

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12297 of 2014

Sachchida Nand Sahay S/o Late Daya Nand Prasad Resident of Mohalla-
Mahboob Khan Tola, Near Kali Asthan Punam Bhawan, Police Station-
Khazanchi Hat, Post Office and District- Purnea, Pin Code- 854301 at present
Scale-1 Officer Uttar Bihar Gramin Bank, Ban mankhi Branch, Distt- Purnea.

... .. Petitioner/s

Versus

1. The Chairman, Uttar Bihar Gramin Bank, Head Office, Sharma Complex,
Kalambagh Chowk, Muzaffarpur – 842001.
2. The General Manager, Uttar Bihar Gramin Bank, Head Office, Sharma
Complex, Kalambagh Chowk, Muzaffa
3. The Regional Manager, Uttar Bihar Gramin Bank, Regional Office, Purnea
Region, Koshi Colony, Shrina
4. Mr. R.K. Jha, Ex Branch Manager, Uttar Bihar Gramin Bank, Banmankhi,
Purnea, P.O. District- Purnea
5. Mr. Abhay Kumar Chand, Scale-1, Officer Uttar Bihar Gramin Bank
Banmankhi A/p deputed at Regional
6. Presenting Officer of U.B.G. Bank of Department Enquiry, Mr. Subodh
Prasad Suman, Scale- II, Office

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Santosh Kumar Sinha – 2, Advocate
Mr. Uttam Kumar Mishra, Advocate
For the Respondent/s : Mr. Prashant Vedasen, Advocate
Mr. Pawan Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 01-09-2022

Heard learned counsels for the respective parties.

2. In the instant petition, petitioner has prayed for the
following relief/reliefs:

“That this is an application for issuance of writ
/ writs, order / orders, direction / directions to respondent



no. 1 to pay the amount of post retirement benefits i.e. gratuity, Leave Encashment and retirement momento etc. after quashing the alleged Memorandum and charges issued by respondent no. 1, vide his memo No. HO/DAD/07/13-14/No. 216 dated 29.06.2013, 217 dt. 29.6.2013 and HO/DAD/07/14-15/No. 111 dated 28.05.2014 contained in Annexure-1, 2 and 10, E-Mail copy received by the petitioner in the afternoon of 25.06.2014 leveling second memorandum and chargesheet, after completion of Ist departmental proceedings which is everlasting story. In this way the petitioner is being unnecessarily harassed by the Respondents only with a view to delay the payment of retiral dues alongwith statutory and penal interest @ 12% per annum.”

3. The petitioner while working as Branch Manager was subjected to disciplinary proceedings in issuance of charge memo on 29.06.2013 and 28.05.2014. The petitioner submitted his explanation on 22.08.2013. It was not satisfied by the disciplinary authority. Thus, the disciplinary authority proceeded to hold an inquiry. The inquiring officer held that charges levelled against petitioner were proved. On receipt of inquiring officer's report, disciplinary authority proceeded to issue second show cause notice along with inquiring officer's report. However, counsel for the petitioner submitted that no second show cause notice was served. On the other hand, inquiring officer's report was served along with



the dismissal order on 22.10.2014 and it was communicated through special messenger on 11.11.2014 *vide* Annexure - 23 to I.A. No. 3 of 2019. Petitioner preferred appeal on 22.12.2014 and it was rejected on 05.06.2014. Hence the present petition.

4. Learned counsel for the petitioner submitted that petitioner has attained age of superannuation and retired from service on 29.06.2013. Once an employee or officer of the respondent – Bank attained age of superannuation and retired from service during pendency of the departmental inquiry, disciplinary authority is not empowered to impose penalty under service Regulation No. 39. Therefore, imposition of penalty of dismissal from service under Regulation 39 - (b) Major Penalties “(v) *dismissal which shall ordinarily be a disqualification for future employment.*” is incorrect. It is further submitted that copy of the inquiring officer’s report was made available to the petitioner along with the order of dismissal dated 22.10.2014 whereby the petitioner has been denied opportunity of submitting his say on the inquiring officer’s report.

