

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.611 of 2011

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Pramod Kumar, Son of Sri Anant Prasad, resident of House No.B/12-A, Road No.18, Rajiv Nagar, P.S. Rajiv Nagar, at present posted as Additional District and Sessions Judge, Bhojpur at Ara.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna.
2. The Joint Secretary, Department of Personnel & Administrative Reforms, Govt. of Bihar, Patna
3. Deputy Secretary, Department of Personnels and Administrative Reforms, Govt. of Bihar, Patna.
4. The Registrar General, Hon'ble High Court of Judicature at Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Basant Kumar Choudhary, Sr. Adv.
Mr. Arun Kumar Sinha, Adv.

For the Respondents : Mr. Lalit Kishore, P.A.A.G.
Mr. Rajesh Kumar, GP 8
Mr. Ashutosh Singh, AC to GP 8
Mr. Vikash Kumar, AC to P.A.A.G.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 30-06-2015

The petitioner joined the judicial service in the State of Bihar on 24.11.1986, on being successful in the competitive examination. Initially he was appointed in the cadre of Civil Judge/Junior Division and thereafter he earned promotion to the cadre of Civil Judge/Senior

Division. On 30th March, 2009, he was promoted to the District Superior Judicial Service as District Judge at entry level.

After promotion he was posted as Additional District Judge 5, Bhojpur at Arrah. One of the cases dealt by him was Sessions Trial No.496 of 2008. The accused therein filed an application for bail and on disposal of the same, he approached the High Court by filing Cr. Misc. No.24627/09. This Court passed an order dated 31.8.2009 in Cr. Misc. No.24627/09. However, certain directions were issued to the trial court, as to how, an application for bail, if filed, must be considered.

The accused, by name Upendra Singh, filed an application for bail before the court headed by the petitioner. He placed reliance upon the order dated 31.8.2009 passed by this Court in Cr. Misc. No.24627/09. The petitioner made an observation to the effect that the certified copy of the said order was not received by his court and, if he so wants, the accused can take necessary steps to get the order communicated.

The accused filed Cr. Misc. No.18214/10 before this Court. One of the grounds urged by him was that though this Court made certain observations in its order



dated 31.8, 2009, the petitioner herein did not comply with the same. Initially, the learned Judge who heard Cr. Misc. No.18214/10 called for a report from the Registry as to whether the order dated 31.8, 2009 was communicated, and if not, to fix the liability. After conducting a detailed enquiry, the Registry filed a detailed report stating that two employees by name Subhash Kumar and Harendra Singh working at Arrah are responsible for not placing the copy of the order on record.

Cr. Misc. No.18214/10 was finally disposed of on 23.6.2010. The learned Judge who passed the order expressed his displeasure about the language employed by the petitioner herein, in his order dated 15.3.2010. Direction was also issued to initiate disciplinary proceedings against the two clerks named in the order.

The order in Cr. Misc. No. 18214 of 2010 was taken note of by the Standing Committee of the High Court, at its meeting held on 7.9.2010. A resolution was passed to the effect that the petitioner be made to compulsorily retire from service, in exercise of power under Rule-74(b)(ii) of the Bihar Service Code. The same was approved by the Full Court at its meeting dated 18.9.2010. In compliance with the same, the High Court passed an order dated 25.9.2010

directing that the petitioner be not assigned any judicial work. Challenging that, the petitioner filed the present writ petition.

During the pendency of the writ petition, the Government issued orders dated 16.12.2010 on the basis of the resolution of the Full Court. The petitioner got amended the prayer in the writ petition by filing I.A. to bring the challenge to the order of compulsory retirement, within the fold of the writ petition.

The petitioner contends that the order passed by him on 15.3.2010 was only as a measure of precaution, particularly in view of the fact that the cases of forged orders of the High Court being filed is rampant in the State of Bihar. It is stated that the effort was only to ensure that the authenticated copy of the order 301.8.2009 is received by him and he never expressed any disrespect. It is stated that the order of compulsory retirement is, in fact, a measure of punishment and the same was imposed without there being any valid basis.

On behalf of the High Court and the Government of Bihar separate counter affidavits are filed. In the counter affidavit filed by the High Court, it is stated that compulsory retirement is not a punishment and after

verification of the service record of the petitioner it was found that it is not at all in the public interest, to continue him in service. Reference is also made to various entries in the service record.

The Government stated in its counter affidavit that the petitioner was required to be more careful in handling the bail petitions.

Heard Shri Basant Chaudhary, learned Senior Counsel for the petitioner, learned Standing Counsel for the High Court and Shri Ashutosh Singh for the State.

Sri Rajesh Kumar, learned Senior Counsel for the petitioner submits that the orders that are challenged in the writ petition are contrary to law and are the result of non-application of mind. He contends that the accused in Sessions Trial No.496 of 2008 was so notorious that twice his bail applications were rejected and when he presented an order, the Judge required certain steps that are not routine, in nature and the petitioner wanted to be sure about it. He contends that the petitioner thoroughly verified his office as to whether any order in Cr. Misc. No.24627 of 2009 has been received, and on finding that no such order was available, he required the accused to ensure that the order is communicated, so that the disposal of the bail application is



not further delayed. Learned Senior Counsel further submits that when the High Court found the petitioner to be fit for promotion to the post of District Judge in the year 2009, there was no basis for passing an order of compulsory retirement, hardly within one year thereafter. In support of his submissions, he has placed reliance upon the judgments of the Hon'ble Supreme Court in (2012 (3) SCC 580, (2013) 4 SCC 301 and AIR 2010 SC 2810.

