

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13965 of 2014

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1. Ajay Kumar Srivastava S/o Late Bindeshwar Prasad Srivastava R/o Savitri-Sadan (Near Pani Tanki), Mohalla- Jagadishpur, District- Ballia (U.P.) At present- Ex. District AND Sessions Judge, Jehanabad, Sant Kutir, House No. 243, Nehru Nagar, Patna- 13, Pin- 800013.

.... Petitioner/s

Versus

1. The High Court of Judicature at Patna through the Registrar General, Patna High Court, Patna.
2. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Department fo Gneral Administration, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/S. Binod Kumar Singh, Rakesh Kumr, Rishi Raj Sinha

For the Respondent No.1 : Mr. Bindhyachal Singh & Ms Smriti Singh

For the Respondent no.3(State): Mr. A.K. Sinha(G.A.9) & Mr. Pawan Kr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 29-07-2015

The petitioner joined the Superior Judicial Service in the year 1991 on being selected as Additional District & Sessions Judge. He was placed at serial no. 2 in the list of 32. After completion of training, he was first posted as Additional District & Sessions Judge, Godda, which is now in the State of Jharkhand. His service was confirmed on 6-5-1992. He worked as Additional District & Sessions Judge at various places, such as Purnea and Siwan.

Disciplinary proceedings were initiated in the year 2008, and punishment of reduction of rank by 17 places was imposed and the same became final.

2. The petitioner was functioning as Presiding Officer, Family Court, Gaya , and on 14-2-2012 was transferred as District & Sessions Judge, Jehanabad.

3. A complaint/representation dated 7-8-2013(Annexure-10) was addressed to this Court by the President and Secretary of the Bar Association, Jehanabad, alleging that the conduct of the petitioner as District & Sessions Judge was highhanded and arbitrary. One retired Stenographer of the court, by name Jagdish Sharma addressed a letter dated 2-8-2013 alleging that the petitioner committed irregularities in the matter of purchase of furniture and other items. The learned Inspecting Judge is said to have directed enquiry into this and on the basis of the report received from the Officer On Special Duty and Registrar(Vigilance), the matter was directed to be placed before the Standing Committee, on the direction issued by the then Hon'ble Chief Justice. The Standing Committee, in turn, passed a Resolution in its Meeting dated 7-1-2014 directing that the petitioner be retired compulsorily in exercise of power under Rule 74(b)(ii) of the Bihar Service Code(for short, the Code), in public interest, duly offering him pay of three months. It was resolved on the



same day that the petitioner shall be relieved from all duties. The said Resolution was placed before the Full Court, and at its Meeting held on 11-1-2014 the Full Court approved the same. That resulted in issuance of the Notification dated 6-2-1994(Annexure-1) by the General Administration Department of the Government, compulsorily retiring the petitioner. The same is challenged in this writ petition.

4. The petitioner contends that the order of compulsory retirement was passed as punishment, without conducting enquiry. He contends that the letters addressed by the retired Stenographer, by name, Jagdish Sharma, formed the sole basis for the Standing Committee and the Full Court, and the same is contrary to law. Other grounds are also urged.

5. The High Court filed counter-affidavit. The fact that representation/complaint was received from the President and Secretary of the Bar Association, Jehanabad and two complaints from Jagdish Sharma, Retired Stenographer, is admitted. It is stated that the said representations/complaints and relevant materials were placed before the Standing Committee, which, in turn, passed the aforesaid Resolution. It was further stated that the measure of compulsory retirement is not a punishment, and the Resolution and the consequent impugned order were passed on the basis of past performance of the petitioner.



6. Sri Binod Kumar Singh, learned counsel for the petitioner submits that a perusal of the Resolution of the Standing Committee, which is made available by the Court, makes it clear that the sole basis for the steps taken was a couple of letters addressed by the retired Stenographer, and it is a clear case of imposition of punishment without conducting enquiry. He submits that in case the High Court wanted to retire the petitioner compulsorily, in public interest, it could have done in usual course by evaluating his performance, and the very fact that the petitioner was promoted as District & Sessions Judge despite there being punishment on earlier occasion, makes the plea taken in the counter-affidavit unacceptable. Learned counsel further submits that the then Registrar(Vigilance) has taken many steps contrary to the prescribed procedure and he was responsible in creating the record and misleading the High Court.

