

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19237 of 2019

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Hriday Narayan Pandey, son of Sri Harivansh Pandey, resident of 110/7-A
Ramanand Nagar, Allahapur, P.S. Georgetown, Allahabad, Uttar Pradesh.
... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Secretary, Law Department, Government of Bihar, Patna.
5. The Hon'ble Court of Judicature at Patna through the Learned Registrar General.
6. The Learned Registrar General, Hon'ble High Court of Judicature at Patna.
7. The Accountant General, Mahalekhakar Bhawan, Veerchand Patel Path, Patna.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 6189 of 2017

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Hriday Narayan Pandey, son of Shri Harivansh Pandey, resident of 110/7-A
Ramanand Nagar, Allahapur, P.S. Georgetown Allahabad, Uttar Pradesh.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Hon'ble Court of Judicature at Patna, through the Learned Registrar General
4. The Learned registrar General, Hon'ble High Court of Judicature at Patna.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 19237 of 2019)

For the Petitioner/s : Mr. Kumar Kaushik, Advocate

For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-3

(In Civil Writ Jurisdiction Case No. 6189 of 2017)

For the Petitioner/s : Mr. Kumar Kaushik, Advocate

For the State : Mr. Saroj Kumar Sharma, AC to AAG-3



For the High Court : Mr. Piyush Lal, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 19-09-2019

Both the writ petitions have been heard together and are being disposed of by this common order.

2. The petitioner has been inflicted with a major punishment of compulsory retirement under the provisions contained in Rule 14 (9) of the Bihar Government Servants (Classification, Control & Appeal) Amendment Rules, 2007 from the date of receipt of the aforesaid notification.

3. The aforesaid punishment has been challenged by the petitioner in C.W.J.C. No. 6189 of 2017.

4. During the pendency of the aforesaid writ petition, an order was issued by the General Administration Department of the Government of Bihar



contained in Memo No. 16963 dated 26.12.2018, whereby the representation preferred by the petitioner for re-fixation of his pension and gratuity without deducting pension at the rate of 1/3 has been rejected. The petitioner has, therefore, through C.W.J.C. No. 19237 of 2019 prayed for setting aside of the aforesaid order as also for a direction to the respondent authorities to fix the pension and gratuity at the rate of fifty percent of the last drawn salary instead of pension at the rate of 2/3, in as much as, no direction was issued by the Disciplinary Authority at the time of imposing the punishment of compulsory retirement from service or thereafter under Rule 46(A) of the Bihar Pension Rules, 1950.

5. There is a further prayer of the petitioner viz., to direct the period of suspension from 20.11.2014 to 17.01.2017 as period spent on duty for the purposes of granting retiral benefits and re-fixation/re-calculation of the pension and gratuity on the basis of the salary



payable to him on the date of his retirement after notionally granting him payable increments during the period of suspension as well as for all other consequential benefits viz. arrears of difference of pension and gratuity, if the prayer is allowed.

6. The petitioner, who joined Bihar Subordinate Judicial Service as Munsif in the year 2002 was promoted to the post of Additional District & Sessions Judge and was posted in the judgeship of Munger on 22.08.2014. While the petitioner was posted as Sub-Judge, IV, Bettiah, he had the occasion to decide a Title Suit viz. Title Suit No. 72 of 2010. One of the defendants in the aforesaid Title Suit made a complaint against the petitioner before the Inspecting Judge of West Champaran alleging lapses on the part of the petitioner in conducting the aforesaid Title Suit. The petitioner was asked for an explanation in the administrative side. Some other defendants of the aforesaid Title Suit No. 72 of 2010 also filed a complaint



against the petitioner, which led to the summoning of the records of the aforesaid Title Suit.

7. On finding certain interpolations in the order-sheet of the records of Title Suit No. 72 of 2010, the matter was placed before the Standing Committee of the High Court, which resolved that a departmental proceedings be initiated against the petitioner and pending such departmental proceedings, the petitioner be placed under suspension with Headquarters at Motihari, East Champaran. An Hon'ble Judge of this Court was requested to act as an Enquiry Officer and to conclude the proceedings within two months. The Registrar (Vigilance) was asked to be the Presenting Officer in the aforesaid proceedings.

