged from hospital, having been found to resume his duties by the Medical Superintendent, RINPAS, who had certified to that extent by certificate no. C83 dated 30.06.1999. The said fact was considered in earlier round of litigation, which came to an end by the final order dated 26.11.2010 passed by a co-ordinate Bench of this Court in CWJC No.1787 of 2004. In the said order, this Court has taken into consideration the entire mental condition of the petitioner and had passed following orders:-

“Heard learned counsel for the petitioner and the counsel for the Vaishali Kshetriya Gramin Bank, which is presently named as Uttar Bihar Gramin Bank(hereinafter referred to as the Bank).

2. Petitioner at the relevant time served as Branch Manager in one of the branches of the Bank. He is aggrieved by the order dated 25.2.2003 Annexure-19 passed by the Chairman cum disciplinary authority, whereunder his five increments have been withheld pursuant to charge sheet dated 3.6.2002, Annexure-A to the counter affidavit. He is also aggrieved by the order dated 31.12.2003, Annexure-21, whereunder appeal filed by the petitioner against the punishment order dated 25.2.2003 has been rejected by the Board of Directors of the Bank, which has been communicated to the petitioner by the Chairman of the Bank under letter dated 31.12.2003. Perusal of chargesheet dated 3.6.2002, Annexure-A indicates that petitioner is alleged to have committed various acts of indiscipline on different occasions between 26.2.1997 to 27.10.2001. The details of the incidents have been narrated in the chargesheet.

3. The Enquiry Officer having examined the allegations with reference to material exhibit nos. 4 to 43, the complaints made by the functionaries of the Bank under report dated 30.11.2002, Annexure-17 found charge nos. 1, 3 and 4 proved and charge no. 2 partly proved. In this



connection, he also considered the statement of the senior officers of the Bank, namely M/s. B.P. Singh, S.N. Singh and A.K. Jha. Petitioner disputed the allegations made in the chargesheet and the findings recorded in the enquiry report on the ground that during the period between 26.2.1997 till 27.10.2001 he was under severe mental strain leading to his insanity and the said fact was also known to the authorities of the Bank. In appreciation of the mental condition of the petitioner he was even referred to the mental hospital for treatment and the treatment continued for the period between 6.10.1997 till 30.6.1999 and the acts of indiscipline alleged against the petitioner is on account of mental strain and disorder for which he was treated at Mental Hospital, Kanke, Ranchi after he was diagnosed to have been suffering from mental illness, pursuant to reference made to the Medical Board by the General Manager of the Bank under letter dated 6.10.1997, Annexure-3 where from he was discharged by the Medical Superintendent, Ranchi Institute of Neuro Psychiatry and Allied Science, Kanke under certificate dated 30.6.1999, Annexure-8. In this connection, learned counsel for the petitioner has also invited my attention to the resignation letter submitted by the petitioner dated 10.9.2001, Annexure-12 which was subsequently withdrawn. It is submitted that the act of submitting resignation letter was also under mental strain.4. This court without going into the correctness or otherwise of the submission of the petitioner about his mental condition, is disposing of this writ petition directing the petitioner to invite the attention of the competent authority of the Bank about his mental condition during the period he is alleged to have committed acts of indiscipline and if the authorities of the Bank are satisfied that petitioner was suffering from mental strain and disorder leading to or bordering insanity, the authorities may pass appropriate orders recalling the punishment imposed on the petitioner. Appropriate order in the light of this order be passed by the competent authority of the Bank, as early as possible, in any case before superannuation of the petitioner, which is scheduled to take place in January, 2012.”

3. The order has been brought on record by way of Annexure-19 to the writ petition. It is admitted fact that the charge-sheet dated 03.06.2002 relates to period 1997 to 2001, admittedly during which period the petitioner was suffering



from mental disorder and he was admitted in hospital on 14.06.1999 and thereafter, he was found fit to join his duty, with an advice to continue his medicines. The pleadings, as well as, the records do not reveal whether at any point of time after he was found to be fit to resume his office as would appear from the certificate dated 30.06.1999, the respondents had complained that the petitioner showed certain unsound mental behaviour and being unaware of health of the petitioner, a chargesheet was submitted on 03.06.2012, which is against the spirit of the order dated 16.11.2010. The respondents have proceeded departmentally against the petitioner without considering the mental status of the petitioner, by again issuing charge-sheet on 01.10.2011 and never considered to refer the petitioner for preliminary medical examination, considering his mental illness and his past reports. The petitioner appears to be not in a position to explain his mental suffering, nor there is any consideration that this aspect of the matter was taken into consideration by the Disciplinary Authority.

