

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4499 of 1997

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1. Chandeshwar Choudhary son of Bihaspat Choudhary, resident of village Nagarnosa, District Nalanda at present posted as temporary Clerk, District Registration Office, Samastipur
 2. Punyadeo Manjhi son of Ramjanam Manjhi, resident of village Surahia P. S. Barhariya, District Siwan, at present posted as Temporary Clerk, District Sub Registry Office, Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary-cum-Inspector General of Registration, new Secretariat, Patna
3. District Magistrate and Collector-cum-District Registration, Samastipur
4. District Magistrate and Collector-cum District Registration, Aurangabad
5. Bihar Public Service Commission through its Chairman
6. Secretary, Bihar Public Service Commission, Bailey Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar Singh, Senior Advocate
With Mr. Ranjeet Tiwary,
Mr. S.K. Griyanghey & Mr. Jitendra Kr. Pandey

For the Respondent/State: Mr. Syed Arshad Alam, SC-3

For PBPSC : Mr. Ashok Kumar Singh, Senior Advocate
With Mr. Sanjay Pandey

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 06-05-2015

1. There are certain facts which are not in dispute in the present writ application.

2. Through an advertisement No. 21 of 1987 dated 23.01.1988 the erstwhile Bihar State Subordinate Service



Selection Board (hereinafter referred to as the Board), had invited application for various posts, including 21 posts of Routine Clerks. From the advertisement itself, a copy of which has been produced before this Court, in course of argument, it appears that the selection was based on written test to be held in "General Hindi". Matriculation was the minimum qualification for a candidate to become eligible for the said post. The petitioners had applied for the said posts and had participated in the process of selection. They appeared in the written examination and were finally selected and subsequently appointed as Routine Clerks, in the Registration Department of Government of Bihar in the year 1994. One Ashok Kumar Choudhary, with a grievance, that his name was wrongly not recommended for appointment on erroneous ground that he had disclosed his identity in the answer sheet, in order to derive undue favour in the process of evaluation of the answer sheet, filed a writ application before this Court, giving rise to CWJC No. 5170 of 1993. This is to be noted that when the process of selection, pursuant to the said advertisement No. 21 of 1987 was going on, the said Board was

abolished and the Bihar Public Service Commission (hereinafter referred to as the Commission) thereafter, had taken over the process of selection.

3. A Division Bench of this Court considering the case of said Ashok Kumar Choudhary in CWJC No. 5170 of 1993, refused to interfere with the decision of the Bihar Public Service Commission, in not recommending his name for appointment on the ground that he had disclosed his identity (his name, name of the village etc.,) and thereby, he had tried to influence the examiner, in breach of Instruction No.2 printed on the answer sheet. It was, however, asserted by said Ashok Kumar Choudhary before the Division Bench that he had been discriminated against inasmuch as, persons with similar default had been allowed to be appointed. The Division Bench, accordingly, while dismissing the writ application directed the Commission to examine the grievance of the said Ashok Chaudhary, to this extent. It seems that the Commission thereafter, scrutinized the answer sheets on the basis of which the selections were made and found that six persons, namely, Ram Pratap Paswan, Ram Pravesh Paswan, Kumar Anal Kant



Singh, Ramdhani Ram, Chandeshwar Choudhary (petitioner No.1) and Pundey Manjhi (Petitioner No.2) had disclosed their identity. Accordingly, the Commission decided to cancel the recommendation made in favour of these persons also for their appointment as Routine Clerks, through a letter dated 18.3.1997, which has been brought on record, by way of Annexure-B to the counter affidavit filed on behalf of the Inspector General, Department of Registration and the District Registrar, Samastipur. In view of the said decision of the Commission to cancel the recommendation on the grounds indicated in the said letter dated 18.3.1997, the Department issued an order No.774 dated 17.4.1997, whereby, the petitioners were asked to show cause as to why their services be not terminated in view of cancellation of recommendation made by the Commission. The petitioners submitted their replies. Finally, by an order dated 11.8.1997, the Registration Department, Government of Bihar terminated the services of the petitioners which has been brought on record by way of Annexure-4 to I. A. No. 12072 of 1998. The said Interlocutory Application No. 12072 of 1998 was taken up by this Court on

25.11.1998, and by an order dated 25.11.1998, this Court restrained the respondents from giving effect to the said order dated 11.8.1997. For the benefit of quick reference the relevant portion of the said order is being extracted hereinbelow:-

“Put up this matter on 16th December, 1998 when final orders will be passed on I.A. No. 12045 of 1998. As an interim measure, the respondents are directed not to give effect to Annexure-4 so far as the petitioners are concerned. After hearing the respondents further orders will be passed.”

