

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6639 of 1998

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Meena Sahay, wife of Late Akhileshwar Sahay, resident of Surya Niwas, Shivganj, Arrah, P.S. Sadar, District-Bhojpur

.... Petitioner/s

Versus

1. The Bihar State Bar Council, Patna, through its Secretary
2. The Chairman, Bihar State Bar Council, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Advocate

For the Respondent/s : Mr. Sanjay Kumar Giri

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 18-03-2015

1. The original petitioner Akhileshwar Sahay died during the pendency of the writ application and has been substituted by his widow, Meena Sahay.

2. The petitioner seeks quashing of an order dated 2.7.1998 (Annexure 10) issued under the signature of the Secretary, Bihar State Bar Council, Patna (Hereinafter referred to as the Council) whereby and whereunder the original petitioner Late Akhileshwar Sahay (hereinafter referred to as the original petitioner) was discharged from his service of the Council. The original petitioner, at the relevant point of time was working as

Assistant under the Council.

3. From the pleadings in the writ application as well as the counter affidavit filed on behalf of the Bihar State Bar Council, Patna, it appears that one Ram Ganesh Pathak an Advocate had filed a complaint case being Complaint Case no. 524C of 1995 in the Court of learned Chief Judicial Magistrate, Patna that said Rajesh Kumar Shukla was practicing as an Advocate at Jameshedpur on the basis of forged enrolment number supplied by the Bihar State Bar Council, Patna. An FIR was thereafter instituted in Kotwali Police Station , Patna vide Kotwali P.S. Case No. 228 of 1995. The original petitioner was put under suspension vide an order dated 11.9.1995 in view of the said development, in contemplation of departmental proceeding. A departmental proceeding was thereafter initiated against him with the issuance of a charge-sheet through letter No. 1034 of 1995 dated 18.11.1995. Following were the charges framed against the petitioner:-

“CHARGE NO.1: You, Shri A. Sahay, under suspension, custodian of all relevant papers, files, original registers, original counter foils, original pro forma of duplicate enrolment certificate including counter foils since more than 15 years and you have deliberately taken away the files and made



interpolation in the State Roll Register of 1986 of Bihar State Bar Council. It is said that one Shri Rajesh Kumar Shukla was allegedly enrolled as an advocate on 31.1.1986 and on receipt of complaint that a person in the name of Shri Rajesh Kumar Shukla is practicing as an advocate at Jameshpur, the original file of Shri Rajesh Kumar Shukla allegedly enrolled on 31.1.1986 was called by the Secretary of the Bihar State Bar Council from you but you did not produce the same and you have removed the said original records from the office of the Bihar State Bar Council. That act of yours is unbecoming of an employee of the Bihar State Bar Council.

CHARGE NO.2:- You have given forged enrolment Certificate in favour of Shri Rajesh Kumar Shukla showing enrolment on 31.1.1986. After receipt of complaint, the Secretary of the Council directed you to produce file relating to enrolment of one Rajesh Kumar Shukla. You did not produce the file relating to Shri Rajesh Kumar Shukla. On further enquiry it was found that Sri Rajesh Kumar Shukla did not file application for enrolment either in the year 1985 or in the year 1986. The office maintains a draft receipt register in which draft no. amount of draft, the name of person who applied for enrolment as an Advocate used to be entered in the said register. The accountant is the custodian of the said record. The accountant has reported that no draft for enrolment of Shri Rajesh Kumar Shukla as an advocate on the Roll of Bihar State Bar Council has been received in between 1st April, 1985 to 31st January, 1986. You have also failed to produce the file relating to alleged enrolment of Rajesh Kumar Shukla. You have changed four pages of State Roll Register of the year 1986 and



you have inserted the name of Shri Rajesh Kumar Shukla to show that he was enrolled as an Advocate, although he was not enrolled. You have deliberately not paged the State Roll Register so that you may change it as and when you so desire. The entry regarding enrolment of Shri Rajesh Kumar Shukla is interpolation which is evidently clear from the identity Card issued through you and entered in the State Roll Register. You also got issued duplicate enrolment certificate to Shri Rajesh Kumar Shukla knowing that his enrolment certificate is forged. All these forgeries have been done by you with an intention for wrongful gain and to damage the reputation of Bihar State Bar Council. This act of yours is unbecoming of an employee of the Bihar State Bar Council.

