

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.329 of 2016

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1. Rajendra Pratap Singh Son of Late Bhawani Seva Singh, Retired Additional District & Judge, Gaya, Presently residing at Flat No. 306, C Block, Sarswati Apartment, River View Enclave, Gomati - Nagar, Sector - 4, P.O. & P.S. Gomati Nagar, District - Lucknow (U.P.)

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary to the Government of Bihar, Department of General Administration, Patna 1
2. Secretary to the Government of Bihar, Department of Law, Patna - 1
3. The High Court of Judicature at Patna, through Registrar General, Patna
4. The Registrar General, Patna High Court, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nand Kishore Singh, Advocate

For the Respondent/s : Mr. Piyush Lall, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 05-07-2017

Challenging an order dated 30th of September, 2014 issued by the Registrar General, Patna High Court, imposing punishment of withholding of 20% of pension payable to the petitioner permanently under Rule 43(B) of the Bihar Pension Rules, 1950, this petition has been filed by the petitioner, a retired Additional District and Sessions Judge, who was posted in Gaya at the relevant point of time.

Facts, in brief, indicate that while the petitioner was



working as an officer in the Bihar Judicial Service and was posted at Gaya from where he superannuated on 30th of May, 2014, it was found that in a case registered by Kotwali Police Station, Gaya being P.S. Case No.40 of 2008 for offences under Sections- 302, 341 and 34 of the Indian Penal Code, read with Section 27 of the Indian Arms Act, petitioner granted bail to an accused Manoj @ Bulbul while sitting as a vacation judge on 16.10.2012.

Based on the complaint of the said act, a charge-sheet was issued to the petitioner under the Discipline And Appeal Rules after preliminary enquiry into the matter and in the charge-sheet was issued to the petitioner on 28.2.2014, based on the resolution of the Standing Committee of the High Court, it was alleged that bail petition was filed by the said accused in Sessions Trial No.66 of 2012 and bail was granted on 16.2.2012 to the accused by the petitioner whereas the High Court in Cr. Misc. No.10563 of 2009 on 20.8.2009 had cancelled the bail earlier granted to Manoj @ Bulbul on 25.11.2008 in Cr. Misc. No.38225 of 2008. It is alleged that in spite of the aforesaid fact, Manoj @ Bulbul has been granted bail, even though it was found by the High Court while cancelling the bail that some forged F.I.R. and document was used for obtaining the bail on 25.11.2009 and a report from the trial Court was called for. The petitioner submitted his detailed explanation to the charge-



sheet vide Annexure-3 on 12.5.2014 and explained the circumstances under which he had granted bail to the accused person. It was a detailed explanation by him and in para 6 it was indicated that on 16.2.2012 when the bail matter came up before him, it was informed that in the sessions trial the co-accused persons have been acquitted and as the nine were accused persons were acquitted in the criminal case, he was swayed by the aforesaid consideration and granted bail to the accused. After explaining the position on the basis of which bail was granted, the explanation submitted indicated that he admits, with utmost humility in his command, that he failed to notice the fact that the earlier bail of the accused was cancelled by the High Court and it can be a judicial impropriety on his part in granting bail based on the subsequent acquittal of the accused persons. It was also submitted in the explanation that he was sitting as a Vacation Judge and the regular Sessions Judge had not reported to the High Court with regard to surrender of the accused on 13.8.2012 etc. However, he submitted his unconditional apology for the same. The petitioner appeared before the Standing Committee along with the aforesaid application and taking note of the fact that the petitioner has submitted an unconditional apology, the Standing Committee imposed the punishment in question without conducting any enquiry into the



matter.

Learned counsel for the petitioner vehemently argued that the so called admission made by the petitioner was not an admission *per se*. It was a qualified explanation submitted by the petitioner and as an alternate, he had explained that he may be pardoned if he has committed any error and in the show cause notice he has also indicated that he has an unblemished service record of 22 years, has never been punished and no disciplinary action taken against him. Accordingly, it was the case of the petitioner that in case the High Court wanted to take action, a departmental enquiry should have been conducted and even if the entire case, as has come on record, is admitted, it is a case of negligence while dealing with the matter by the petitioner and, therefore, a solitary act of negligence cannot be taken as misconduct for punishing the petitioner, as held by the Hon'ble Supreme Court in the case of vs. High Court of Allahabad, AIR 2007 SC Suppl. 88.