4. In terms of the said order dated 25.11.1998, the petitioners have continued to discharge their services, without any interruption, as the order terminating their services dated 11.8.1997 could not be given effect to.

5. By an order dated 21.6.1999, this Court had directed the Respondent Commission to produce the answer book of top ten candidates including the petitioners and that of Ashok Chaudhary, petitioner of CWJC No. 5171 of 1993.

6. Learned Senior Counsel, representing the Bihar Public Service Commission has produced before this Court the respective original copies of the answer sheets. Since the entire dispute revolves around compliance of Instruction No.2,

mentioned on the first page of the answer sheet supplied by the Board/Commission in course of written test to the candidates, I consider it appropriate to quote the said Instruction No.2 verbatim:-

“2. परीक्षार्थी इस पृष्ठ के बाएं वाले प्रथम पृष्ठ पर तथा उत्तर पुस्तिका के किसी अन्य स्थान पर अपना नाम न लिखें। इसका उल्लंघन होने पर उत्तर पुस्तिका रद्द कर दी जायेगी।” (emphasis mine)

7. Apparently, Instruction No.2 required no examinee to mention his “name” on the left side of the first page nor anywhere else in his answer sheet. It prescribed consequence of violation of the said Instruction, making the answer sheet itself liable to be cancelled.

8. As indicated above, along with these petitioners actions were taken against four other persons, whose services were also terminated. They had approached this Court by filing CWJC No. 4211 of 1997. This Court by a judgment and order dated 20.2.1998 had dismissed the writ application. The other persons, namely, Ram Pratap Paswan, Ram Pravesh Paswan and Ram Dhani Ram, then filed an appeal before this Court under the Letters Patent of this Court against the order passed



in CWJC No. 4211 of 1997. The Division Bench was not in a position to accept the contention of the Commission that on the ground that a candidate had mentioned his name while answering a question, his candidature itself was liable to be, cancelled, which contention was accepted by the earlier Division Bench in case of Ashok Choudhary (supra). The matter was, accordingly, referred to a larger Bench for decision. A Full Bench of this Court finally, on 10.3.2014 dismissed the appeal by a judgment dated 10.3.2014 in following terms:-

“It is apparent that the Bench has made the aforesaid observation on the premise that the instruction was not to disclose the identity on the first page of the answer sheet. However, under the relevant instructions the candidates were specifically instructed not to disclose their identity “on the left portion of the first page of the answer sheet or anywhere in the answer sheet.” In our opinion, the disclosure of one’s name or identity on the first page of the answer script or anywhere else in the answer script was in violation of the aforesaid specific instruction. We are, therefore, of the opinion that the result of the appellants could not have been declared, nor could they have been appointed as Routine Clerks. They were rightly disqualified to hold the post of Routine Clerk.

In any view of the matter, with the passage of time the appellants are nearing the age of superannuation, the question of their reinstatement in service at this advanced age does not arise.”



9. From the Full Bench decision, it is apparent that the Court also took into account a fact while considering the cases of those petitioners, that since they were nearing the age of superannuation, the question of their reinstatement in their service at the advanced age did not arise. I must record here itself that the petitioners of CWJC No. 4211 of 1997/ Appellants of LPA No. 347 of 1998 were not granted any interim protection by this Court to continue in service, after the Registration Department had terminated their service in the year 1997 and they had not continued in service thereafter after.

10. Mr. Abhay Kumar Singh, learned Senior counsel appearing on behalf of the petitioners has referred, firstly to the case of petitioner no.1 and has contended that so far as his case is concerned, there is no violation of Instruction No.2 inasmuch as, he did not mention his "name" anywhere in the answer sheet and it is not at all the stand of Commission or the State Government that he mentioned his name, anywhere in the answer sheet. He has submitted that Instruction No.2 is required to be interpreted strictly and no other interpretation can be given to the said instruction, which specifically provided



that a candidate while writing answer should not mention his “name”. He has further submitted that the Full Bench decision of this Court in case of Ram Pratap Paswan & ors. (supra) will have no adverse effect in case of petitioner no.1, inasmuch as, the Full Bench held that disclosure of one’s “name or identity on the first page of the answer script or anywhere else in the answer script” was in violation of aforesaid specific instruction. He has submitted that the only allegation against petitioner no.1 is that while answering a question, whereby he was required to write an essay about his village, he mentioned the name of his village. He has submitted that mentioning the name of the village in the answer sheet will not amount disclosure of one’s identity. He has referred to the literal meaning of word “identity” as existing in Black Legal Dictionary (6th Edition page 745), which means “sameness;” “the fact that a subject, person, or thing before a Court is the same as it is represented, claimed, or charged to be”. He has submitted that naming the village, while answering a question, whereby he was required to give description of his own village will not amount to disclosing the identity of petitioner no.1 and

therefore, he has reiterated that the Full Bench decision of this Court in case of Ram Pratap Paswan (supra) has no adverse effect on the case of petitioner no.1.