4. This Court is not in a position to draw any conclusion with regard to mental illness of the petitioner in absence of any recent medical report or any other report other than report dated 30.06.1999, but one thing is clear from the



certificate dated 30.06.1999 granted by the Medical Superintendent RINPAS, Kanke, Ranchi, shows that a person who is suffering from mental illness particularly Bipolar Disorder Hypo-mania, if continues with medicine, can lead a normal life.

5. The medical researchers throughout the world have found that “Hypomania is a condition in which you display a revved up energy or activity level, mood or behavior. The new “energized you” is recognized by others as beyond your usual self. Hypomania is a less severe form of mania, and both are commonly part of bipolar disorder. Treatments include psychotherapy, medication and self-care strategies.”

6. Bipolar disorder is a mood disorder that can cause intense mood swings. “Sometimes you may feel extremely "up," elated, irritable, or energized. This is called a manic episode. Other times you may feel "down," sad, indifferent, or hopeless. This is called a depressive episode. You may have both manic and depressive symptoms together. This is called a mixed episode. Along with mood swings, bipolar disorder causes changes in behavior, energy levels, and activity levels. Bipolar disorder used to be called other names, including manic depression and manic-depressive disorder.”



7. There are three main types of bipolar disorder, which are as under:

(I) Bipolar I disorder involves manic episodes that last at least 7 days or manic symptoms so severe that patients need immediate hospital care. Depressive episodes are also common. Those often last at least two weeks. This type of bipolar disorder can also involve mixed episodes.

(ii) Bipolar II disorder involves depressive episodes. But instead of full-blown manic episodes, there are episodes of hypomania. Hypomania is a less severe version of mania.

(iii) Cyclothymic disorder, or cyclothymia, also involves hypomanic and depressive symptoms. But they are not as intense or as long-lasting as hypomanic or depressive episodes. The symptoms usually last for at least two years in adults and for one year in children and teenagers. With any of these types, having four or more episodes of mania or depression in a year is called “rapid cycling”.

8. The exact cause of bipolar disorder is unknown. Several factors likely play a role in the disorder. They include genetics, brain structure and function, and your environment. The symptoms of a manic episode can include feeling very up,



high, or elated; feeling jumpy or wired, more active than usual; having a very short temper or seeming extremely irritable; having racing thoughts and talking very fast; needing less sleep; feeling like you are unusually important, talented, or powerful; do risky things that show poor judgment, such as eating and drinking too much and spending or giving away a lot of money, or having reckless sex.

9. The symptoms of a depressive episode can include, “feeling very sad, hopeless, or worthless; feeling lonely or isolating yourself from others; talking very slowly, feeling like you have nothing to say, or forgetting a lot; having little energy, sleeping too much; eating too much or too little; lack of interest in your usual activities and being unable to do even simple things and thinking about death or suicide.”

10. The symptoms of a mixed episode include both manic and depressive symptoms together. For example, patients may feel very sad, empty, or hopeless, while at the same time feeling extremely energized.

11. Treatment can help many people, including those with the most severe forms of bipolar disorder. The main treatments for bipolar disorder include medicines, psychotherapy, or both. Medicines can help control the



symptoms of bipolar disorder. Patients may need to try several different medicines to find which one works best for them. Some people need to take more than one medicine. It's important to take the medicine consistently. Patients should not stop taking it without first talking with their provider. Contact the provider if the patients have any concerns about side effects from the medicines. Psychotherapy (talk therapy) can help the patients to recognize and change troubling emotions, thoughts, and behaviors. It can give patients and their family support, education, skills, and coping strategies. There are several different types of psychotherapy that may help with bipolar disorder. Other treatment options include: “Electroconvulsive therapy (ECT), a brain stimulation procedure that can help relieve symptoms. It uses a mild electric current and is done while patients are under general anesthesia. ECT is most often used for severe bipolar disorder that is not getting better with other treatments. It may also be used when someone needs a treatment that will work more quickly than medicines. This might be when a person has a high risk of suicide or is catatonic (unresponsive); Repetitive transcranial magnetic stimulation (rTMS), a brain stimulation procedure that uses magnetic waves to relieve depression. It is not as powerful as ECT, but with