Learned counsel for the petitioner referring to the observations made by the Hon'ble Supreme Court in the aforesaid case, particularly para 12 onwards, tried to indicate that in the facts and circumstances of the case, it is appropriate that the petitioner should be exonerated of the charges levelled against him.

Learned counsel for the respondent High Court



submitted that the petitioner, a judicial officer, should have taken note of the order passed in Cr. Misc. No.38225 of 2008, the terms which compelled the High Court to cancel the bail and without taking note of the aforesaid aspect the act of granting bail was an act of misconduct on the part of the petitioner and taking note of the admission made by the petitioner to the Standing Committee, the action taken by the High Court cannot be faulted with.

We have considered the matter in detail and we find that while taking action in the matter, the High Court has not taken note of various aspects of the matter which are relevant for taking action in cases of this nature against a Judicial Officer. The first and the foremost is that Annexure-3, the explanation submitted by the petitioner cannot be termed to be unequivocal or specific admission in its totality. In fact, the petitioner at the very outset in para 2 shows that the allegations made against him are incorrect. He denies the same and from para-3 onwards up to para 6 explains the circumstances based on which bail was granted and he had given justification for the impugned action. However, in the concluding part of para 6 he seeks pardon from the High Court and prays for closing of the proceedings. The respondents only took note of the last part of the submission made in para 6 of the explanation, it lost sight of the explanation given in its totality and proceeded to hold



the petitioner is guilty of the charges levelled against him. This was not the right approach as the admission of guilt was not an unequivocal one without any reasons. It was an explanation by the petitioner justifying his action and, as an alternate, the prayer was to exonerate him on grounds of humanity, past conduct and excuse him for the solitary act of negligence committed by him. That apart, the charges leveled included allegations of “extraneous consideration” and “lack of integrity”. There was nothing before the Standing Committee to hold these allegations as proved, at best even if for argument sake the entire allegation is accepted, it would prove the charges of “gross judicial impropriety” that also with regard to a solitary case of granting bail to a co-accused when 9 of the accused after trial have been acquitted as the complainant i.e. wife and the daughter of the accused did not turn up to give evidence.

That being so, if the High Court was of the view that the misconduct is serious in nature for which a major punishment should be imposed, the High Court should have conducted an enquiry into the matter once the charge-sheet was issued leveling charges of lack of integrity and extraneous consideration and in treating the explanation of the petitioner Annexure-3 as an admission and proceeding in the matter, in our considered view, amounts to violation of the principles of natural justice and denies



reasonable opportunity of explaining the circumstances in an enquiry to the petitioner and therefore, on this count, the entire action taken against the petitioner is liable to be quashed. That apart, while imposing the punishment in question, the Standing Committee of the High Court, with due respect, did not take into account the law laid down by the Hon'ble Supreme Court in the case of Ramesh Chandra Singh (supra). It has been held by the Hon'ble Supreme Court in the aforesaid case that while discharging his judicial function, if some aberration or negligence is committed by a judicial officer and if the said negligence is not coupled with lack of integrity or *mala fide* intention and if it is only an isolated case of negligence, then punishment should not be imposed. Instead, the officer should be exonerated. It has been held by the Hon'ble Supreme Court that a negligence *per se* on one instance may not amount to misconduct. A negligence in order to attract the requirement of being a misconduct should be one which has been committed deliberately, intentionally with *mala fide* intention or ulterior motive and repeated causing of negligence would amount to misconduct in case of a judicial officer. The law laid down by the Hon'ble Supreme Court is also not taken note of properly by the Standing Committee of the High Court while imposing the punishment. It is not the case of the respondents that the petitioner



had been in the habit of committing such acts of omission and commission or negligence on his part and his service record is so bad or vitiated that after taking note of all these factors this impugned action was taken. There was no material either before the Standing Committee or in the counter affidavit filed in this petition to show that the petitioner during his service was habituated in committing such negligent act or in the past also he was doing so. We are of the considered view that in taking action and imposing punishment without conducting an enquiry, and various relevant facts, a grave error has been committed which has resulted in prejudice to the petitioner in defending himself and these are sufficient grounds for interference.