11. This is not in dispute that so far as petitioner no.2 is concerned, he mentioned his name while answering question, whereby he was required to write a letter to his friend. While concluding his letter he has mentioned his name also. Mr. Singh referring to the case of petitioner No.2 has submitted that it is true that case of petitioner no.2 is squarely covered by a Full Bench decision of this Court in case of Ram Pratap Paswan and others (supra) but at the same time has contended that it would too harsh a punishment upon him to ask him to leave the job after having continued in service, though on the strength of the interim order of this Court, since 1997. He has submitted that the equity requires that this Court should interfere with the order of termination of service of petitioner no.2 also, in the facts and circumstances of the case.

12. In support of his submission that Instruction No.2 having penal consequence should be given strict construction, and if two constructions are possible, one which is in favour of

the persons against whom there is allegation of violation of certain requirement, should be accepted, he has relied upon following decisions of Supreme Court:-

- “1.(2003) 4 SCC 642 (Bipinchandra Purushottamdas Patel Vs. State of Gujarat)
- 2.(2007) 6 SCC 124 (Bharat Petroleum Corporation Ltd. Vs. Maddula Ratnavali and others)
- 3.(2001) 10 SCC 401 (V. Jagannadha Rao and others Vs. State of A.P. and others)”

13. He has submitted that for appointment to the post of Routine Clerk, a limited competitive examination for those who were working against Class IV post was also held and Commission had detected several, similar mistakes committed by the candidates participating in the said process of selection, on the basis of limited Competitive examination. He has contended, which is not in dispute, that matriculation was the qualification for appointment on the basis of limited competitive examination also, for appointment by promotion to the post of Routine Clerk from Class IV post. He has submitted, referring to a decision taken by the Commission in its meeting held on 23.9.1997, that the Commission decided to



condone such mistakes committed by the candidates. Referring to the proceedings of the meeting of the Commission dated 23.9.1997, which has been brought on record by way of Annexure-7, he has submitted that the Commission found that nearly 53 percent of the total candidates, who had participated in the process of selection on the basis of limited competitive examination, had committed such mistakes, by mentioning their names while answering question relating to letter writing.

14. Mr. Ashok Kumar Singh, learned Senior counsel appearing on behalf of the Commission on the other hand, has submitted that while interpreting Instruction No.2, which has been extracted hereinabove, the Court should consider real intent behind issuing such instruction. He has submitted that such instruction was issued to ensure that the candidates might not disclose their identity, in any manner, so as to influence the examiner. He has placed reliance upon following Supreme Court decisions in support of his contentions:-

(1) (2005) 4 SCC 530 (Standard Chartered Bank and ors. vs. Directorate of Enforcement and others)

(2) (2003) 7 SCC 628 (Balram Kumawat Vs. Union of

India and others).

15. He has laid great emphasis on Full Bench decision of this Court in case of Ram Pratap Paswan and others (supra) to contend that cases of these petitioners are identical and it is not permissible for this Court to take a different view. He has submitted that services of six persons were terminated by the Registration Department consequent upon cancellation of recommendation made by the Commission earlier on same/similar grounds, which came to be finally decided in case of Ram Pratap Paswan and others (supra). All of them had approached this Court by filing writ petition which came to be finally decided in LPA No. 347 of 1998 by the Full Bench and, therefore, he has emphasized that this Court should not take a different view than what has been taken by the Full Bench of this Court. In course of his submission, he has referred to Supreme Court decision reported in (1997) 5 SCC 1 (State of U.P and another Vs. C.L. Agrawal and another), with special reference to Paragraph 19, which reads thus:-

“19. We are dismayed that the Division Bench hearing the said writ petition should have proposed to examine the issue “notwithstanding the aforesaid pronouncement of the Full Bench judgment ...”. If the judgments in the cases of *Supreme Court Employees’ Welfare*

*Assn.*³ and *H.C. Puttaswamy*⁴ were cited and the respondents to the said writ petition submitted that the Full Bench judgment was erroneous by reason thereof, the proper course for the Division Bench to follow, if it found any merit in the submission, was to refer the said writ petition to a Full Bench. Judicial discipline requires that a Division Bench should not examine de novo an issue that is concluded by the decision of a Full Bench of that High Court."