5. Learned counsel for the petitioner submitted that imposition of penalty of dismissal against retired employee is impermissible for the reasons that Regulation 2010 is not applicable to such of those retired employees so as to invoke



Regulation No. 39 of Regulation 2010 in imposing the penalty of dismissal from service.

6. On 04.08.2022 this Court passed the following order:

“One of the question for consideration in the present petition is whether an employee/officer who has attained age of superannuation and retired from service could be punished while imposing the penalty of dismissal from service or not?

Perusal of Regulation called “*Uttar Bihar Gramin Bank (Officers and Employees) Service Regulation, 2010*”, Item No. 1 (3) relating to applicability of Regulation, 2010 which reads as under: -

“(3) They shall apply to every officer and employee of the Bank:

Provided that they shall not apply except as otherwise provided in these regulations or to such extent as may be specifically or generally specified by the board to,-”

Further Regulation No. 45 of Regulations, 2010 provides for continuation of disciplinary enquiry against retired official. If he is under suspension in that event master and servant relationship would continue. If he is not under suspension in that event relationship of master and servant ceases in terms of Regulation No. 45 (3).

In the light of these provisions, the disciplinary authority is hereby directed to apprise this Court by filing affidavit as to whether against retired employee penalty of dismissal is permissible or not?



Re-list this matter on 01.09.2022.”

7. Today learned counsel for the respondents filed affidavit on behalf of respondent – Bank. In paragraph Nos. 5 and 6 it is stated as under:

“5. That Regulation 45 of Respondent Bank provides provisions for disciplinary proceeding after retirement and Regulation 45 (1) provides that an officers or employee, who is under suspension on charge of misconduct and who attains the age of superannuation shall be deemed to be in service even after age of superannuation for specific purpose of continuation and conclusion of disciplinary proceeding and issue of final orders.

6. That it is stated that according to the provision of Regulation 45 (3) the officer or employee, against whom disciplinary proceeding has been initiated, shall cease to be in service on the date of superannuation but the disciplinary proceeding shall continue as if he was in service until the proceeding is concluded and final order is passed.”

8. In the light of the aforesaid stand, there is no infirmity in the order of dismissal and its confirmation by the appellate authority.

9. Heard learned counsel for the respective parties.

10. The petitioner while working as Branch Manager was subjected to disciplinary proceedings in framing article of charges and it was concluded in imposition of penalty of dismissal from service on 22.10.2014 and thereafter, it was confirmed by the appellate authority on 05.06.2014.



11. Core issue involved in the present petition is whether disciplinary authority can impose penalty of dismissal from service against retired employee or not? For the purpose of examining source of power of the disciplinary authority to impose penalty under Regulation 2010, it is necessary to reproduce Regulation 1 (3) which reads as under:

“(3) They shall apply to every officer and employee of the Bank:

Provided that they shall not apply except as otherwise provided in these regulations or to such extent as may be specifically or generally specified by the board to,-”

12. Further, Regulation No. 43, 45 (1) and 45 (3) reads as under:

“43. Corrupt Practices.- Notwithstanding anything contained in these regulations, the following provisions shall apply where it is alleged that an officer or employee has been guilty of corrupt practices, namely, -

(a) where it is alleged that an officer or employee is possessed of disproportionate assets or that he has committed an act of criminal misconduct or where the investigation and proof of the allegation would require the evidence of persons who are not officers or employees of the Bank or where, in the opinion of the Chairman, the investigation into the allegations cannot be conveniently undertaken by the Bank, the investigation into the allegations may be entrusted to the Central Bureau of Investigation or the Central Vigilance Commission or such other Authority as may be approved by the Chairman,



(b) if after considering the report on the investigation, the Competent Authority is satisfied that there is a prima-facie case of instituting disciplinary proceeding against the officer or employee, he may send the investigation report to the Central Vigilance Commission or such other authority as may be decided by the Chairman from time to time in this behalf, for its advice whether disciplinary proceeding should be taken up against the officer or employee concerned,

(c) if after considering the advice of the Central Vigilance Commission or such other Authority, as the case may be, the Competent Authority is of the opinion that disciplinary proceeding may be instituted against the employee concerned, then, the enquiry under this regulation may be entrusted to a Commissioner for Departmental Enquiries or any other person who may be nominated by the Central Vigilance Commission for this purpose;

(d) The Commissioner for Departmental Enquiries or any other person nominated by the Central Vigilance Commission shall submit his report to the Competent Authority.

