

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10179 of 2021

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Hari Niwas Gupta, Son of Kedar Nath Gupta, Resident of L.N.T. Collage
Campus, Aghoria Bazar Chowk, P.S. Kazi Mohammadpur, District
-Muzaffarpur, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The High 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 :

For the Petitioner/s	:	Mr. Kumar Kaushik, Advocate Smt. Namrata Dubey, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG- 3
For the High Court	:	Mr. Sanjeev Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 21-06-2023

Heard Mr. Kumar Kaushik, Mr. Sanjeev
Kumar and Mr. Suman Kumar Jha, learned Advocate for the
petitioner, High Court and the State respectively.

2. The petitioner, by invoking the
extraordinary jurisdiction of this Court under Article 226 of
the Constitution of India has sought quashing of the



notification contained in Memo No. 12095 dated 17.12.2020 (Annexure-P/30B) whereby the petitioner has been dismissed from service in exercise of powers under Clause (b) of the second proviso to Article 311(2) of the Constitution of India read with Rules 14 and 20 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 with effect from the date of notification no. 2011 dated 12.02.2014 (Annexure- P/7C); with a stipulation that the petitioner shall not be entitled to any post retiral or other service benefits.

3. The petitioner further sought a direction upon the respondent authorities to grant all the post-retiral and the other consequential benefits to which the petitioner is found to be entitled, including the arrears of salary for the period from 12.02.2014 to the date of his superannuation i.e. 31.07.2014, during which he was kept out of employment due to earlier order of dismissal contained in notification no. 2011 dated 12.02.2014, which has since been set aside by this Court vide order and judgment dated 19.05.2015 passed in C.W.J.C. No. 8636 of 2014.

4. The facts of the case as gleaned from the



record is that the petitioner was appointed as Munsif in the year 1984, in the 20th Bihar Judicial Service Examination and subsequently he was confirmed in service vide notification dated 28.11.1988. He was promoted to the post of Subordinate Judge and thereafter to the post of Additional District & Sessions Judge. The petitioner was finally promoted to the post of District & Sessions Judge and directed to be posted as Principal Judge, Family Court, Samastipur vide notification dated 28.11.2012, issued by the General Administration Department read with letter no.18161 dated 29.11.2012 issued by the Patna High Court.

5. It would be apt to state here that earlier the petitioner was dismissed from his service vide notification no. 2011 dated 12.02.2014, which was assailed in C.W.J.C No. 8636 of 2014. The aforesaid writ petition was allowed with certain observations and directions, giving liberty to the respondent authorities to proceed afresh vide judgment and order dated 19.05.2015 (Annexure-14 Series to the writ petition).

6. However, being aggrieved to the part of the aforenoted judgment and order to the extent liberty was



granted to the respondent authorities to proceed afresh, the petitioner assailed the same by way of Special Leave Petition, converted into an appeal, bearing Civil Appeal No. 3105 of 2017 before the Apex Court, which stood dismissed vide order and judgment dated 08.11.2019.

7. Pursuant to the aforementioned order/judgment passed by this Court, duly affirmed by the Hon'ble Supreme Court, a Sub-committee of Patna High Court considered the matter of the petitioner afresh and after detailed examination of the matter as well as the evidence on record vide minutes dated 03.08.2015 recommended that the departmental proceeding and enquiry may be dispensed with and the petitioner be dismissed from service with effect from the date on which he had earlier been dismissed and be also deprived of the retiral dues and other benefits as well. The aforesaid recommendation of the Sub-committee of the High Court was accepted by the Full Court vide its resolution dated 07.08.2015. However, by the time necessary notification could be issued by the General Administration Department, Government of Bihar, the Civil Appeal No.3105 of 2017, giving rise to SLP (Civil)



No.26473 of 2015 filed by the petitioner along with other two judicial officers came up for consideration before the Supreme Court, which stayed the operation of the impugned judgment and order dated 19.05.2015 passed in C.W.J.C. No. 8636 of 2014.

8. The aforementioned Civil Appeal No. 3105 of 2017 finally came to be dismissed by judgment dated 08.11.2019 (Annexure-P/21 to the writ petition). Thereupon, the petitioner filed a detailed representation for sympathetic consideration before the High Court, which was ultimately rejected by the Full Court of Patna High Court vide resolution dated 20.09.2020 and the matter was communicated to the State Government for necessary action. In the light thereof, the State Government issued notification as contained in Memo No. 12095 dated 17.12.2020, which is impugned herein in the present writ petition.