16. Before I proceed to adjudicate upon the dispute with reference to the pleadings and submissions made on behalf of the parties, I have kept in my mind the fact that the matriculation was the minimum qualification of persons who were participating in the said written examination. I have quoted verbatim the Instruction No.2, different interpretations of which has been given by learned senior counsel representing contesting parties and which is the issue in the present writ application. I have perused the two original answer sheets of petitioner nos. 1 and 2 which have been produced by the learned senior counsel appearing on behalf of Commission. No special expertise is required to evaluate such answer sheets. It seems from the answer sheets that petitioner no.1 was too careful while complying with the Instruction no.2, so much so, that he did not conclude even the answer, which required him to write a letter, as by doing that he would have been



required to write his name. From the answer sheet, I find that the examiner had given him 16 marks for answering question no.2 (letter writing) but subsequently he deducted 2 marks because the petitioner no.1 had not concluded the answer by not mentioning the name in the last portion and awarded him 14 marks, instead. While reducing the marks the examiner has mentioned thus “प्रश्न का अंत”? It seems that probably, in order to strictly comply with Instruction No.2, the petitioner no.1 did not conclude his letter by so as to avoid mentioning his name, for which he had to lose 2 marks. It is not apparent from the answer sheet as to what was the maximum marks for question no.2 (letter writing) and question no.1 (essay writing). However, from the photo copy of the advertisement inviting application for various posts, copy of which has been produced by the learned senior counsel representing the Commission, it appears that following was the marks allocated to different kind of question for the paper “general Hindi”:-

“ Essay writing -30-

Letter writing- 30

Sentence framing-20

Grammar -20”



Out of 30 marks for the letter writing, petitioner no.1 has been given 14 marks and against essay writing, he has been awarded 19 marks. Marks so awarded, on perusal of the answer sheet, cannot be said to be by any stretch of imagination excessive. I take into account the fact that 50 was the pass marks for the post of Routine Clerk. The reason for cancellation of recommendation of petitioner no.1 is, however, that he mentioned the name of his village while answering the question relating to essay writing. What was the question to be answered is not there on record but it appears that the candidates were required to write an essay on "Aapka Gaon" (your own Village). While writing essay on his own village, petitioner no.1 appears to have mentioned the name of his village.

17. On perusal of the answer sheet of petitioner no.1, I feel satisfied that he did not disclose his name anywhere in the answer sheet. There is nothing in the answer sheet of petitioner no.1 to show that he anyhow disclosed his identity. I am of the considered opinion that mentioning the name of village to which the candidate belonged, while writing an essay, on his

own village will not amount to disclosing his identity and thus violating Instruction No.2 even if, it is read with Full Bench decision of this Court, in case of Ram Pratap Paswan and others (supra).

18. Mr. Ashok Kumar Singh, learned senior counsel is right in his submission that I cannot take a different view than the view taken by the larger Bench and submission made on behalf of the Commission by the learned senior counsel is unexceptionable, while relying upon Supreme Court judgment reported in (1997) 5 SCC 1 (supra). However, so far as petitioner no.1 is concerned, in the facts and circumstances of the case, I am satisfied that his case is not covered by the ratio laid down by the Full Bench, after having carefully gone through the original answer sheet of petitioner no.1.

19. Learned senior counsel appearing on behalf of the Commission has also submitted that in exactly similar circumstance, the candidature of other persons including Ram Pratap Paswan was cancelled by the Commission leading to termination of their services, which was not interfered by the Full Bench. While following precedents, a Court is required to

follow the law which has been laid down by the superior Court or by a larger Bench. The Full Bench has finally held that disclosure of "name or identity" would have been in violation of Instruction No.2.

