

(2003) 01 AHC CK 0149

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 54380 of 2002

Dharmendra Dhisht Dubey

APPELLANT

Vs

Chairman, Rani Laxmi Bai

Kshetriya Gramin Bank and

Others

RESPONDENT

Date of Decision: Jan. 7, 2003

Citation: (2003) 5 AWC 3882 : (2003) 96 FLR 925 : (2003) 1 UPLBEC 724

Hon'ble Judges: S.K. Singh, J

Bench: Single Bench

Advocate: Indra Mani Tripathi, for the Appellant; Nripendra Mishra and K.L. Grover, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Singh, J.

Heard learned Counsel for the petitioner and Sri Nripendra Mishra, Advocate appearing for the respondents.

2. Challenge before this Court is the show cause notice dated 20.11.2002 (Annexure No. 23 to the writ petition) by which the petitioner has been intimated about the proposed punishment and he has been called upon to place his version either by appearing in person or through his representative.

3. Ground as has been taken in writ petition and as argued by the learned Counsel, for the petitioner against show cause notice appears to be several i.e., (i) delay in starting proceedings which leads violation of the principles of natural justice; (ii) charge-sheet was issued under the old regulations but the impugned show cause notice has been issued under the new regulation; (iii) proceedings against the petitioner are malafide; (iv) the charges against the petitioner are frivolous and they are not proved; and (v) other employees facing same charges have been exonerated and they have been finally reinstated. In support of the submission that in the event

the disciplinary proceedings have been started after much delay that is vitiates on that ground itself. Reliance has been placed on decision given in the case of [The State of Madhya Pradesh Vs. Bani Singh and another,](#), Subhash "Chandra Basu v. Bank of Baroda and Ors., reported in 1992 (1) SLR 38, Binayak Datta v. State of West Bengal and Ors., reported in 1991 (4) SLR 647 and a decision given in the case of Arun Kumar Basu v. Union of India and Anr., reported in 1992 (2) SLR 715.

4. Sri Nripendra Mishra, learned Advocate who appeared for the respondents at the very outset raises a preliminary objection and submits for dismissal of the writ petition on the ground (i) that writ petition has been filed against only show cause notice and the petitioner has a remedy to file reply and it is only after the final decision if it goes against the petitioner he can take up the matter to this Court; (ii) even if the decision goes against the petitioner, he has an alternative remedy of approaching higher forum under Para 47 of the relevant regulation of employees service regulation and thus, he submits that no interference is required. Otherwise, also he submits that as acceptance of the contention of the petitioner is dependent on examination of various factual aspects which at this stage may not be proper for this Court to go into and thus, on this ground as well writ petitioner is not entitled to get any relief at this stage.

5. Having heard the arguments from both sides as indicated above the matter has been considered.

6. The question which requires consideration in this petition is that whether on the facts of present case, challenge to the show cause notice about proposed punishment is to be permitted and the writ petition is to be entertained. The facts as has come on record demonstrates that the petitioner was placed under suspension on 4.2.1999 and it is thereafter the disciplinary proceedings proceeded by serving charge-sheet on the petitioner on 10.4.1999 and on conclusion of the enquiry, the Enquiry Officer submitted its report on 10.7.2001 and thereafter, the Disciplinary Authority having considered the report of the Enquiry Officer has issued the impugned show cause notice against which the petitioner has come up in this writ petition. In view of the aforesaid, it is quite clear that the disciplinary proceedings proceeded without any intervention and that has now been completed and the report by Enquiry Officer has already come and now it is just a final decision in respect to the punishment, if it is so to be given to the petitioner is to be taken by the Disciplinary Authority. It is not the stage where the petitioner has come against the very initiation of the disciplinary proceedings i.e., at the stage of issuance of the charge-sheet, on the ground of delay in starting the disciplinary proceedings and thus, this Court is of the view that the cases which has been referred by the learned Counsel for the petitioner being related to very start of the disciplinary proceedings can have no application to the facts of the present case. In the event petitioner has permitted enquiry to go on and same proceeded for more than 2-3 years, which includes the submission of the reply on behalf of the petitioner to the charge-sheet,

adducing of the evidence from either of the sides and then the submission of the Enquiry Officer's report, he cannot be permitted to challenge show cause notice against proposed punishment at this stage. So far the ground as has been argued by the learned Counsel for the petitioner, in respect to the merits of the prove or disapprove of various kinds of charges and the proceedings being malafide, charges being frivolous, suffice, it to say that as all these aspects requires adjudication of various factual contentions, it will not be proper for this Court to go into at this stage. The submission of the learned Counsel for the petitioner that other similarly situated employees have been exonerated is also dependent on examination of the factual aspect inasmuch as verifying the nature of the charges against those employees, evidence in support thereof and thus, it is the first job of the Disciplinary Authority to examine all these pleas which requires examination of record and facts which have been raised by the petitioner before this Court, and only then this Court may examine, the correctness of reasoning, finding and conclusion, so arrived by Competent Authority. There also appears to be another reason for declining to intervene in the matter. Pursuant to the show cause notice, the petitioner was required to appear personally in support of his reply or through his representative on 9.12.2002. As he could not appear on that date, he moved application on 18.12.2002, for giving another date to appear and to place his version upon which the Disciplinary Authority taking a reasonable view in the matter has allowed petitioner to appear himself and to bring his representative on 8.1.2003 and thus, the petitioner has already joined the proceedings pursuant to the show cause notice. In view of the aforesaid filing of the writ petition at this stage by the petitioner appears to be totally misconceived and it appears that petitioner has unnecessarily rushed to this Court at a premature stage. As all objections whether factual or legal which have been taken by the petitioner before this Court can always be raised by him before the Disciplinary Authority, who will be in a better position, to go into and to take appropriate decision in the matter in accordance with law either way, which this Court cannot anticipate like the petitioner, and thus, no examination on merits in respect to the various grounds is required at this stage.

7. In view of the aforesaid, this Court is of the considered view that as the petitioner has already participated in the disciplinary proceedings and now the Enquiry Officer has already submitted his report, challenge to the show cause notice in respect to the proposed punishment is not to be entertained at this stage and thus, writ petition deserves dismissal.

8. Accordingly, writ petition fails and it is dismissed at the admission stage.