9. The facts giving rise to the impugned order of dismissal of the petitioner from judicial services is that on 29th January, 2013, a news item was published in a local daily (Udghosh) that on 26.01.2013, the Nepal police had



apprehended three Judicial Officers belonging to the State of Bihar as they were allegedly found in compromising position with three Nepali women in a guest house in Birat Nagar, Nepal. Thereupon, the Judicial Officers were brought to the district police station Nepal, but were released on account of pressure from various quarters. On learning about the incident, the Patna High Court shot a letter dated 18.02.2013 to the District & Sessions Judge, Purnea to submit a report in the matter. The District & Sessions Judge, Purnea vide report dated 24.02.2013, informed that during the inquiry, the three judicial officers, with whom he had discussed the matter, had denied having left India for Nepal. The report had made reference to another news item published by the same daily local on 22.02.2013 expressing regret over erroneous reportage and that the Superintendent of Police, Araria appeared to have held bias against the judicial officers.

10. After receipt of the report, the High Court had addressed the Ministry of Home Affairs, Government of India to collect and ascertain information, details and records. The Deputy Secretary, Ministry of Home Affairs



vide his communication dated 20.06.2013 informed the High Court that the mobile phones of the judicial officers, including the petitioner, were simultaneously switched off for a long time on 26.01.2013 to 27.01.2013 and when the phones were active during that period, they were within the range of the tower at Forbesganj town, which indicated that the judicial officers were together in proximity of Nepal and not the place of their posting. The hotel bill submitted and relied upon by one of the judicial officer, namely, Komal Ram, in support of his claim that he was staying at a hotel in Purnea between 26/27.01.2013 was found to be fabricated based on the handwriting of Komal Ram and signature on the bill. Further, the hotel was not of the standard where a judicial officer of such rank would have stayed.

11. The Standing Committee of the High Court in its meeting held on 05.02.2014 thus resolved that the judicial officers should be placed under suspension and that they also be dismissed from service without any inquiry in exercise of power under Clause (b) of the second Proviso to Article 311(2) of the Constitution of India read with



Rules 14 and 20 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. On 10.02.2014, the Full Court of the High Court accepted the recommendation of the Standing Committee and a Full Court resolution was passed for dismissal of the service of the petitioner from judicial services, dispensing with the disciplinary proceeding by invoking power under Clause (b) of the second Proviso to Article 311(2) of the Constitution of India. The recommendation of the Full Court was accepted by the State Government and vide common order dated 12.02.2014 issued by the Governor of the State of Bihar, the judicial officers, including the petitioner, were dismissed from service.

12. The petitioner and two other judicial officers had challenged the dismissal order by filing separate writ petitions, which were allowed by the Division Bench of the High Court vide order/judgment dated 19.05.2015 primarily on the ground that the Full Court had, in breach of Clause (b) of the second Proviso to Article 311(2) of the Constitution of India had not recorded reasons for dispensing with the disciplinary enquiry at the time of



recommending dismissal of the judicial officers.

13. The Division Bench of this Court, having taken note of the record placed by the Registry, recording the reasons for dispensing with the disciplinary enquiry observed that it did not contain any date or signature and lacked authenticity. Thus, the High Court had no material to show that reasons were recorded for dispensing with the disciplinary proceedings. The Division Bench of the High Court, while setting aside the order of dismissal on that account gave the liberty to the High Court, to, if so desired, to invoke its power under Sub-clause (b) of the 2nd proviso to Article 311 (2) of the Constitution of India afresh, when it shall be under an obligation to record reasons. It was further held that two (sic- one) of the officers, who had attained the age of superannuation, during the pendency of the writ petitions, be deemed to be under suspension, and the other two would be deemed to be continuing in service for the limited purpose of enabling the departmental proceedings to continue. The High Court was ordained to take a decision in this matter within a period of two months. If no decision would take in this regard, the proceedings would lapse and



the petitioners would be entitled for all the consequential benefits, as though the proceedings have been set aside in their entirety. If, on the other hand, the proceedings are initiated, the petitioners shall await the outcome thereof. While the one who is in service shall be paid subsistence allowance, the other two shall be paid provisional pension to the extent of 25%, forthwith.