20. I am in agreement with the submission made on behalf of the petitioners that Instruction No.2 will have to be strictly construed as it has penal consequence of cancellation of the answer sheet itself, in the event of breach of the said instruction. The Supreme Court in case of Bipinchandra Parshottamdas Patel (supra) has laid down, while interpreting Section 40 of the Gujarat Municipalities Act, 1963 which provided for disqualification to hold an elected post of Vice-President or local body on the ground of pendency of an offence alleged to have been committed by him under the Prevention of Corruption Act or Bombay Prohibition Act, 1949, while acting or purporting to act in discharge of his duties under the Act, hold inter alia, that recourse to strict interpretation must be made while construing a provision having penal consequence. The Supreme Court laid down the following law, for the purpose of construing such provisions in

paragraphs 31 to 54 which read as thus:-

"31. It is trite that a law leading to disqualification to hold an office should be clear and unambiguous like a penal law. In the event a statute is not clear, recourse to strict interpretation must be made for construction thereof. In his classic work *The Interpretation and Application of Statutes* Read Dickerson states:

"(1) The court will not extend the law beyond its meaning to take care of a broader legislative purpose. Here 'strict' means merely that *the court will refrain from exercising its creative function to apply the rule announced in the statute to situations not covered by it, even though such an extension would help to advance the manifest ulterior purpose of the statute.* Here, strictness relates not to the meaning of the statute but to using the statute as a basis for judicial law-making by analogy with it.

(2) The court will resolve an evenly balanced uncertainty of meaning in favour of a criminal defendant, the common law, the 'common right', a taxpayer, or sovereignty.

(3) The court will so resolve a significant uncertainty of meaning even against the weight of probability.

(4) The court will adhere closely to the literal meaning of the statute and infer nothing that would extend its reach.

(5) Where the manifest purpose of the statute, as collaterally revealed, is narrower than its express meaning, the court will restrict application of the statute to its narrower purpose. This differs from the Riggs situation in that the narrow purpose is revealed by sources outside the statute and its proper context."

32. In Section 263 of *Francis Bennion's Statutory Interpretation* it is stated:

"A principle of statutory interpretation embodies the policy of the law, which is in turn based on public policy. The court presumes, unless the contrary intention appears, *that the legislator intended to conform to this legal policy.* A principle of statutory interpretation can therefore be described as a principle of legal policy formulated as a guide to legislative intention."

(emphasis supplied)

33. Maxwell in the *Interpretation of Statutes* (12th Edn.) says:

"The strict construction of penal statutes seems to manifest itself in four ways: in the requirement of express

language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction.”

34. In *Craies on Statute Law* (7th Edn., at p. 529) it is said that penal statutes must be construed strictly. In *Tuck v. Priest*⁶ which is followed in *London and Country Commercial Properties Investments v. Attorney General*⁷ it is stated:

“We must be very careful in construing that section, because it imposes a penalty. *If there is a reasonable interpretation, which will avoid the penalty in any particular case, we must adopt that construction. Unless penalties are imposed in clear terms they are not enforceable.* Also where various interpretations of a section are admissible it is a strong reason against adopting a particular interpretation if it shall appear that the result would be unreasonable or oppressive.”

(emphasis supplied)

35. Blackburn, J. in *Willis v. Thorp*⁸ said:

“When the legislature imposes a penalty, the words imposing it must be clear and distinct.”

36. In *Craies on Statute Law* (7th Edn., at p. 530) referring to *U.S. v. Wiltberger*⁹, it is observed thus:

“ ‘The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is, what is the true construction of the statute? I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law.’ This rule is said to be ‘founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the legislature, and not in the judicial department, for it is the legislature, not the court, which is to define a crime and ordain its punishment’.”

37. It is also well known that there exists a principle against doubtful penalisation. In *Mohd. Ali Khan v. CWT*¹⁰ it is held: (SCC p. 514, para 6)

“6. It is a cardinal principle of construction that the words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary. It has been often held that the intention of the legislature is primarily

to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. *As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided.* Obviously the aforesaid rule of construction is subject to exceptions. Just as it is not permissible to add words or to fill in a gap or lacuna, similarly it is of universal application that effort should be made to give meaning to each and every word used by the legislature.”

(emphasis supplied)

38. *Francis Bennion's Statutory Interpretation* states that the principle of legal policy known as the principle against doubtful penalization, requires strict construction of penal enactments. Although often referred to as though limited to criminal statutes, the principle in fact extends to any form of detriment.

39. It is opined at Section 265 of the said treatise: it is a principle of legal policy that a person should not be penalized except under clear law. The court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe this principle. It should therefore strive to avoid adopting a construction which penalizes a person where the legislator's intention to do so is doubtful, or penalizes him in a way which was not made clear.

40. It is relevant to note that service rules also provide for suspension of a holder of a post and therein it is ordinarily mentioned that a holder may be placed under suspension if he is detained in custody either during investigation or trial. Thus, whenever the legislature thinks fit to provide for suspension of a holder of a post when he is in custody, the stages of the case are specifically mentioned.