8. The petitioner was served with the charge that while functioning as Sub-Judge, IV, Bettiah during 02.06.2011 to 19.08.2014, he dealt with Title Suit No. 72 of 2010 in complete disregard of established practice and procedure, in as much as, the issues were framed



twice: on one occasion on 01.04.2014 and later on 15.04.2014. The defendants were not given reasonable opportunity to produce evidence and the certified copies of the private exhibited documents also could not be supplied to the parties because it was not signed by him and that a 43 pages judgment was delivered on 28.04.2014 without fixing any date for passing judgment and when the aforesaid date was fixed for further hearing in the matter.

9. It was also alleged that there were several interpolations and additions in the order, giving a missive that the petitioner was per-determined to pass the judgment in the suit on 28.04.2014.

10. The aforesaid act was treated as misdemeanor in Court proceedings which displayed lack of knowledge of practice and procedure and finally it reflected lack of judicial integrity which was unbecoming of a Judicial Officer.

11. It appears from the records that the



petitioner was supplied with all the documents and the list of witnesses and he was also permitted to inspect the records of the case. The petitioner was also offered the assistance of a retired District & Sessions Judge to represent him.

12. The learned Enquiry Officer came to the conclusion that the petitioner did not frame any issue and wrongly recorded that he had framed the issue on 01.04.2014 as well as on 15.04.2014. He had not put his signature on the plaintiffs' exhibits and that he delivered final judgment in utter haste. All the charges therefore were found by the learned Enquiry Officer to have been proved vide his report dated 22.04.2016.

13. The Enquiry Report was furnished to the petitioner and a second show-cause notice was also served upon him. The Standing Committee of the High Court in its meeting on 04.07.2016 found the explanation submitted by the petitioner to be unsatisfactory and resolved to compulsorily retire the



petitioner with effect from the date he was put under suspension. The matter was placed before the Full Court for its approval. However, it appears from the records that there was a reconsideration by the Standing Committee on 26.07.2016 and it resolved to re-call the earlier order and substitute it with the order to compulsorily retire the petitioner but the period of suspension be treated as period spent in service with the caveat that only subsistence allowance shall be paid during the aforesaid period.

14. The aforesaid decision of the Standing Committee was confirmed by the Full Court on 02.08.2016. Consequently, the Government issued sequel order which has been impugned in the present writ petition.

15. While assailing the order of compulsory retirement, it has been submitted on behalf of the petitioner that the Enquiry Officer traversed beyond the charge of framing the issues in the suit twice. A finding



was returned by the Enquiry Officer that no issue was framed at all.

16. It has been urged that all through the proceedings, the petitioner tried to defend himself against the charge of framing the issues twice. The petitioner has contended that the regular practice in the subordinate Courts of Bihar has been that the issues are framed on a separate sheet of paper and kept on record. He had recorded in the order-sheets dated 01.04.2014 and 15.04.2014 that the issues had been framed. The finding of the Enquiry Officer that exhibits were not signed by the petitioner was only on the basis of report of the Copying Department and no original exhibits were perused by the Enquiry Officer. In fact, it has been asserted by the petitioner that all the documents were signed by him.

17. With respect to the charge that the petitioner had delivered judgment in utter haste, he had a plausible explanation that he had the occasion to



deliver a judgment in a Partition Suit No. 159 of 1949 on the basis of family settlement, whereby the entire landed property of the parties had been partitioned and the suit was decreed on the basis of compromise. An identical Title Suit No. 306 of 2010 had also been decreed in terms of the aforesaid settlement in Partition Suit No. 159 of 1949 in which judgment was delivered on 21.07.2013. Incidentally, the aforesaid Title Suit was with respect to the residential plots of the parties in dispute whereas in the instant Title Suit No. 72 of 2010, the schedule of property contained the agricultural plot between the same parties.

18. Under such circumstances, large part of the judgment in the Partition Suit No. 159 of 1949 and Title Suit No. 306 of 2010 were incorporated in the judgment of Title Suit No. 72 of 2010 which made it very easy for the petitioner to deliver a 43 pages judgment on the day when a date was fixed.