7. Sri Bindhyachal Singh, learned counsel for the High Court, on the other hand, submits that the impugned order was passed purely in exercise of discretion under Rule 74(b)(ii) of the Bihar Service Code, and there is no element of punishment in it. He contends that the reference to the representations/complaints was only by way of passing reference, and the Standing Committee and thereafter the Full Court have taken into account, the entire service record, and on being satisfied that it is not at all in the public interest

to continue the petitioner in service, the decision was taken to retire the petitioner compulsorily.

8. Learned counsel for the petitioner as well as learned counsel for the High Court has placed reliance upon certain precedents.

9. It is not in dispute that the High Court is conferred with the power under Rule 74(b)(ii) of the Code to compulsorily retire a person before he attains the age of superannuation. Such steps must be in public interest and not by way of punishment. The power of this nature, being an exception to the protection afforded under Article 311 of the Constitution of India, the exercise thereof needs to be examined meticulously and any benefit of doubt in this behalf must, invariably accrue to the employee.

10. It may be true that the petitioner was imposed the punishment of reduction in rank on earlier occasion. It is equally true that he had been appointed as District & Sessions Judge almost by way of forward movement, several years after the said punishment. Though one cannot treat the punishment as having been washed off on account of appointment of the petitioner as District & Sessions Judge, the manner in which the High Court treated him can easily be discerned. In case he was an officer of such nature that he cannot be assigned with any responsibility, the question of his being appointed

as District & Sessions Judge would not have arisen. This, however, is a different aspect altogether.

11. Even after the petitioner was appointed as District & Sessions Judge, it was competent for the High Court to exercise power under Rule 74(b)(ii) of the Bihar Service Code, if the circumstances warranted. Time and again, the Hon'ble Apex Court has been sounding a note of caution that exercise of power of this nature should not be a substitute, or alternative, for initiation of disciplinary proceedings. In a given case, if the Disciplinary Authority feels that it may not be possible to prove the charges, it may be tempted to resort to the power under the provision similar to Rule 74(b)(ii) of the Code. In this regard, the Hon'ble Supreme Court, in Ram Ekbal Sharma Vs. State of Bihar(A.I.R. 1990 Supreme Court 1368) observed in paragraph 28 as under:

“ On a consideration of the above decisions the legal position that now emerges is that even though the order of compulsory retirement is couched in innocuous language without making any imputations against the Government servant who is directed to be compulsorily retire from service, the Court, if challenged, in appropriate cases can lift the veil to find out whether the order is based on any misconduct of the Government servant concerned or the order has been made bona fide and not with



any oblique or extraneous purposes. Mere form of the order in such cases cannot deter the Court from delving into the basis of the order if the order in question is challenged by the concerned Government servant as has been held by this Court in Anoop Jaiswal's case. This being the position the respondent-State cannot defend the order of compulsory retirement of the appellant in the instant case on the mere plea that the order has been made in accordance with the provisions of R.74 (b)(ii) of the Bihar Service Code which prima facie does not make any imputation or does not cast any stigma on the service career or the appellant. But in view of the clear and specific averments made by the respondent-State that the impugned order has been made to compulsorily retire the appellant from service under the aforesaid Rule as the appellant was found to have committed grave financial irregularities leading to financial loss to the State, the impugned order cannot but be said to have been made by way of punishment. As such, such an order is in contravention of Art. 311 of the Constitution of India as well as it is arbitrary as it violates principles of natural justice and the same has not been made bona fide."

12. In case the High Court formed the opinion in the ordinary course, by referring to the record for reviewing the

performance of the petitioner, to retire him before the age of superannuation, it could have certainly done that. The scope of judicial review in the matter of this nature is very limited. However, the record in this case, presents a different picture.

13. One Stenographer from Jehanabad submitted a complaint alleging that the petitioner resorted to certain irregularities in purchasing the furniture. It is important to mention that Jehanabad District Court was recently established, and large scale purchases of furniture were needed. After the purchases were made during the tenure of the petitioner, an inspection by a learned Judge of this Court took place and did not notice any irregularity. It is only after the receipt of the complaint, that the matter was reopened and placed before the subsequent Inspecting Judge. Except directing that the question as to whether the prescribed procedure was followed must be examined, the learned Judge did not make any comments adverse to the petitioner. However, taking advantage of that limited endorsement, the then Registrar(Vigilance) went whole hog, and made a mountain out of mole. He stated that the purchases were made without inviting tender, and that the purchases were made in a very casual manner. Ultimately, a comprehensive note was put before the then Hon'ble Chief Justice. It was directed to be placed before the Standing Committee on 18-12-2013.