rTMS, patients don't need general anesthesia. It also has a low risk of negative effects on the memory and thinking; Light therapy has been shown to be effective for seasonal effective disorder (SAD). Many people with bipolar disorder also find that their depression gets worse during certain seasons, usually in the fall and winter. Light therapy may help with their symptoms and Healthy lifestyle changes, such as getting regular exercise, having a consistent sleep schedule, and keeping a mood journal, can also help with your symptoms. Bipolar disorder is a lifelong illness. But long-term, ongoing treatment can help to manage the patients symptoms and enable them to live a healthy, successful life.”

12. Admittedly, in the present case, the petitioner had resumed his duty and in spite of detecting erratic mental behaviour due to his unsound mental health and Bipolar Disorder Hypo-mania attack, he was served with a punishment order. I find that the Disciplinary Authority has committed illegality firstly for the reason that they have not complied with the direction of this Court contained in order dated 26.11.2010, passed in CWJC No.1787 of 2004 and secondly, there is no finding or any evidence on record to show that they have proceeded to initiate a second Departmental Proceeding, on



altogether different charges, as would appear from Memo No.582 dated 01.10.2011, having found the petitioner to be normal condition and had not shown any erratic behaviour. Non-consideration of the petitioner's mental condition in spite having found that the petitioner has been suffering from mental disorder bipolar hypomania, was not required to be proceeded departmentally in accordance with provisions of RPwD Act, 1995.

13. The Apex Court in case of ***Ravinder Kumar Dhariwal and another Versus Union of India and Others, reported in (2023) 2 Supreme Court Cases 209***, faced with the similar situation, where a person suffering from mental disability was subjected to the disciplinary proceeding, has held that the proceedings are discriminatory and violative of principle of the Rights of Persons with Disability Act (hereinafter referred to as the "RPwD Act"). The Apex Court has held as follows in paragraph nos.148.2 and 149 of the ***Ravinder Kumar Dhariwal (Supra)***.

148.2. The mental disability of a person need not be the sole cause of the misconduct that led to the initiation of the disciplinary proceeding. Any residual control that persons with mental disabilities have over their conduct merely diminishes the extent to which the disability contributed to the conduct. The mental disability impairs the ability of persons to comply with



workplace standards in comparison to their able-bodied counterparts. Such persons suffer a disproportionate disadvantage due to the impairment and are more likely to be subjected to disciplinary proceedings. Thus, the initiation of disciplinary proceedings against persons with mental disabilities is a facet of indirect discrimination.

149. The disciplinary proceedings against the appellant relating to the first enquiry are set aside. The appellant is also entitled to the protection of Section 20(4) of the RPwD Act in the event he is found unsuitable for his current employment duty. While re-assigning the appellant to an alternate post, should it become necessary, his pay, emoluments and conditions of service must be protected. The authorities will be at liberty to ensure that the assignment to an alternate post does not involve the use of or control over firearms or equipment which may pose a danger to the appellant or others in or around the workplace.”

14. The Hon’ble Supreme Court has set aside the order of penalty. The facts of the present case are also similar as of ***Ravinder Kumar Dhariwal (Supra)*** to the extent that the petitioner was served with first charge memo in the year 1997 and the case of the petitioner without considering the provision of Section 47 of the Rights of Persons with Disability Act, being a special legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine of *generalia specialibus non derogant* would apply, hence, the



service conditions Rules cannot override Section 47 of the Act. Further Section 72 of the Act also supports the case of the petitioner. The said clarification has been laid down by the Apex Court in case of ***Kunal Singh Versus Union of India and Another***, reported in ***(2003) 4 Supreme Court Cases, 524*** and in this regard paragraph no.11 of the said judgment is reproduced hereinafter:-

“11. We have to notice one more aspect in relation to the appellant getting invalidity pension as per Rule 38 of the CCS Pension Rules. The Act is a special legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine of generalia specialibus non derogant would apply. Hence Rule 38 of the Central Civil Services (Pension) Rules cannot override Section 47 of the Act. Further, Section 72 of the Act also supports the case of the appellant, which reads:

“72. Act to be in addition to and not in derogation of any other law.—The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefit of persons with disabilities.”