(e) The Competent Authority shall forward such report to the Central Vigilance Commission for its advice as to whether the charge or charges, as the case may be, to be framed and the penalty or penalties to be imposed under regulation 39.

(f) The Competent Authority shall, after considering the advice of the Central Vigilance Commission, impose the penalty.

Explanation : For the purposes of this regulation, an officer or employee shall be deemed to be guilty of corrupt practices if he has committed an act of criminal misconduct as defined in sections 13, 14, 15 and



16 of the Prevention of Corruption Act, 1988 (49 of 1988) or he has acted for an improper purpose or in a corrupt manner or had exercised or refrained from exercising his powers with an improper or corrupt motive.

45. Disciplinary proceedings after retirement.

(1) An officer or employee who is under suspension on a charge of misconduct and who attains the age of superannuation, shall be deemed to be in service even after the age of superannuation for the specific purpose of continuation and conclusion of the disciplinary proceedings and issue of final orders thereon.

(3) The officer or employee against whom disciplinary proceeding has been initiated shall cease to be in service on the date of superannuation but the disciplinary proceeding shall continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof.”

13. Respondent could not apprise this Court that Regulation 2010 is applicable to the retired employees. In the light of Regulation No. 1 (3) cited *supra* applicability of Regulation 2010, the petitioner do not fit into any of the criteria for the reasons that he has attained age of superannuation and retired from service on 29.06.2013 and imposition of penalty of dismissal from service is on 22.10.2014.

14. Learned counsel for the respondent submitted that Apex Court has held that penalty of dismissal could be imposed on retired employee. Also the aforesaid contention cannot be appreciated for the reasons that as long as Regulation 2010 is not



applicable to retired employees. Further it is to be noted that there is no amendment to the Regulation 2010 incorporating that Regulation No. 2010 is applicable to such of those retired employees also.

15. At this stage, it is necessary to take note of Apex Court decision in the case of *Nair Service Society v. Dr. T. Beermasthan*, (2009) 5 SCC 545 : 2009 SCC OnLine SC 660, paragraph nos. 47 and 48 it is held as under:

“47. This Court in *Nair Service Society v. Kerala Public Service Commission* [(2003) 12 SCC 10 : 2004 SCC (L&S) 1037] (SCC para 22) had the occasion to examine the Rules, the ranked merit list and the supplementary reserved list prepared by the Commission, and the principles followed by the Commission in making the appointments. This Court observed as follows: (SCC pp. 21-22, para 22)

“22. ... Based on the procedure so prescribed, KPSC prescribes the ranked merit list in the order of merit. The candidates are arranged strictly according to merit and are not arranged according to community or caste or group or according to the cycle of rotation, in reservation. The number of candidates to be included in this rank list is filled with reference to some principles followed by them, which are explained in Para 4 of KPSC's writ appeal before the High Court (pp. 102-03). The candidates are advised for appointment as and when vacancies are reported, but following the rules of reservation and rotation prescribed in Rules 14 to 17 of KSSR.”

The Commission has advised appointments based on a unit of 20 for the last more than 30 years. The principle of



reservation, rotation and sub-rotation are all applied based on this unit of 20.

48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

16. In the light of the Apex Court decision stated *supra*, this Court cannot travel beyond Regulation 2010. In other words whatever provision made available under Regulation 2010 is required to be examined insofar as petitioner and respondent – Bank is concerned.

17. In view of these facts and circumstances, petitioner has made out a *prima facie* case so as to interfere with the impugned order HO/DAD/07/13-14/No. 216 dated 29.06.2013, 217 dt. 29.06.2013 and HO/DAD/07/14-15/No. 111 dated 28.05.2014. Accordingly, they are set aside.

18. The concerned respondent – Bank is hereby directed to settle all monetary dues which were due to the petitioner within a period of three months from the date of receipt of this order



failing which the petitioner is entitled to interest @ 6 % *per annum* on all dues.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	07.09.2022
Transmission Date	