14. What made the things curious and gave important twist and turn of the case is the second letter dated 12-8-2013 received from Jagdish Sharma. This time, the Registrar(Vigilance) went whole hog and made his own comments about it. Thereafter submitted note before the learned Inspecting Judge which reads as under:

“In view of the aforesaid facts and circumstances, your Lordship may, perhaps, desire that the instant allegation petition sent by Jagdish Sharma, retired Steno, Civil Court, Jehanabad kept at sl. 3/c along with the report of the District Judge kept at sl. 5/c as well as the another allegation petition sent by Jagdish Sharma kept at sl. 6/c also require consideration by Hon’ble Standing Committee.”

15. The learned Inspecting Judge simply endorsed it. This could have found its way to the Standing Committee, only after endorsement by the then Hon’ble Chief Justice. However, no steps were taken in this direction, and the note together with complaints were placed before the Standing Committee. This is evident from the Agenda 6(A) of the Proceedings of the Meetings of the Standing Committee held on 7th January, 2014, as well as the Resolution passed in relation to it, which are as under:

Agenda

Resolution

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| 6(A) | To consider the minutes dated 2.1.2014 of Hon’ble Inspecting Judge of the | Resolved that Sri Ajay Kumar Srivastava, District and Sessions Judge, Jehanabad be, in exercise |
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Judgeship of Jehanabad of powers conferred by Rule 74 with regard to allegation (b)(ii) of the Bihar Service Code, petition sent by Sri retired from Service in public Jagdish Sharma, retired interest. In lieu of notice Sri Stenographer, Civil Ajay Kumar Srivastava be paid Court, Jehanabad directed three months' pay and against Sri Ajay Kumar allowances. Srivastava, District and Sessions Judge, **Further resolved** that Sri Ajay Jehanabad, Sri Sunil Kumar Srivastava, District and Kumar Singh, A.C.J.M.- Sessions Judge, Jehanabad, be Cum-Sub Judge IV, Sri relieved from all judicial duties. Ashok Kumar, Accountant and Sri Mahendra Singh, Head Clerk, Civil Courts, Jehanabad.

(P.F.VI-25-2002) (Vigilance Cell)

16. We are indeed shocked to note the sequence of events which led to the Resolution of the Standing Committee. The Registrar(Vigilance) was supposed to process the matter in a systematic manner, in accordance with law, but has chosen to deviate from the prescribed procedure and in a way misled the Standing Committee.

17. Whatever be the procedural impropriety, it becomes clear from the Resolution of the Standing Committee that what constituted the basis for its conclusion, is the couple of letters addressed by Jagdish Sharma. Therefore, it cannot at all be presumed that the Standing Committee passed the Resolution on the basis of general evaluation of the performance of the petitioner. There cannot

be any presumption contrary to what is specifically contained in the record. The Resolution of the Standing Committee was approved by the Full Court.

18. The protection given to a civil servant under Article 311 of the Constitution of India, is almost sacrosanct, and it is only in rare and exceptional cases, that the punishment can be imposed without conducting the departmental proceedings. It is in the departmental enquiry, that an employee who is accused of illegality or misconduct, can put forward his case. Compulsory retirement provided for under a Service Rule is no doubt, not a punishment. However, if the power under such provision is resorted to in a case where acts of misconduct are presumed, the exercise tends to become colorable. What is prohibited from being done directly, cannot be permitted to be done indirectly.

19. We are conscious of the principles laid down by the Supreme Court in *Sushree Sumita Kumari Vs. State of Bihar & ors.*[2001(2) P.L.J.R 459 and in *Rajasthan State Road Transport Corporation and ors. Vs. Babu Lal Jangir* [(2013) 10 Supreme Court Cases 551] dealing with similar matters. However, we find that the facts of the present case prove beyond the pale of doubt, that the measure of compulsory retirement was taken not in the ordinary course of things, but on the basis of certain allegations, without

conducting enquiry. Therefore it partakes of the character of punishment.

20. Under these circumstances, it cannot be said that the Resolution of the Standing Committee does not result in stigma, when the Agenda for the Resolution itself indicates the substratum for stigma.

21. We, therefore, allow the writ petition and set aside the Notification dated 6-2-2014 (Annexure-1). It is, however, left open to the High Court to initiate action against the petitioner in case it is found that he has resorted to any acts of indiscipline.

(L. Narasimha Reddy,CJ)

BK.Roy/-A.F.R.

(Anjana Mishra, J)

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