41. While providing for different standards in the matter of issuance of order of suspension, the legislature must have in mind the impact of institution of cases which, in its opinion, would amount to moral turpitude and other offences. So far as offences under the statutes other than specified in the first part of the statute are concerned, the legislature did not evidently intend

that an order of suspension be issued automatically without making an investigation in relation thereto.

42. For the foregoing reasons, I am of the opinion that the judgment of the High Court cannot be sustained. It is set aside accordingly. The civil appeal is allowed. However, having regard to the fact that the term of the petitioner came to an end on 30-6-2002 and the election have been held on 11-7-2002, we do not intend to proceed with the contempt petition. The contempt proceeding is, therefore, dropped.

43. In the circumstances of this case, parties shall pay and bear their own costs.

RAJENDRA BABU, J.— I have had the privilege of perusing the judgment proposed by my learned Brother S.B. Sinha, J. However, with respect, I express my inability to concur with the same and I propose to deliver a separate judgment in the following terms.

45. As facts and provisions of the relevant law have been set out in the judgment of my learned Brother S.B. Sinha, J., I do not propose to reiterate them. The petition in hand calls for interpretation of Section 40 of the Gujarat Municipalities Act, 1963 (for short "the Act").

46. Section 40(1) is disjunctive in nature. The first part of this sub-section says that a President or Vice-President of a Municipality can be suspended if any criminal proceeding has been instituted against him/her in respect of any offence alleged to have been committed under the Prevention of Corruption Act or the Bombay Prohibition Act or while acting or purporting to act in discharge of his/her duties under the Act. Whereas, the second part deals with the suspension of a President or Vice-President who has been detained in prison during trial under the provisions of any law. The present petition falls under the second part. Here the appellant was suspended from the President's office of Anand Municipality owing to his detention in judicial custody for alleged offences under Sections 307, 143, 147, 148 and 149 of the Indian Penal Code read with Section 25(1)(c) of the Arms Act and under Section 135 of the Bombay Police Act. To the appellant, his suspension is bad in law since his detention was not "during trial" as

contemplated in Section 40(1) of the Act. It is also his case that the words “during trial” should be given a strict meaning so as to cover detention only after commencement of trial of a case as envisaged in the Code of Criminal Procedure.

47. The manifest intention and obvious purpose of Section 40 is to ensure the proper functioning of the office of the President or Vice-President of the Municipalities by keeping the public confidence. A person, who is detained in prison, will not be able to effectively discharge his public duties. So the Act aims to keep those persons, against whom serious criminal proceedings are initiated or who are detained in prison, away from the public office of the President or Vice-President of the Municipalities until they are cleared of the charge. Actual conviction for the alleged offence is not a necessary precondition for any suspension under Section 40. For the purpose of suspension under Part I of Section 40(1), initiation of criminal proceeding in respect of any offence alleged to have been committed by him/her is sufficient. Section 40(2) deals about the stopgap arrangement that has to be made in the eventuality of a suspension under sub-section (1). This sub-section provides for electing a councillor to perform the functions of a President or Vice-President as the case may be. And sub-section (3) provides for appeal from a decision of suspension under sub-section (1). Reading of sub-sections (2) and (3) along with Part I of sub-section (1) goes on to show that immediately after the initiation of any criminal proceeding, a President or Vice-President could be suspended from office. At the same time they could reoccupy the office immediately after clearing the charges against them. By virtue of Section 40, a person who is alleged to have committed an offence under Part I of sub-section (1) will have to be kept away from office. The cardinal dictum that the legislature laid down vide Section 40 is to allow only those persons, against whom there are no criminal proceedings, to man the office of the Municipal President or Vice-President.

48. The proper meaning of the words – “detained in prison during trial” in Part II of Section 40(1) could only be deciphered in the above contextual backdrop. The meaning of these words should be in perfect tune with the spirit of Section 40. Otherwise, the purpose of the section will be defeated. Therefore, the word “trial” used in the expression “detained in prison during trial” cannot be singled out and cannot be accorded with a restricted meaning. The meaning will have to promote the reason

and spirit of Section 40 of the Act.

49. Now the entire issue boils down to the exercise of finding the true meaning of the word “trial” as portrayed in the broad canvas of Section 40 of the Act.

50. In *State of Bihar v. Ram Naresh Pandey*³, SCR at p. 289 this Court observed: (AIR p. 394, para 6)

“The words ‘tried’ and ‘trial’ appear to have no fixed or universal meaning. No doubt, in quite a number of sections in the Code to which our attention has been drawn the words ‘tried’ and ‘trial’ have been used in the sense of reference to a stage after the inquiry. That meaning attaches to the words in those sections having regard to the context in which they are used. There is no reason why where these words are used in another context in the Code, they should necessarily be limited in their connotation and significance. They are words which must be considered with regard to the particular context in which they are used and with regard to the scheme and purpose of the provision under consideration.”