CHARGE NO.3:- You were incharge and custodian of original Enrolment Certificate and duplicate certificates also you were custodian of blank enrolment certificate including the duplicate enrolment certificate and you intentionally used to leave one or two enrolment certificate totally blank for being issued on forged basis to such persons who are/is not enrolled as an Advocate and one of such act has been detected which is between duplicate enrolment certificate dated 31.10.1994 and 11.11.1994 and you got issued duplicate certificate on 11.11.1994 and thereafter keeping one proforma totally blank to be used for issuing to fake persons by putting seal of the Bihar State Bar Council and by putting forge signature thereon. This act of yours is unbecoming of an Assistant of Bihar State Bar Council.

CHARGE NO. 4:- You issued a forged certificate in the form of letter allegedly from the office of the Bihar State Bar Council dated

21.2.1990 and gave reference No. EC/90-BC/-03 dated 21st February, 1990 under the forged signature of Kumar Vijay Sinha, the then Secretary of Bihar State Bar Council dated 21st February, 1991. It has been verified and it has been found that no such letter under the signature of the then Secretary of the Bihar State Bar Council has been issued and this act of yours is unbecoming of an Assistant of the office of Bihar State Bar council.

CHARGE NO.5:- You, in connivance with Sri Rajesh Kumar Shukla prepared an identity card in the name of Shri Rajesh Kumar Shukla which is apparently against the entry of State Roll of 1986 and it is undated for being used as genuine, although the same is not genuine. This act of yours is unbecoming of an Assistant of the Office of the Bihar State Bar Council.

CHARGE NO.6:- You brought a typed certificate on 12.5.1995 for signature before the Secretary Shri Bikas Narain for giving it to Shri Rajesh Kumar Shukla and got signature of Sri Bikas Narain on 12.5.1995 and handed it over to Shri Rajesh Kumar Shukla. The said certificate was/is the basis of Sri Shukla to be a member of Jamshedpur Bar without production of original certificate. This act of yours is unbecoming of an Assistant of the office of Bihar State Bar Council."

4. A senior Advocate of the High Court and member of Bihar State Bar Council was appointed as an Inquiry Officer, before whom the petitioner submitted his written

statement of defence, denying the charges.

5. This is not in dispute that a proper enquiry was held thereafter following due procedure required in a departmental proceeding. The delinquent was given opportunity to present his defence before the Inquiry Officer. He was also given the opportunity to cross-examine the witnesses, produced by the Council in order to prove the charge. The Inquiry Officer upon considering the evidence, oral as well as documentary, available in the records of the disciplinary proceeding concluded that all the charges against the petitioner stood proved. A copy of the report of the Inquiry Officer was supplied to the petitioner before taking decision upon the report of the enquiry Officer. The delinquent had submitted his explanation on 4.8.1997 (Annexure-9). The Bihar State Bar Council accepted the report of the Inquiry Officer in its meeting held on 17.5.1998. Considering the gravity of the charge, the Council decided to discharge him from service. On the basis of the resolution of the Bihar State Bar Council, the impugned letter dated 2.7.1998 (Annexure-10) was issued communicating the petitioner the decision of the Bihar State Bar

Council, Patna.

6. A counter affidavit has been filed by the Bihar State Bar Council, Patna.

7. Mr. Pramod Mishra, learned counsel appearing on behalf of the petitioner has assailed the order imposing punishment of discharge from service on various grounds. One of the grounds which Mr. Mishra has taken to assail the order is that the Bar Council has not taken any action against Rajesh Kumar Shukla, who is said to be practicing as an Advocate on the basis of allegedly forged enrolment number, fraudulently issued by the Bihar State Bar Council, in issuance of which, the original petitioner was said to be instrumental. He submits that no action having been taken against said Rajesh Kumar Shukla, no action could have been initiated against the original petitioner as issuance of forged enrolment number to Rajesh Kumar Shukla was the main charge against the deceased petitioner. He has further submitted that in the criminal case, the police submitted final report in favour of the deceased petitioner which, was accepted by a criminal court of competent jurisdiction. He has further submitted that the departmental



proceeding should not have been proceeded during the pendency of investigation of the criminal case. According to him, the petitioner was forced to participate in the departmental proceeding though he had resisted continuance of such proceeding when the criminal case was still under investigation.