19. So far as the finding of interpolations of the



order-sheet of Title Suit No. 72 of 2010 is concerned, the consistent defence of the petitioner was that it was for correcting inadvertent clerical errors which were directed to be corrected vide order dated 21.05.2014. Such corrections which have been held to be the interpolations could not have had any bearing on the final outcome of the case nor could it have impacted the judgment in any manner.

20. Lastly, it was submitted that there was no evidence of any *mala fide* motive and if the judgment delivered by the petitioner was incorrect, the same could have been remedied in an Appeal before the higher Court. In the absence of any motive, therefore, the petitioner ought not to have been slapped with such a harsh punishment.

21. What has really been harped upon is the absence of any evidence that the judgment was passed on extraneous considerations. Even if there were some procedural lapses, that did not render the judgment



delivered by the petitioner suspect in any manner.

22. It has also been submitted on behalf of the petitioner that the defendant/complainant was trying to delay the disposal of the suit on the ground of pendency of C.W.J.C. No. 10592 of 2013, which writ petition was ultimately dismissed by the High Court vide order dated 15.07.2014. A long rope was given to the defendant but the petitioner, as the Presiding Officer, came to the understanding that there was a deliberate move on the part of the defendants to delay the disposal of the Title Suit.

23. The attention of this Court has also been drawn to the fact that the judgment delivered by the petitioner has been appealed against vide First Appeal No. 131 of 2014, which is pending adjudication before this Court. During the pendency of the appeal against the judgment of the petitioner, the petitioner ought not to have been subjected to a departmental proceeding and punished.



24. The appeal in that event is likely to succeed on this very issue.

25. Apart from the aforesaid facts, it has also been urged on behalf of the petitioner that in several cases and contested ones at that, the petitioner has passed judgments in Court and that in his entire service record, he was not given any adverse remark.

26. From the perusal of the records and the arguments advanced on behalf of the petitioner, we have come to the conclusion that the petitioner did not conduct himself in the manner befitting a Trial Judge while dealing with a case. It may be the general practice of the issues being framed on a plain sheet of paper but it has to be appended to the records and has to be recorded in writing that such issues have been framed on a particular date. Many of the documents which were exhibited on behalf of the plaintiffs could not be supplied to the defendants only because they were not signed by the Presiding Officer viz. the petitioner.



27. It is incorrect for the petitioner to allege that such finding was arrived at by the learned Enquiry Officer only on the basis of report of the Copying Department. The documents were produced during the enquiry proceedings which did not have the signature of the petitioner. No objection, during the enquiry proceedings, was raised by the petitioner with respect to non-perusal of all the records and therefore, such a ground could not now be taken by him to challenge the enquiry report and the punishment meted out to him.

28. There has to be complete probity and transparency in dealing with a judicial matter and if a particular date was fixed for further hearing in the matter, there can be no justification for delivering the judgment on that date.

29. It is quite understandable that some parts of the judgment in Title Suit No. 72 of 2010 could be common to the Partition Suit and the other Title Suit about which reference has been made in this order,



nonetheless, a date was required to be fixed for delivering judgment. If the judgment was delivered on the date which was fixed for further hearing in the matter, consent of the parties was in that case, required to be taken.

30. This Court otherwise also does not approve of the practice of cut and paste in the judgment. It cannot be gainsaid that unnecessary haste was shown by the petitioner in delivering judgment. Timely disposal of the case is important but not in a manner which would render the judgment suspect.

31. A Judge is known not only by the quality of his judgment but also by the impeccable standards he practices in Court proceedings. Integrity and probity which are the hallmarks of judicial system must be perceived. Utmost care therefore is required to be taken so that the stream of justice or the edifice of the justice delivery system does not get contaminated, or else, it would lead to confidence deficit of the public at large.



32. It has aptly been quoted in one of the judgments of the Supreme Court while dealing with integrity of Judicial Officers that "It must be borne in mind that woodpeckers inside pose a larger threat than the storm outside".