(emphasis supplied)

Following this view, this Court in *Omparkash Shivprakash v. K.I. Kuriakose*⁵ ruled that: (SCC p. 637, para 10)

“10. The term ‘trial’ cannot be given a fixed meaning to be applied in all cases uniformly.”

51. Therefore, the word “trial” in Section 40 of the Act cannot be supplanted with a straitjacket meaning so as to cover all situations. No doubt, the word “trial” used in Part II of Section 40(1) is capable of two interpretations in the context of the present case. One is the restricted interpretation so as to cover only the period after framing of the charge. This view is what the appellant advances. The second possibility is to assign a liberal meaning so as to cover “detention at any stage of the case”.

52. Since the purpose of Section 40 is to “ensure the proper functioning of the office of the President or Vice-President of the Municipalities by keeping the public confidence”, the concentration is on the expression “detention in prison”. For obvious reasons a person who is detained in prison cannot effectively function as a President or Vice-President of a Municipality. So any person “detained in prison” cannot be allowed to hold the office. This is the purpose of Part II in Section 40(1). The words “during trial” are used so as to exclude the situations like preventive detention or detention in police custody. If the words employed in a provision are capable of two meanings or cast doubts as to the actual meaning, then they have to be interpreted in the light of



the object of the legislation. Word-by-word interpretation is not a welcome method of interpretation. Words, vehicles of legislative intentions, take colour from the context in which they are used. Hence the interpretation of the words “during trial” will have to promote the purpose of Section 40. As already pointed out, the object of this section is to keep shady characters away from local bodies and to pave way for persons with high integrity and good moral conduct to hold public offices. This large interest could only be promoted if the word “trial” is given a broad meaning. This intention is vividly displayed by choosing the expression “under the provisions of any law for the time being in force” in Part II of Section 40(1), which means the provision is designed to cover any “detention in prison” under provisions of any law. Only by this interpretation, the textual meaning of “during trial” matches the contextual spirit of Section 40 that aims to ensure the smooth functioning of the office and to keep the confidence of the people in the institution.

53. In result, the word “trial” should not be given a restricted meaning so as to include only proceedings after the accused is actually arraigned before the competent court for framing and facing of charges. Thus, detention in the present case took place during the process of trial. It served as a step in aid for trial.

54. The distinction between two parts of Section 40(1) of the Act regarding offences under the Prevention of Corruption Act, Bombay Prohibition Act, Gujarat Municipalities Act on the one hand and other enactments on the other is strongly relied upon on behalf of the appellant. Many offences arising under other laws adverted to in the latter part of Section 40(1) of the Act are no less serious than those adverted to in the former part of Section 40(1) of the Act. For that matter they may be far more serious. For example, drunkenness may be an offence under the Bombay Prohibition Act, while murder and sedition are offences under the Indian Penal Code. Further, for practical reasons, if a person is kept in prison, whatever may be the nature of the offence whether falling under the first part or the second part of Section 40(1) of the Act, the working of the Act will be put in jeopardy unless he is suspended. While the one who has committed an offence under the Bombay Prohibition Act is liable to be suspended immediately on being accused of such an offence and arrested, the other who has committed a murder is not so liable. Thus a literal interpretation of the provision would lead to anomalous

results as in the categorisation of offences no scientific basis is discernible. The object of Section 40(1) of the Act is to prevent a President/Vice-President of a Municipality from functioning in the event of a criminal case being launched and arrested. However, in one set of cases, immediately on arrest such office-bearer can be suspended, while in the other only on detention during trial. Thus two classes are created, one more onerous than the other and, therefore, may lead to being irrational and arbitrary so as to violate Article 14 of the Constitution. Such an interpretation can be avoided if we accept the interpretation suggested by the High Court."