14. The petitioner and the two other judicial officers being aggrieved by the order/judgment of the Division Bench of this Court to the extent liberty granted to the High Court to invoke the power under Clause (b) of the second Proviso to Article 311(2) of the Constitution of India, has assailed the same by way of Special Leave Petition, which was converted in appeal bearing Civil Appeal No. 3105 of 2017. The aforementioned Special Leave Petition was dismissed vide judgment dated 08.11.2019 with a direction to the respondents to proceed in accordance with law in terms of the judgment of the Division Bench dated 19.05.2015, pursuant to which the final order came to be passed, as stated in foregoing paragraph.



15. Mr. Kaushik, learned Advocate for the petitioner, while assailing the impugned order has submitted that the power under Clause (b) of the 2nd Proviso to Article 311(2) of the Constitution of India cannot be exercised after cessation of master and servant relationship between the petitioner and the respondent authorities, unless there are specific service Rules conferring such power on the employer. Thus, the order passed with retrospective effect is not at all sustainable in law. He has submitted that the impugned order dated 17.12.2020 containing the stipulation that the notification shall be treated as part of the earlier notification no. 2011 dated 12.02.2014 by which the petitioner and two other judicial officers were dismissed is thoroughly misconceived, inasmuch as the said notification was set aside by this Court in CWJC No. 8636 of 2014 and the effect of setting aside an order is that the notification dated 12.02.2014 was annulled and ceased to exist and thus the attempt to dismiss the petitioner with retrospective effect is *mala fide* and an abuse of power conferred under Clause (b) of the 2nd Proviso to Article 311(2) of the Constitution of India.



16. It is next submitted that the High Court and the State have committed a grave error of law in recording a finding that it is not practicable to hold a regular inquiry in the present case despite the fact that there were already three enquires conducted in the matter and the impugned order of dismissal, which has been directed to be a part of the earlier order, which was set aside by the Division Bench of this Court, clearly disclosed the pre-determined mind of the respondent authorities, apart from the fact that the impugned order dispensing with the disciplinary enquiry is out and out a mechanical one based on no supporting legal material to suggest non-cooperation of the authorities across the border and destruction and manipulation of record.

17. Mr. Kaushik further submitted with all his vehemence that in the present case, since the Leave to Appeal was granted after the jurisdiction of the Supreme Court was invoked, the order passed in appeal would attract the doctrine of merger. It is only the order passed by the Hon'ble Supreme Court which exists and is capable of enforcement in so far as the liberty given by the High Court



in its order dated 19.05.2015 is concerned, since that was subjected to challenge by the petitioner. Thus, in view of the fact that the Supreme Court has clearly clarified in the last paragraph of the judgment that the High Court shall have to proceed in accordance with law, the deemed continuance in service could not have been for the purpose of invoking the power under Article 311(2) of the Constitution of India unless and until the power was available by operation of any statutory provision.

18. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in **Kunhayammed and Others Vs. State of Kerala and Another, (2000) 6 SCC 359, M/s Gojer Bros. (Pvt.) Ltd. Vs. Shri Ratan Lal Singh, (1974) 2 SCC 453**. He further relied upon the judgment of the Apex Court in the case of **R. Jeevaratnam Vs. State of Madras, AIR 1966 SC 951** and the judgment rendered in **Gujarat Mineral Development Corporation Vs. Shri P. H. Brahmbhatt, (1974) 3 SCC 601** on the point that the order of dismissal will take effect from the date of the order.

19. While concluding his submissions, he



further impressed upon this Court that the reasons for dispensing with the inquiry are not sufficient in as much as simply because the case of the employer is weak, it cannot resort to the powers under the 2nd Proviso to Article 311 of the Constitution of India. The powers are to be exercised in exceptional circumstances and if three preliminary inquiries could have been conducted, there was no reason to deny the protection of Article 311 of the Constitution to the petitioner. The right to be heard ought not to have been denied.

20. It was recorded in the case of **Sudesh Kumar Vs. State of Haryana (2005) 11 SCC 525** that the complainant being a foreign national is likely to leave the country for dispensing with the inquiry is no ground for dispensing with the inquiry. In the instant case, simply because the incident has taken place in Nepal and materials and evidence destroyed, inquiry could not have been dispensed with especially because discreet inquiries have been conducted by the learned District & Sessions Judge, Purnea and by the Ministry of Government of India.