8. Assailing the resolution of the Bihar State Bar Council, Patna taking decision to impose punishment of discharge from service, Mr. Mishra has submitted that the report of the Inquiry Officer has not been discussed properly as would appear from the minutes of the proceeding, which is part of the impugned letter.

9. In addition, it has been submitted that the action against the petitioner started upon a complaint made by Ram Ganesh Pathak against Rajesh Kumar Shukla for cancelling his licence under Section 26(1) of the Advocates Act. Resolution dated 31.1.1996 of the Bihar State Bar Council has been brought on record by way of Annexure-13 to the writ application in order to contend that the Bihar State Bar Council, as a matter of fact, decided to drop the complaint against Rajesh Kumar



Shukla since the complainant Ram Ganesh Pathak had failed to appear before the Committee of the Council constituted for that purpose. Mr. Mishra has accordingly, submitted that the decision to impose punishment upon the petitioner, in the facts and circumstances of the case, is wholly arbitrary, illegal and needs to be interfered with, in the present proceeding under Article 226 of the Constitution of India.

10. Mr. Mishra, has also submitted that punishment imposed upon the petitioner is evidently disproportionate to the alleged misconduct.

11. Mr. S.K. Giri, learned counsel appearing on behalf of the Respondent Bihar State Bar Council has, on the other hand, submitted, referring to the report of the enquiry Officer there has been no procedural infirmity in holding the departmental enquiry. He has submitted that the petitioner was given due opportunity to file his written statement of defence, produce defence witness, if any, and cross examine the prosecution witnesses in course of the departmental enquiry. He further submits that in strict compliance of the principles of natural justice, the petitioner was supplied a copy of the



enquiry report and his comments were sought on the said enquiry report. After considering the report of the Enquiry Officer and the petitioner's explanation/comments thereon, the Bihar State Bar Council, the disciplinary authority, came to a definite conclusion that the petitioner was guilty of the charges levelled against him and rightly imposed the punishment of discharge from service. Referring to the charges, he submits that the same were grave in nature and the delinquent was not fit to be retained in service in view of the conclusive finding that he was guilty of grave misconduct. He has further submitted that seeing the nature of allegation, the quantum of punishment cannot be said to be excessive and shockingly disproportionate to the misconduct proved against the petitioner, warranting interference with the impugned decision on such ground. He has also submitted that the criminal cases and the departmental proceeding are decided differently and the standard of proof to prove a criminal charge and a misconduct in a disciplinary proceeding are substantially different. He has accordingly, submitted that acceptance of the final report by the criminal court of competent jurisdiction could not have come in a way of



disciplinary authority while taking disciplinary action against its employees for misconduct committed by him, on the basis of a domestic enquiry. He further submits, referring to Annexure 13 dated 31.1.1996 to the writ application that complaint of Ram Ganesh Pathak was dropped as he failed to submit documents in support of his allegation. He was, however, given liberty to approach the Bar Council of India with his grievance.

12. From the charge-sheet it appears that original petitioner Late Akhilshewar Sahay was the In-charge of enrolment and custodian of all relevant papers, files, original registers, original counter foils, original proforma of duplicate enrolment certificates including counter foil for more than a decade. Upon receiving a complaint with respect to Rajesh Kumar Shukla allegedly enrolled on 31.1.1996, he was directed to produce relevant records by the Bihar State Bar Council. It is alleged that the petitioner removed the original records from the office of Bihar State Bar Council and did not produce the documents when demanded.

