

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1935 of 2016
Arising out of
Miscellaneous Jurisdiction Case No. 1417 of 2012
Along with
Interlocutory Application No.8087 of 2016

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The High Court of Judicature at Patna through the Registrar (Vigilance), Patna High Court.

.... Opposite Party- Appellant/s

Versus

1. Suresh Pandey, son of Late Shantu Pandey, resident of Mohalla- Jyoti Puram Colony, P.S. Shastri Nagar, District- Patna.

... ... Petitioner ... Respondent.

2. Navin Kumar, Chief Secretary, Government of Bihar, Patna.

3. Ravindra Panwar, Principal Secretary, Public Health Engineering Department (in Short PHED), Bihar, Patna.

4. Prabhakar Jha, Joint Secretary to Government, Public Health Engineering Department, Bihar, Patna.

5. The State of Bihar.

.... Opposite Parties- Respondent/s

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Appearance :

For the Appellant : Mr. Piyush Lall, Advocate

For respondent No.1 : Mr. Arvind Kumar Tiwary, Advocate

For the Respondents-State : Mr. Lalit Kishore (P.A.A.G.-1)

Mr. H. S. Roy, A.C. to P.A.A.G.I

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 19-10-2016

Re.: Interlocutory Application No.8087 of 2016

The present Interlocutory Application is by the High Court for leave of this Court to file an appeal against the part of the order passed by the learned Single Bench of this Court on 7th September, 2016 in Miscellaneous Jurisdiction Case No.1417 of 2012, whereby, an employee of this Court was ordered to be put under suspension and to

initiate departmental proceeding. The said order is said to be in violation of Article 229 of the Constitution.

2. In view of the issues raised, we deem it appropriate to allow the High Court to file the present Letters Patent Appeal.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.1935 of 2016

The High Court has filed the present Letters Patent appeal under Clause 10 of the Letters Patent against the direction issued by the learned Single Bench directing the Registrar General of this Court to comply with the order of putting an employee of this Court under suspension immediately and to initiate departmental proceedings against him for the stated misconduct.

2. Learned counsel for the appellant contended that in terms of Article 229 of the Constitution, the appointment of the officers and servants of the High Court are under the exclusive control of the Chief Justice of a Court which includes the power to take disciplinary proceedings, therefore, the learned Single Bench, by virtue of a judicial order, cannot direct the administrative power of the Chief Justice to be carried out in a particular manner. It is contended that the learned Single Judge could recommend to the Chief Justice to take appropriate action in respect of the officers and servants under the control of the Chief Justice, but cannot usurp the powers of the Chief



Justice in exercise of power of judicial review deemed to be exercised in terms of Article 226 of the Constitution. The power of appointment including the power to dismiss an employee of the High Court has to be exercised in the manner enumerated in the Constitution and in no other manner. Reliance is placed upon two judgments of the Hon'ble Supreme Court reported as Manmatha Nath Ghosh v. Baidyanath Mukherjee, (2005) 13 SCC 630, and State of U. P. v. Section Officer Brotherhood, (2004) 8 SCC 286.

3. Mr. Lalit Kishore, learned Principal Additional Advocate General No.1 appearing for the State and Mr. Arvind Kumar Tiwary, learned counsel appearing for the writ petitioner-respondent no.1, could not raise any argument disputing the proposition argued by the learned counsel for the appellant.

4. We have heard learned counsel for the parties and find that in exercise of power of judicial review, a judge of this Court could not usurp the power of the Chief Justice in respect of officers and servants of the High Court to be dealt with them in a particular manner.

5. In Manmatha Nath Ghosh's case (supra), though the Court was dealing with the fixation of pay scale by the Hon'ble the Chief Justice, but it was held that under the guise of judicial review, the Court cannot usurp the powers conferred under Article 229 of the

Constitution and fix a pay scale different from the one prescribed in exercise of the said power. The relevant extract reads as under:-

“23. We agree with the conclusion of the Special Bench that the Court cannot, in the guise of judicial review, usurp the powers conferred by Article 229 of the Constitution and fix a pay scale different from the one prescribed in exercise of the said power.”

6. In Section Officer Brotherhood's case (supra), which was again a case of fixation of pay scale, it was held that the Chief Justice of a High Court exercises constitutional power in terms of Article 229 of the Constitution and that conditions of service applicable in the case of staff and officers of the High Court are within the exclusive domain of the Chief Justice. The relevant extract reads as under:

17. There cannot be any doubt or dispute whatsoever that determination of different scales of pay for different categories of employees would ordinarily fall within the realm of an expert body like the Pay Commission or Pay Committee. The Chief Justice of a High Court exercises constitutional power in terms of Article 229 of the Constitution of India which reads as under:

“229. *Officers and servants and the expenses of High Courts.—*

(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other judge or officer of the Court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the legislature of

the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.”

18. Such a provision has evidently been made to uphold the independence of the judiciary.

19. A bare perusal of the aforementioned provision would clearly go to show that laying down the conditions of service applicable in the case of staff and officers of a High Court is within the exclusive domain of the Chief Justice but in case of any financial implication involved therein the approval of the State Governor is imperative.”

7. In view of the aforesaid judgments interpreting the scope of Article 229 of the Constitution, the appointment of the Officers and servants of the High Court are in exclusive control of the Chief Justice which includes the power to take disciplinary proceedings and that such power cannot be usurped in purported exercise of power of judicial review. The judgments referred to above are though in respect of pay scales, but the conditions of service include the condition of suspension and disciplinary action which fall within the exclusive domain of the Chief Justice.

8. Consequently, part of the order whereby, the Registrar

General was directed to put an employee of this Court under suspension and to initiate departmental proceedings is ordered to be treated as recommendation to Hon'ble the Chief Justice to take an appropriate action administratively in accordance with law.

9. Learned counsel for the appellant points out that in terms of the direction of this Court, the official has been put under suspension and disciplinary proceedings initiated. Even if that be so, still, we find that an appropriate decision has to be taken by Hon'ble the Chief Justice and not in terms of the direction of this Court. Therefore, all proceedings initiated against the official are quashed. Hon'ble the Chief Justice is at liberty to take appropriate decision considering the order as recommendation in accordance with law.

10. Consequently, the Letters Patent Appeal stands allowed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	A. F.R.
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