Shri Piyush Lall, learned Standing Counsel for the High Court and learned Standing Counsel for the Government of Bihar, on the other hand, submit that it is the prerogative of the High Court, to pass orders, in exercise of power under Rule-74(b)(ii) of Bihar Service Code and the same cannot be treated as imposition of punishment. They further contend that though reference was made to the order in Cr. Misc. No.24627 of 2009, that did not constitute the basis to form an opinion about the continued utility of the petitioner, in service. They rely upon the judgment of the Supreme Court in (2011) 10 SCC 1, (2010) 10 SCC 693, (2003) 9 SCC 592 and 2014 (2) BBCJ 488.

The relevant facts have already been stated. The entire episode is referable to the bail application in Cr. Misc. No.24627 of 2009. It is stated that the trial court rejected

the bail application twice and that resulted in filing of Cr. Misc. No. 24627 of 2009. This Court was not inclined to grant bail in that petition also. However, while disposing of the same, it made the following observation:-

“Heard.

The petition could not be maintained simply for the reason that after passing of the order Annexure-1 by this Court the petitioner did not approach the lower court. The petitioner is directed to approach the lower court first.

The lower court must indicate in its order as to what is the stage of the trial of Udwant Nagar P.S. Case No.194 of 2006, whether it has been committed to the court of Sessions and if, yes, then the learned trial Judge shall let the Court know as to what steps he had taken for production of the witnesses or what progress he has made in the trial of the case. The Court below must clearly mention the above things in its order if he finds that the petitioner could not be granted bail. The petitioner shall come up before this court, thereafter.

Petition is dismissed.”

The accused filed an application for bail in the Sessions Case and that was heard by the petitioner herein. Since certain steps which are not common in the disposal of the bail applications were indicated by this Court. On finding that the copy of the order was not received by his court, the petitioner wanted to be sure about the matter and insisted that the accused/petitioner can take steps to get the certified copy of the original order communicated to the Court.



If one takes into account, the volume of the litigation in criminal courts, or the type of practices which some of the notorious criminals resort to, one must appreciate the care and caution taken by the petitioner. Instances are not lacking where orders of bail were fabricated and it is impermissible for the State to take any steps, once the criminals were out. In the Sessions Court at Arrah itself, one notorious criminal escaped from the court after exploding a bomb, and the same criminal did it once again in the recent past. When such is the notoriety, one is required to be careful and cautious.

The only basis for the High Court to pass order, directing that no judicial work be assigned to the petitioner, or retiring him before he attained the date of superannuation, was the order dated 15.3.2010 passed in Sessions Trial No.496 of 2008.

In fact, the High Court said so in its counter affidavit in paragraph 6:-

“That the matter in light of the observations of the Hon’ble Court as contained in order dated 28.7.2010 passed in Cr. Misc. No.18214 of 2010 (Upendra Singh Versus The State of Bihar) against the petitioner was considered in the meeting of the Standing Committee of the Hon’ble Court in its meeting held on 7.9.2010 and it was resolved to retire him under Rule-74(b)(ii) of the Bihar Service Code, 1952 by giving him an amount equal to three months pay and allowances in lieu of notice.”



From perusal of the order dated 28.7.2010, in Cr. Misc. No.18124/10, it is evident that though the learned Judge expressed some displeasure about the language used by the petitioner in requiring the accused to get the original order in Cr. Misc. No.24627/09 dated 31.8.2009 communicated, he recorded specific finding to the effect that two clerks by name Harendra Singh and Subhash Kumar have played mischief in not placing the order before the trial court. There was no serious indictment of the petitioner accusing him of any impropriety, corruption or lack of integrity. Though the said order constituted the sole basis for initiating action against the petitioner, the High Court sought to fall back upon the entries in the service record, to sustain the order of compulsory retirement.

It is true that in Baikuntha Nath Das And Anr Vs. Chief Distt. Medical Officer¹ the Hon'ble Supreme Court held that compulsory retirement of an employee is not a punishment and judicial scrutiny thereof must not be on the touchstone of the other disciplinary proceedings, and the same was reiterated by the Hon'ble Supreme Court recently in State of Orissa And Others Vs. Ram Chandra Das². There

1. (1992) 2 SCC 299

2. (1996) 5 SCC 331



cannot be any second opinion about this. However, in the course of forming an opinion for taking a decision to retire an employee before he attains the age of superannuation, the appointing authority is required to be objective. The decision, no doubt, is subjective, but it must be on the basis of proper material. The opinion must not be on the ipse dixit of the appointing authority. It is in this small area, that the scrutiny by the Court is permissible. In Nand Kumar Verma Vs. State of Jharkhand¹ the Hon'ble Court observed:-

“.....It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a valid material. It is permissible for the courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based.”

If the same test is applied to the facts of the present case, it becomes clear that the only basis for forming an opinion to pass an order of compulsory retirement against the petitioner was the order in Sessions Trial No.496 of 2008, and if one closely analyses the said order, nothing adverse to the petitioner, warranting such serious action can be found. It is not necessary for us to apply the wash off theory that explained by the Supreme Court in some of the precedents.

We, therefore, allow the writ petition and set aside the order. We, however, find that the petitioner ought to have been a

1. (2012) 3 SCC 580

bit more careful in choosing the language, even if his intention to require the accused to arrange for the order in original be not objectionable. For this, we deny 1/4th of back wages, but the same shall not be treated as punishment. Interlocutory application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

K.C.jha/-
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