13. It further appears from the charge-sheet that no bank draft, required for the purpose of enrolment of a person as



an Advocate, was received by the Bihar State Bar Council between 1.4.1985 and 31.1.1996. It was found that, as a matter of fact, said Rajesh Kumar Shukla had not filed any application for enrolment. When the matter was being enquired into upon receiving a complaint, the petitioner failed to produce the file relating to the alleged enrolment of Rajesh Kumar Shukla. It was further alleged that the original petitioner had changed four pages of State Roll Register of the year 1986, and inserted the name of Rajesh Kumar Shukla to show that he was enrolled as an Advocate. These were the charges, which came to be proved, in course of the departmental enquiry. From the enquiry report, I find that findings of the enquiry officer are based on evidence which cannot be said to be irrelevant for the purpose of coming to a conclusion as recorded by the Inquiry Officer. Said differently, the finding of the enquiry officer as regards petitioner's guilt can not be said to be perverse so as to warrant interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

14. The charges levelled against the petitioner in the departmental enquiry related to interpolation made in the State



Roll Register by the original petitioner and failure on his part to produce the record when demanded. He is said to have removed the original records from the office of the Bihar State Bar Council. These charges/such allegations are separate and independent of allegation of forgery made in the criminal case. Secondly, Mr. Giri is right in his submission that the disciplinary authority was free to take appropriate action against the petitioner on the basis of domestic enquiry on the charges of misconduct of the original petitioner which were apparently unbecoming of worthy employee of the Council.

15. I do not feel persuaded by submissions made on behalf of the petitioner that no disciplinary action against the delinquent ought to have been taken in view of acceptance of final form by the Court of competent jurisdiction and in view of the fact that Bar Council had dropped the complaint filed by Ram Ganesh Pathak against the said Rajesh Kumar Shukla. This is well settled that result of a criminal proceeding exonerating an employee of criminal charge cannot be the basis for exoneration of an employee in a disciplinary proceeding, if on the basis of preponderance of probabilities, the charges can

be said to have been proved in the disciplinary proceeding. I do not find the quantum of punishment to be disproportionate to be proved misconduct and accordingly, I do not find any reason to interfere with the impugned order.

16. I do not find any merit in this application. This application is accordingly, dismissed.

17. Mr. Mishra, learned counsel for the petitioner has submitted that certain amount is still payable by Bihar State Bar Council which had remained unpaid during the life time of the original petitioner. The petitioner shall be at liberty to approach the Secretary, Bihar State Bar Council, Patna giving the details of such due. The Secretary, Bihar State Bar Council shall be obliged to consider the representation and if any, amount is found due having remained unpaid to the original petitioner, the same shall be paid within a period of three months from the date of receipt/production of a copy of this order.

18. Before I part with, I must observe that on the one hand the Bihar State Bar Council came to a definite conclusion that the original petitioner was responsible for issuance of a



forged enrolment number in favour of Rajesh Kumar Shukla, whereas on the other hand, it dropped a complaint filed by said Ram Ganesh Pathak on the ground that Ram Ganesh Pathak failed to prove the allegation against Rajesh Kumar Shukla. It appears that Ram Ganesh Pathak in his application has not alleged any misconduct against Rajesh Kumar Shukla which was required to be pursued and proved by Ram Ganesh Pathak. He appears to have brought a complaint before the Bihar State Bar Council that the very enrolment number in favour of Rajesh Kumar Shukla to practice as an Advocate was issued fraudulently. It was incumbent upon the State Bar Council to have enquired into the matter from that angle without depending upon any further proof in support of allegation, to be brought by said Ram Ganesh Pathak. If it is the finding of the Bihar State Bar Council, Patna that said Rajesh Kumar Shukla had not submitted his application nor any draft was received by the Bar Council for his enrolment, it was statutory duty upon the Councils to have proceeded accordingly and it appears to me that the State Bar Council has miserably failed in this regard.

19. Accordingly, I would direct the Bihar State Bar Council to reconsider the circumstance in which Rajesh Kumar Shukla has been allowed to practice as an Advocate, despite conclusive finding by the Council in a disciplinary proceeding that enrolment number was fraudulently issued in his favour. The Court expects from the Bar Council to proceed thereafter in accordance with law as Council itself is a body of experts. The Court expects that the Bihar State Bar Council shall take a decision within a period of six months from the date of communication of this order.

(Chakradhari Sharan Singh, J)

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