21. Per contra, the learned Advocate



representing the High Court controverting the submissions of the petitioner, submitted that the contention of the petitioner that he had superannuated from the service on 31.07.2014 after which there was cessation of master and servant relationship between the petitioner and the respondent authorities and thus the respondent could not have been dismissed, without any basis. A coordinate Bench of the High Court vide order and judgment dated 19.05.2015 in C.W.J.C. No. 8636 of 2014 had categorically observed that the petitioner, who is already in service, shall be deemed to be under suspension, and the other two would be deemed to be continuing in their service for the limited purpose of enabling departmental proceedings to continue. In the meanwhile, the High Court shall take a decision in this behalf within the stipulated period. He further submitted that the petitioner and other two judicial officers came to be dismissed on 12.02.2014 while they were in service. Furthermore, the Supreme Court had dismissed the Appeal preferred by the petitioner and had clarified that the respondents, in terms of the judgment passed by the Division Bench, would be required to proceed in



accordance with law. Hence, there is no illegality in the order of dismissal passed by the Full Court on 07.08.2015, as also the notification issued by the General Administration Department dated 17.12.2020.

22. Mr. Sanjeev Kumar further submitted that pursuant to the directions of the Division Bench of this Court dated 19.05.2015 in C.W.J.C No. 8636 of 2014, a Sub-Committee of Patna High Court considered the case of the petitioner and after detailed examination of the matter as well as the evidence on record found as follows; “a detailed enquiry is reasonably not practicable under the circumstances because of non-cooperation of authorities across the border, destruction and manipulation of records we are of the view that it is reasonably not practicable to conduct formal departmental proceedings and enquiry in the matter and it is in public interest to exercise the power conferred under sub clause (b) of the 2nd proviso to clause 2 to Article 311 of the Constitution read with Rules 14 and 20 of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, for dismissing the three Judicial Officers from service from the date on which they had been



earlier dismissed from service and they be also deprived of their entire retiral dues and other benefits as well".

23. The above mentioned decision of the Sub-Committee is annexed as Annexure p-16 in writ application; from the perusal of which it transpires that the reason to dispense with the enquiry for departmental proceeding have been reasonably assigned to invoke the power under Sub-clause (b) of the 2nd proviso to Clause 2 to Article 311.

24. Mr. Suman Kumar Jha, learned Advocate representing the State has also reiterated the submissions made on behalf of the Patna High Court.

25. Having given anxious consideration to the submissions made on behalf of the parties and after perusing the records, prima facie, this Court finds that the points raised by the learned Advocate for the petitioner has already been eruditely answered by the Supreme Court in the earlier round of litigation in Civil Appeal No. 3105 of 2017. So far the submission of the petitioner that the power under Clause (b) of the 2nd Proviso to Article 311(2) of the Constitution of India could not be exercised after cessation



of “master and servant” relationship between the petitioner and the respondent authorities is concerned, it has been answered by the learned Supreme Court in para 10 of its judgment dated 08.11.2019, wherein it has been categorically observed that the liberty granted to the disciplinary authority does not confer a new and unconventional right or power on the High Court. Instead, it clarifies what is an obvious and perspicuous consequence of quashing the order of dismissal in the present case. The direction requires the High Court to proceed in accordance with law and rightly did not put any fetters on the course of action the High Court as a disciplinary authority would like to follow. Therefore, it is observed, more out of abundant caution rather than as a typical direction, that the High Court was entitled, if it deemed it appropriate and proper, to invoke the power under clause (b) of the 2nd proviso to Article 311(2) of the Constitution at an appropriate stage, after recording reasons and following the prescribed procedure.

26. The Supreme Court further clarified in para 11 of the judgment that striking down and setting aside



the earlier order dated 12th February, 2014 under clause (b) of the 2nd proviso to Article 311(2) for failure to record reasons for dispensing with the departmental inquiry annuls the earlier order, which ceases to exist and stands obliterated, but does not adjudicate on the merits of the allegations so as to attract the bar of *res judicata*. Conscious of the seriousness of the allegations and the reason for allowing the writ petition, the Division Bench was justified in not barring the High Court from fresh application of mind and from invoking clause (b) of the 2nd proviso to Article 311(2) if required and justified in accordance with law. The expression '*at appropriate stage*' used by the Division Bench is not a direction for initiation of a regular departmental inquiry nor does it prohibit recourse to clause (b) to the 2nd proviso of Article 311(2) of the Constitution in accordance with law.