15. As I have observed that the first disciplinary proceeding was initiated against the petitioner in the year 1997,



second in the year 2011 and the writ petition has remained pending since the year 2012, the question arises, as to whether, the case of the petitioner in view of Section 47 of the RPwD Act, 1995, can have its effect, after coming into effect of RPwD Act, 2016 and in view of Section 6 of General Clause Act, the case of the petitioner will be guided by the old enactment?

16. The Apex Court in the case of ***Ravinder Kumar Dhariwal (Supra)*** has discussed the changing legal resume and continuing quest for justice in paragraphs no.18 to 32. While discussing with the facts of the said case in paragraph no.22, the Apex Court has observed that Section 47 states that no employee working in a government establishment, who acquires a disability during the course of service shall be (i) terminated from employment; (ii) reduced in rank; or (iii) denied promotion. Section 47 protects disabled employees from punitive actions on the ground of disability. The Apex Court also clarifies that the general rule of interpretation is that a newly enacted statute has prospective application. Section 6 of General Clauses Act provides an exception to this Rule, where a pending legal proceeding or investigation would be guided by the old enactment, if any, right, privilege, obligation or liability' has accrued to the parties under the repealed law. Exemplifying the



said situation, as of in the present case, the Apex Court has relied upon the law laid down in the case of ***M/S. Ambalal Sarabhai Enterprises Ltd.Vs. M/S. Amrit Lal & Co. & Anr***, reported in (2001) 8 SCC 397. The observation made in paragraphs no. 23 to 24 of ***Ravinder Kumar Dhariwal (Supra)*** would be relevant in this regard, which are reproduced hereinafter:-

“23. In Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co. [Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co., (2001) 8 SCC 397] , the issue before a two-Judge Bench of this Court was whether the Court of Rent Controller constituted under the Delhi Rent Control Act, 1958, or the ordinary civil court would have the jurisdiction to decide the eviction proceedings instituted by the landlord against the tenant. Section 3 was amended to exclude tenancies whose monthly income exceeded Rs 3500 from the application of the Delhi Rent Control Act. In that case, the monthly rent was Rs 8625. The eviction petition was filed by the landlord in 1985 before the amendment of Section 3. While the petition was pending, Section 3 was amended, which excluded such tenancies from the purview of the Act. The High Court had held that in view of the amendment, only the ordinary civil court and not the Rent Controller would have jurisdiction over the eviction proceedings. The tenant contended that since the tenant did not possess any vested right under the Act before the amendment came into force, the Rent Controller would not have jurisdiction. The landlord contended that even if the tenant did not possess any vested right, the landlord possessed a vested right, and that in view of Section 6 of GCA, the pending proceedings should continue under the



pre-amended Rent Control Act. This Court held that the tenant did not have any vested right under the Act. Furthermore, the Court also held that the landlord does not have an accrued “right” under Section 14 of the Delhi Rent Control Act. Section 14 of the Delhi Rent Control Act provides a general protective right to the tenant against eviction. The proviso to Section 14 lists specific grounds on which the tenant could be evicted.

24. The Court held that since Section 14 is a protective right conferred upon the tenant, it cannot be construed to provide a right to the landlord. In this context, it was observed : (Ambalal Sarabhai Enterprises case [Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co., (2001) 8 SCC 397] , SCC p. 409, para 22)

“22. ... The right which is sought to be inferred as vested right is only under its proviso. Proviso cannot enlarge the main section. When the main section is only a protective right of a tenant, various clauses of its proviso cannot be construed as it gives a vested right to a landlord. The right, if at all could be said of the landlord, flows only under the protective tenant's umbrella which cannot be enlarged into a vested right of a landlord.”