21. Mr. Abhay Kumar Singh, learned Senior counsel appearing on behalf of the petitioners has rightly placed reliance on another Supreme Court decision reported in (2001) 10 SCC 4000 (V. Jagannadha Rao Vs. State of AP), in this regard, relevant portion of paragraph 18 of which reads thus:-

"18. We find that para 5(2) of the Presidential Order speaks of transfer and not of promotion. It would be hazardous to accept the contention of the appellants that promotion is included in the expression "transfer" and no assistant can be availed from the distinction made in para 5(1) of the Order. No provision or word in a statute has to be read in isolation. In fact, the statute has to be read as a whole. A statute is an edict of the legislature. It cannot be said that without any purpose the distinction was made in para 5(1) between transfer and promotion and such distinction was not intended to be operative in para 5(2). The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid as to what has been said as also to what has not been said. (See Mod. Ali Khan V. CWT5 and Institute of Chartered Accountants

of India V. Price Waterhouse⁶). As a consequence a construction which requires for its support addition or substitution of words or which resorts to rejection of words as meaningless, has to be avoided. As stated by the Privy Council in *Robert Wigram Drawford V. Richard Spooner*⁷. "We cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make deficiencies which are left there." The aforesaid decision was referred to by this Court in *State of Gujarat V. Dilipbhai Nathjibhai Patel*⁸. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See *Stock V. Frank Jones (Tipton) Ltd* ⁹). Similarly, it is wrong and dangerous to proceed by substituting some other words for words of the statute. (See *Pinner V. Everett* ¹⁰). In other words, there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding a particular case. Much trouble is made by substituting other phrases assumed to be equivalent, which then are reasoned from as if they were in the Act. In *Union of India V. Deoki Nandan Agarwal* ¹¹ it was observed that the Court cannot reframe the legislation for the very good reason that it has no power to legislate. It is incumbent on the Court to avoid the construction if reasonably permissible on the language which would render a part of the statute devoid of any meaning or application. In the interpretation of statutes, the Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have an effect."

22. He is right in his submission referring to the said judgment that Instruction No.2 has to be read strictly on the basis of what has been said in the instruction and the Court must exclude what has not been said in the said instruction.

23. There is yet another aspect of the matter. The Court cannot loose sight of ground realities. The candidates were participating in a competitive examination to get an employment in the State Government which most coveted these days. I am of definite view that so far petitioner no.1 is concerned, there has been no violation on his part, of Instruction no.2. Upon perusal of the answer sheet of petitioner no.1, as I have noted above, I reiterate that I do not find even a hint of any favoritism done by the examiner while evaluating his answer sheet.

24. Further, while considering the cases of the candidates who participated in the limited competitive examination, for appointment by promotion to Class III from Class IV posts, the Commission took into account the fact that 53% of the candidates had committed such similar mistakes. The Commission, however, decided to condone the mistakes.



Minimum educational qualification for selection on the basis of limited competitive examination was the same as in the case of direct recruitment, through advertisement No. 21 of 1987. However, I agree that case of petitioner no.2 is squarely covered by full Bench decision of this Court in case of Ram Pratap Paswan and others and the termination of his service cannot be interfered with, in the present proceeding. there being allegation against him that he mentioned his name in the answer sheet.

25. I have perused the answer sheet of petitioner no.2 also. He has mentioned his name, answering a question which required him to write a letter to his friend, while concluding his letter. Though, from his answer sheet also I do not find that any undue favour was shown to him by the examiner, I, being bound by a Full Bench decision of this Court, decline to pass any positive order in his favour. However, there is one thing which distinguishes the case of petitioner no.2 also from appellants of LPA No. 347 of 1998 (Ram Pratap Paswan and others vs. State of Bihar & ors). The Full Bench observed in their case that there was no question of reinstatement after long



lapse of time. In the present case petitioner no.2 has remained in service from the date of his initial appointment till date, though by virtue of an interim order of this court. It may be too harsh at this stage to ask him to leave the job at this stage of his life, a question which, I leave to the Chief Secretary of Bihar, in the peculiar facts and circumstances of the case, to ponder and decide, particularly, as he has continued in his service for so long.

26. For the reasons above, Office order issued vide memo no. 1533 dated 11.8.1997 (Annexure-4) by the Secretary cum I. G. Registration, Bihar, Patna is quashed to the extent it relates to petitioner no.1.

27. So far as petitioner no.2 is concerned, I direct the Chief Secretary of Bihar to take a decision whether he should be allowed to continue in the peculiar facts and circumstances of the case any further. The decision of the Chief Secretary, Bihar in this regard shall final and shall not be challenged. I must indicate that the direction, so far petitioner no.2 is concerned is being issued in the special circumstance of the present case, which atypical and exceptional. Till final decision is taken in

this regard, by the Chief Secretary in the light of present order, status quo as regards petitioner no.2 shall be maintained.

28. Let the original answer sheets of petitioner Nos. 1 and 2 be returned to the learned counsel representing the Commission.

29. This application is thus, partly allowed.

30. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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