27. Now so far the second contention raised by the petitioner that once the High Court has undertaken a preliminary enquiry and got possession of certain materials, be it in the form of the paper clippings, report of the District Judge, Purnea or letter from the Home Ministry,



Government of India, it would have been equally possible to frame charges, and then to proceed with the departmental enquiry, the Supreme Court had clarified that the observations made by the Division Bench of the Court has been completely misread by the petitioner, as normally a departmental inquiry is a matter of Rule, however, clause (b) to the 2nd proviso of Article 311(2) of the Constitution also refers to a scenario where a departmental inquiry cannot be conducted that is, “when conducting of departmental enquiry turns out to be a difficult task”, in which case a “decision could have been taken to dispense with the enquiry; by recording specific reasons”.

28. The Supreme Court, taking note of the principles laid down by the Constitution Bench in the case of *Union of India and Another Vs. Tulsiram Patel*, (1985) 3 SCC 398, as also in the case of *Tarsem Singh Vs. State of Punjab and Others*, (2006) 13 SCC 581, was pleased to hold that the authorities, to invoke the power under Clause (b) to the 2nd proviso of Article 311(2) of the Constitution of India to dispense with a departmental inquiry, must record a finding that such an inquiry cannot be conducted and record



specific reasons for the same. In this case, the Division Bench had recorded the contention of the respondent High Court as the disciplinary authority that it would be impossible to assimilate, collect and produce direct evidence and materials as the acts and misdeeds were in another country. The Division Bench having found that reasons had not been recorded for dispensing with the inquiry, has neither accepted nor rejected this contention of the High Court. It will not be appropriate and correct to interpret the decision of the Division Bench by reading one or more sentences of a paragraph in isolation. The entire judgment has to be read to understand the ratio and finding and the observations must be read in the context in which they have been made.

29. In order to throw light on the aforesaid proposition of law, the Supreme Court quoted para. 130 of the Constitution Bench judgment rendered in *Tulsiram Patel* case (*supra*), which reads as follows:

130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that “it is not reasonably practicable to hold” the



inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are “not reasonably practicable” and not “impracticable”. According to the Oxford English Dictionary “practicable” means “Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible”. Webster's Third New International Dictionary defines the word “practicable” inter alia as meaning “possible to practice or perform : capable of being put into practice, done or accomplished: feasible”. Further, the words used are not “not practicable” but “not reasonably practicable”. Webster's Third New International Dictionary defines the word “reasonably” as “in a reasonable manner: to a fairly sufficient extent”. Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. ... The reasonable



practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of Arjun Chaubey v. Union of India [(1984) 2 SCC 578 : 1984 SCC (L&S) 290 : (1984) 3 SCR 302] is an instance in point.”

30. Now so far the third contention of the petitioner with regard to applicability of doctrine of merger is concerned, since the SLP was converted into Civil Appeal



No. 3105 of 2017 and judgment of the High Court stood merged with the judgment of the Supreme Court is concerned, this Court has no hesitation to accept the mandate of the law as enunciated by the Supreme Court in the case of **Kunhayammed** (supra), which has succinctly held that if an appeal is provided against an order passed by a Tribunal/Court, the decision of the appellate authority is the operative decision in law, even if the appellate decision merely confirms the decision of the tribunal/court. As a result of the affirmation of the decision by the appellate authority, the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement.

31. Be it noted that the impugned recommendation for dismissal of the services of the petitioner, as also the consequential notification of the State Government have been passed pursuant to the order/judgment passed by the Division Bench of this Court, as also the judgment passed by the Supreme Court in Civil Appeal No. 3105 of 2017.

32. Now what is left for consideration before



this Court is as to whether the reasons assigned by the disciplinary authority, which in the present case is Patna High Court, dispensing with the inquiry by invoking the power under Clause (b) of 2nd proviso to Article 311(2) of the Constitution of India is sufficient enough to term it practically not reasonable to hold inquiry.