However, it was observed that Section 14 provides a “privilege” to the landlord, and if the privilege has been accrued or acquired as required under Section 6 of GCA, then the Rent Controller would retain the jurisdiction to decide the proceedings. It was held that on the filing of the eviction petition, the privilege accrued to the landlord in view of Section 6(c) of the GCA, and the pending proceeding was saved.

17. The petitioner, faced with the disciplinary action against him, had filed CWJC No.1787 of 2004 before this Court, however, he had not taken the settle legal proposition that



in view of Section 47 of RPwD Act which has overriding effect over the Civil Services Conduct Rules. No conscious statement or information in regard to the petitioner, who is suffering from bipolar mental disorder and that he was not required to be proceeded in accordance with the provision of CCA Rules of the Bank, therefore, no consideration was given by this Court, while passing order dated 26.11.2010 to the said effect.

18. The Apex Court dealing with the provisions of Section 2(h) of the RPwD Act, which defines discrimination, has held as follows in paragraph no.56 of the ***Ravinder Kumar Dhariwal (Supra)***:

“56. Section 3 of the RPwD Act states that persons with disabilities must not be discriminated against on the ground of disability, and the appropriate Government shall ensure that persons with disability enjoy the right to live with dignity. Section 2(h) of the RPwD Act defines “discrimination” as follows:

“2. (h) “discrimination” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;”

19. Mental disability and discrimination has been dealt in paragraph no. 59 of the said judgment. It has been observed by



the Apex Court in the said judgment that to escape stigma and discrimination, persons with mental health issues painstakingly attempt to hide their illnesses from co-workers and managers. Disclosure of mental health status carries with it the possibility of being demoted, laid off, or being harassed by co-workers. Resultantly, persons with mental health disorders deprive themselves of workplace assistance and effective treatments that can improve their mental health. The Apex Court had proceeded to discuss the stigmatization of mental health disorder and societal discrimination in paragraph no.81 and India being signatory to CRPD, which is an International Human Right Treaty of United Nation, intends to promote, protect and ensure the full and equal enjoyment of human rights and fundamental freedoms by all persons with disabilities. Taking note of the provisions of CRPD in paragraph no.84 to 90, the Apex Court has finally concluded in paragraph no.91 that discourse needs to expand to fundamental issues of housing, education, support, and employment. The present case is one such opportunity. To conclude that disciplinary proceeding can constitute discrimination against person disability, Section 47 comes into play in relation to right of a person with mental disability against employment discrimination. The Apex Court



in the said judgment after discussing at length the Act of different countries has finally made analysis that Article 15 of the Constitution of India states that State shall not discriminate against any citizen on grounds only of religion, race, castes, sex, place of birth or any of them and indirect discrimination, as has been recognized by in the case of *Nitisha Vs. Union of India (2021) 15 SCC 125*, in which case, the conception of substantive equality that prevents the international and Indian disability right regime held that disciplinary proceeding against the appellant of the said case to be discriminatory and must be set aside.

20. Similarly in the present facts and circumstances of the case and in view of the law laid down by the Apex Court, I find that that the impugned order dated 23.01.2012, passed by the Chairman, the Uttar Bihar Gramin Bank and the appellate order dated 25.07.2012, passed by Board of Directors cannot be sustained in eye of law and accordingly the same are set aside and quashed.

21. I find that the Bank which comes within the meaning of State as per the mandate of Article 12 of the Constitution, being the employer must make its disciplinary authorities aware with regard to the International Human Right



Treaty of the United Nations and the provisions of CRPD and the legislation in this regard, leading to enactment of RPwD Act, 1995, as amended and after its repeal by RPwD Act, 2016 must not take any disciplinary action against the employee, who suffers from mental illness as the present petitioner, rather give sympathetic consideration by providing specialized treatment from time to time after having reported the erratic behaviour of the employee. The respondents are directed to consider first to get the petitioner mentally examined by any super-specialty hospital in the State or anywhere in the country and provide adequate help to the petitioner, even he may have superannuated as on date.

22. The writ petition filed by the petitioner, being misconceived, this Court has not taken consideration of the pleading made either in the writ petition or in the counter affidavit.

23. With aforesaid observation and direction, the writ petition stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.05.2024
Transmission Date	NA

