

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1024 of 2019

In

Civil Writ Jurisdiction Case No.2806 of 2004

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1. Deputy General Manager Bank of India, Patna Zone, Chanakya Place, Birchand Patel Path, Patna- 800001.
2. Zonal Manager, Bank of India, Bhagalpur Zone, Adampur Chowk, Bhagalpur.

... ... Appellant/s

Versus

1. Savitri Devi Wife of Late Dineshwar Prasad Resident of Village- Kumardi, P.S.- Makdumpur in the District of Jehanabad.
2. Pankaj Kumar Son of Late Dineshwar Prasad Resident of Village- Kumardi, P.S.- Makdumpur in the District of Jehanabad.

... ... Respondent/s

=====

Service Law—Punishment—original writ-petitioner confessed his guilt regarding withdrawal of amount on the basis of withdrawal slip—original writ-petitioner also confessed that he altered the date of withdrawal; and in order to destroy the evidence he also tore off the page of the supplementary book on which the entries are made had been tampered—original writ-petitioner retracted from earlier confession that he has not committed any offence rather his confession admitting guilt has been taken under duress, coercion and threat—report of inquiry officer as well as order of punishment is based on the material available on record and inquiry is held according to the procedure prescribed and there is no lacunas in the inquiry—impugned order set aside—LPA allowed.

(Paras 7, 8, 11)

(2021) 11 SCC 321—Relied Upon.

CWJC No. 2806/2004—Set Aside.

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Appearance :

For the Appellant/s

:

Mr. Ajay Kumar Sinha, Sr. Adv.
Mr. Ajit Kumar Sinha, Adv.
Miss. Dilkash Khan, Adv.

For the Respondent/s

:

Mr.Sanjay Parasmani, Adv.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 03-07-2024

The present appeal is directed against the judgment dated 14.08.2018 passed by learned Single Judge in CWJC No. 2806 of 2004 whereby the learned Single Judge has quashed the report of Inquiry Officer dated 15.11.2001, order of punishment dated 20.12.2001 as well as appellate order dated 18.04.2002.

2. Briefly stated facts of the present LPA is that original writ-petitioner/late Dineshwar Prasad withdrew a sum of Rs. 15,000/- on 05.03.2001 from the account of Sri Keshav



Prasad Suman on the basis of withdrawal slip. It is further alleged that he also altered the date of withdrawal from 15.02.2001 to 05.03.2001. It is further alleged that in order to destroy the evidence the original writ-petitioner tore off the page no. 143 of the supplementary book on which the entries of 15.02.2001/16.02.2001 had been tampered.

3. Departmental inquiry was conducted against the original writ-petitioner and the inquiry officer had submitted inquiry report dated 15.11.2001. An opportunity was also given to the original writ-petitioner to defend himself. The inquiry officer found the charges to have been proved against the original writ-petitioner. Thereafter, second show cause notice was served upon him, thereafter order of punishment dismissing the original writ-petitioner from his service was passed on 20.12.2001 which was affirmed by the appellate authority.

4. During pendency of the writ petition, original writ-petitioner died and in his place, his wife and son have been substituted. The learned Single Judge allowed the writ petition and quashed the finding of inquiry officer being based on extraneous material. Consequently, order of disciplinary authority and order of appellate authority have also been quashed. Being aggrieved by the aforesaid order of learned



Single Judge the appellants have preferred the present LPA.

5. Learned counsel for the appellants submitted that finding in departmental inquiry is required to be proved on preponderance of probability not beyond reasonable doubt and finding of inquiry officer is based in accordance with the principle of natural justice giving fullest opportunity to the original writ-petitioner to defend himself and there is no procedural irregularity in conducting the departmental proceeding. Learned counsel further submitted that penalty imposed upon the original writ-petitioner is not disproportionate to the charges proved against him. Learned counsel further submitted that original writ-petitioner confessed his guilt regarding withdrawal of Rs. 15,000/-. He also confessed that he made over-writing on withdrawal slip. Learned counsel further submitted that being a clerk of the Bank he has to direct control over the relevant documents and he was accountable for the lapses on the principle of preponderance.

6. Learned counsel for the respondents submitted that impugned judgment of learned Single Judge is justified and legal as the finding of inquiry officer is based on extraneous material. Learned counsel further submitted that confession of original writ petitioner has no scope in the eye of law as the



same has not been given voluntarily rather it was made on the basis of duress.

7. The business of Bank is based upon trust and the original writ-petitioner is the employee of Bank who has to bear the responsibility how to perform the duty of utmost trust of the public. If any tampering has been made in the document he should have informed his superior authority under the given facts and circumstances of the case.

8. From perusal of the record it is found that original writ-petitioner confessed his guilt on 11.04.2001 regarding withdrawal of Rs. 15,000/- on 05.03.2001 from the account of Sri Keshav Prasad Suman on the basis of withdrawal slip. He also confessed that he altered the date of withdrawal from 15.02.2001 to 05.03.2001 and in order to destroy the evidence he also tore off the page no. 143 of the supplementary book on which the entries of 15.02.2001/16.02.2001 had been tampered. If it is presumed that his confession was taken on account of duress, he must have made his grievance to the superior authority immediately after recording the confession to the extent that his confession was made under duress. On 06.11.2001 the original writ-petitioner retracted from earlier confession that he has not committed any offence rather his



confession admitting guilt has been taken under duress, coercion and threat. On the said score, only conclusion can be inferred from the act of original writ-petitioner that subsequent conduct is nothing but afterthought.

9. It is necessary to quote the judicial pronouncement of Hon'ble Supreme Court in the case of ***Union of India and Others vs. Dalbir Singh*** reported in (2021) 11 SCC 321 where the Hon'ble Supreme Court at para 21 held as under:-

21. This Court in Union of India v. P. Gunasekaran had laid down the broad parameters for the exercise of jurisdiction of judicial review. The Court held as under:

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;



(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

In the said judgment, it is settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and



credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor textbooks, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good.

10. In the light of discussions of judicial pronouncements of Hon'ble Supreme Court, we have to look into the probability as to guilt is proved against the delinquent employee or not.

11. In the light of discussions made above, it is clear that report of inquiry officer as well as order of punishment is based on the material available on record and inquiry is held according to the procedure prescribed and there is no lacunas in the inquiry. Hence, appellants have made out a case so as to interfere with the order dated 14.08.2018 passed by



learned Single Judge in CWJC No. 2806 of 2004.

12. Accordingly, order dated 14.08.2018 passed by
learned Single Judge in CWJC No. 2806 of 2004 is set aside
and the present LPA stands allowed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

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