At this stage, it would be appropriate to take note of certain questions of law involved in the matter. Petitioner has been proceeded against and action has been taken against the petitioner on account of misconduct said to have been committed by the petitioner.

In the case of Inspector Premchand vs. Govt. of NCT Of Delhi And Others, (2007) 4 SCC 566, the meaning of the word “misconduct” has been considered and after taking note of the meaning of the word “misconduct” as appearing in the Black’s Law Dictionary and detailed by the Hon’ble Supreme Court earlier in the



case of State of Punjab vs. Ram Singh, Ex-Constable, (1992) 4 SCC 54, the Hon'ble Supreme Court deals with the matter in the following manner:

“9. Before advertent to the question involved in the matter, we may see what the term “misconduct” means.

10. In *State of Punjab v. Ram Singh, Ex-Constable*, (1992) 4 SCC 54: 1992 SCC (L & S) 793: (1992) 21 ATC 435 it was stated: (SCC pp. 57-58, para 5)

“5. Misconduct has been defined in *Black's Law Dictionary*, 6th Edn. At p. 999, thus:

‘A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.’

Misconduct in office has been defined as:

‘Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.’”

Thereafter in para-11, the term “misconduct” as defined in P. Ramanatha Aiyar's Law Lexicon, 3rd Edn. is considered and after taking note of various judgments of the Hon'ble Supreme Court with regard to the meaning of the word “misconduct”, the principle has been crystallized in para Nos.11 and 12 in the following manner:

11. In *P. Ramanatha Aiyar's Law Lexicon*, 3rd Edn., at p. 3027, the term “misconduct” has been defined as under:

“The term ‘misconduct’ implies a wrongful intention, and not a mere error of judgment.

* * *

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word ‘misconduct’ is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. ‘Misconduct’ literally means



wrong conduct or improper conduct.”

(See also *Bharat Petroleum Corpn. Ltd. V. T.K. Raju*, (2006) 3 SCC 143: 2006 SCC (L&S) 480)

12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was wilful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In *union of India v. J Ahmed*, (1979) 2 SCC 286: 1979 SCC (L&S) 157 whereupon Mr. Sharan himself has placed reliance, this Court held so stating:

“11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct. A disregard of an essential condition of the contract of service may constitute misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pierce v. Foster*, 17 QB 536, 542). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers)*, (1959) 1 WLR 698]. This view was adopted in *Shardaparasad Onkarprasad Tiwari v. Divisional Supdt., Central Rly., Nagpur Division, Nagpur*, (1959) 61 Bom LR 1596, and *Satubha K. Vaghela v. Moosa Raza*, 10 Guj LR 23. The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under;

‘Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct’.”

(emphasis supplied)

From the aforesaid analysis of the meaning of “misconduct” it is very clear that “misconduct” means an act which is forbidden under law, unlawful behaviour, wilful in character, improper or wrong behaviour which are all synonymous with misdeed, misbehaviour, impropriety, mismanagement etc., but a



negligent or careless approach is not classified as a “misconduct”. It means a conduct arising from ill motive and acts of negligence. Error of judgment or innocent mistakes do not constitute misconduct. If an act is done consistently in a manner which is not permissible under law, it comes out of the purview of consistent act of the error of judgment or negligence and constitutes a wilful act of misconduct, but a single isolated act may not come within the purview of misconduct when there is no material to show wilful act with mala fide motive or any question with regard to integrity of the person. In the matter of taking action against members of judicial services, particularly on the basis of a complaint received, a detailed principle and caution has been laid down by the Hon’ble Supreme Court in the case of *Nirmala J. Jhala v. State of Gujarat*, (2013) 4 SCC 301, wherein the Hon’ble Supreme Court after considering various judgments with regard to departmental action, discharge of quasi judicial function etc., has laid down that while taking action against members of the subordinate judicial authorities, various factors have to be taken note of and merely on the basis of an isolated complaint, without there being any substantial material and on the basis of doubt action should not be taken. While considering the question of taking action against judicial officers, in the case of *Nirmala J. Jhala’s case* (supra) the Hon’ble Supreme Court has



placed reliance upon judgments of the Hon'ble Supreme Court rendered earlier in various cases including a judgment in the case of Ishwar Chand Jain vs. High Court of Punjab and Haryana, AIR 1988 SC 1395 and in the case of Ishwar (supra) in the case of **Ishwar Chand Jain** (supra) in the matter of taking action against a Judicial Officer and imposing a punishment of dismissal on the Judicial Officer on the basis of the complaint received against the working of the Judicial Officer by an association of Advocates in para 14, the Supreme Court has made the following observation:

“14. Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control it is under a constitutional obligation to guide and protect judicial officers. An honest strict judicial officer is likely to have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial orders which may have been upheld by the High Court on the judicial side no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a sine qua non for Rule of law. If judicial officers are under constant threat of complaint and enquiry on trifling matters and if High Court encourages anonymous complaints to hold the field the subordinate judiciary will not be able to administer justice in an independent and honest manner. It is therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants. Having regard to facts and circumstances of the instant case we have no doubt in our mind that the resolution passed by the Bar Association against the appellant was wholly unjustified and the complaints made by Sh. Mehalawat and others were motivated which did not deserve any credit. Even the vigilance judge after holding enquiry did not record any finding that the appellant was guilty of any corrupt motive or that he had not acted judicially. All that was said against him was that he had acted improperly in granting adjournments.”

(emphasis supplied)



That apart, in the case of Ramesh Chand Gupta, relied upon by learned counsel for the petitioner, for an isolated instance of grant of bail on a single occasion, Hon'ble Supreme Court has laid down the principle which has already been discussed hereinabove. That apart, similar questions had been considered by the Hon'ble Supreme Court in the case of P.C. Joshi vs. State of U.P. & Ors., AIR 2001 SC 2788 and in para 7 of the aforesaid judgment, the principle has been crystallized in the following manner:

“7. In the present case, though elaborate enquiry has been conducted by the Enquiry Officer, there is hardly any material worth the name forthcoming except to scrutinize each one of the orders made by the appellant on the judicial side to arrive at a different conclusion. That there was possibility on a given set of facts to arrive at a different conclusion is no ground to indict a judicial officer for taking one view and that too for alleged misconduct for that reason alone. The Enquiry Officer has not found any other material, which would reflect on his reputation or integrity or good faith or devotion to duty or that he has been actuated by any corrupt motive. At best he may say that the view taken by the appellant is not proper or correct and not attribute any motive to him which is for extraneous consideration that he had acted in that manner. If in every case where an order of a subordinate court is found to be faulty a disciplinary action were to be initiated, the confidence of the subordinate judiciary will be shaken and the officers will be in constant fear of writing a judgment so as not to face a disciplinary enquiry and thus judicial officers cannot act independently or fearlessly. Indeed the words of caution are given in K.K. Dhawans case [supra] and A.N. Saxenas case [supra] that merely because the order is wrong or the action taken could have been different does not warrant initiation of disciplinary proceedings against the judicial officer. In spite of such caution, it is unfortunate that the High Court has chosen to initiate disciplinary proceedings against the appellant in this case.”

Keeping in view the facts and circumstances of the present case in the backdrop of the aforesaid legal principle, we find



that with regard to grant of bail on one occasion, treating the explanation of the petitioner to be an admission, the impugned action is taken, but while doing so, the detailed cause and explanation given by the petitioner is lost sight of and there is no material even before us nor was any material available before the Standing Committee to reflect upon the reputation, integrity and past record of the petitioner.

Keeping in view all these circumstances, we find that the action of the Standing Committee cannot be approved by us.

Accordingly, we allow the writ petition, quash the order passed by the respondents. Normally, when an action is quashed on account of procedural impropriety or irregularity, liberty is available to the authorities concerned to proceed afresh in accordance with law, but in this case we find that the incident took place in the year 2012, petitioner has already suffered the consequence for all this period and in the counter affidavit filed by the respondents, there is no whisper or indication to say that the petitioner's service record is tainted with acts of omission and commission for which he has been punished, is habitual in committing such misconduct and there is nothing to indicate that the petitioner had in the past also committed such acts. That being so, now after retirement of the petitioner it is not appropriate to proceed



further in the matter and, accordingly, we quash the impugned action and restrain the respondents from proceeding further in the matter.

All consequential benefits granted to the petitioner by virtue of this order be granted to him.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

AFR/NAFR	AFR
CAV DATE	N/A
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