33. The petitioner perhaps forgot that he is not an ordinary government servant but a Judicial Officer who has to have exacting standards while dispensing justice. One lapse in the judgment dispensation process could lead to many accusing fingers which ultimately would do immeasurable harm to the system. The standard of conduct expected of petitioner is definitely higher than what the petitioner has displayed.

34. After having said that but looking at the nature of charge against the petitioner and that also at the instance of one of the defendants in the Title Suit, who was also one of the parties in the Partition Suit which ended in a compromise decree and that an appeal against the judgment delivered by the petitioner is



pending adjudication before this Court, coupled with the residual doubts in our minds that loose sheets on which issues were framed could have been lost in the maze of papers and that some documents in the labyrinthine records may have been left unsigned without any motive and that certain parts of the judgment in other cases may have been incorporated without any ill motive in the judgment which was delivered in Court and that the sentence being excessive, we deem it appropriate to revisit the order of sentence.

35. Under the exceptional and mitigating circumstances listed in the aforementioned paragraph, we are of the view that interest of justice would stand satisfied if the order of punishment of compulsory retirement is modified to the extent that the period served by the petitioner under suspension be treated as the period spent on duty and he be paid his salary for the aforesaid period.

36. We therefore order accordingly.



37. The sentence is modified to the extent indicated above.

38. The natural corollary would be that the petitioner would be entitled to the re-fixation of his pension and gratuity on the basis of salary payable to him on the date of his retirement after giving all payable increments to him during the period of suspension and all other consequential benefits viz. arrears of difference of pension and gratuity accruing after the modification of the sentence.

39. The General Administration Department of the Government of Bihar has issued an order to the Accountant General, sanctioning $2/3^{\text{rd}}$ pension and $2/3^{\text{rd}}$ gratuity to the petitioner in accordance with the approval of the Finance Department in the light of Rule 46(A) and 27 of the Bihar Pension Rules, 1950.

40. Pursuant to the aforesaid order, the Office of the Accountant General has issued pension order on 18.09.2017, fixing Rs. 12888/- per month as $2/3^{\text{rd}}$



pension with effect from 18.01.2017.

41. The representation of the petitioner through Registrar General for re-fixation of pension and gratuity as there is no direction of the Court to make payment of only 2/3rd pension and gratuity and that as per letter of the Finance Department contained in Resolution No. 11859 dated 28.12.2011, the requirement of 33 years of service for full pension has been dispensed with and Judicial Officers have been directed to be paid 50 percent of the last drawn salary as pension, has been rejected.

42. The rejection is primarily on the ground of the petitioner having been punished by way of compulsory retirement, attracting the provisions of Rule 46(A) of the Bihar Pension Rules, 1950. Rule 46(A) of the Bihar Pension Rules, 1950 is being extracted below.

"46A. A Government servant compulsorily retired from service as a penalty may be granted by the authority, competent to impose such penalty pension



at rate not less than two-thirds and not more than full invalid pension and special additional pension, if any, admissible to him on the date of compulsory retirement.

Provided that in the case of a Government servant mentioned in rule, who has completed, before such compulsory retirement, 25 years of qualifying service or more the pension shall be not less than two thirds of the invalid pension and not more than the full retiring pension and special additional pension, if any, to which he would have been entitled, if he retired on that date”.

43. No power is vested in the General Administration Department of the Government of Bihar to reduce the pension of the petitioner, who has been served with a penalty by the High Court without any caveat.

44. In the absence of any direction by the High Court for reduction of pension and holding the period of suspension of the petitioner to be the period spent on duty, the reduction of pension by 1/3rd and making



payment of only 2/3rd therefore does not appear to have the sanction of law.

45. Under the aforesaid circumstances, the order rejecting the representation of the petitioner by order dated 26.12.2018 contained in Memo No. 16963 is also set aside.

46. The General Administration Department is directed to pass appropriate order for re-fixation of pension of the petitioner in the light of the modification in the sentence of the petitioner within a period of four weeks of the receipt of a copy of this judgment.

47. Both the writ petitions stand partially allowed to the extent indicated above.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18/10/2019
Transmission Date	