33. The Constitution Bench of the Highest Court of the land in the case of **Tulsiram Patel** (supra) has held that the condition precedent for the application of proviso to clause (b) of Article 311(2) is the satisfaction of the disciplinary authority that “it is not reasonably practicable to hold” the inquiry contemplated by clause (2) of Article 311 of the Constitution. What is pertinent to note is that the words used are “not reasonably practicable” and not “impracticable”. Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. The



reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. True it is that a disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail.

34. The case in hand clearly depicts the picture that three Judicial Officers of the Patna High Court were caught red handed in a raid conducted by Nepal police at “Metro Hotel” situated near the Bus stand at Birat Nagar, a neighbouring town in Nepal in the night of 26.01.2013. The report suggests that during the raid, the Nepal police headed by the Nepal police Sub-inspector, Pradeep Kumar Singh, caught certain persons from hotel rooms found in compromising position with women. It was reported that out of the persons caught and detained including the three Judicial Officers of Civil Court, Bihar (India). Although, the



Judicial Officers were caught by the Nepal police red handed, those officers were released upon instructions received from the Superintendent of Police, Morang (Nepal) without recording the detention of the said officers. Further it may be noted that the District Judge, Purnea vide his report dated 08.03.2013 submitted enquiry details pertaining the mobile phones of the three judicial officers, which revealed that all the three mobile phones were switched off simultaneously on 26.01.2013 between 2.15 P.M. and 2.30 P.M. and were reactivated on 27.01.2013 again simultaneously between 11.32 A.M. and 11.52 A.M. They were within the tower range of Forbesganj Town, which borders Birat Nagar, Nepal. On getting these information, the then Chief Justice of the Patna High Court on 13.04.2013 wrote an urgent confidential letter to the Secretary, Ministry of Home Affairs, Government of India indicating therein that as the occurrence is reported to have taken place in foreign territory (Nepal), it was not possible to carry out further enquiry at the level of the High Court and it called a detailed report from the higher level.

35. From the resolution of the Committee



consisting of five judges of the High Court, as also the resolution of the Full Court, it appears that the Home Ministry, Government of Nepal through its Interpol branch vide its communication dated 06.04.2013, sought certain information from Superintendent of Police, Morang. Similarly, Indian Embassy at Kathmandu by its communication dated 30.04.2013 also requested for necessary information from the Superintendent of Police, Interpol, PHQ, Naxal, Kathmandu. Confidential letter dated 03.06.2013 of the Joint Secretary, Government of India, Ministry of Home Affairs also suggested that inquiry revealed the involvement of the three Judicial Officers regarding how they crossed over Nepal. Their Mobile call report which were given in alibi was found to be fabricated (of judicial officer- Komal Ram).

36. The Standing Committee of this Court also noted that as the incident had occurred in the territory of Nepal, no direct evidence could be made available and the police had not been cooperating. A formal enquiry thus was not reasonably practicable regarding the involvement of the three Judicial Officers in this episode.



37. The Judicial Officers have displayed lack of moral character, lack of integrity and have tarnished the reputation of Bihar State Judiciary and, therefore, in these circumstances, as envisaged under Clause (b) of the 2nd Proviso to Article 311(2) of the Constitution of India read with Rules 14 and 20 of the Rules, 2005 dispensing with enquiry, the three judicial officers dismissed from service.

38. The aforementioned report was placed before the Full Court of the Patna High Court which vide its resolution dated 07.08.2015 was pleased to resolve as under:

“...in view of the reports and materials available, coupled with the fact that incident, in question, took place in Nepal and discreet enquiries, including the mobile calls logs, because of non-cooperation of the authorities across the border, destruction and manipulation of records, it is reasonably not practicable to conduct formal departmental proceeding and enquiry in the matter and it is in public interest to exercise powers conferred by sub-clause (b) of the 2nd proviso to Cause (2) of Article 311 of the Constitution read with Rule-14 and 20 of



the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, and dismiss the three Judicial Officers aforementioned from service from the date on which they had been earlier dismissed from service and they be deprived of their entire retiral dues and other benefits as well...The report, dated 03.08.2015, aforementioned shall be treated as part of this resolution”

39. Accepting the aforesaid recommendation and resolution of the Patna High Court, the Government of Bihar in the Department of General Administration came out with the impugned notification contained in Memo No. 12095 dated 17.12.2020 issued by the order of the Hon’ble Governor of the State of Bihar.

40. Before parting with the final conclusion, this Court also finds that the petitioner did not choose to assail the recommendation dated 13.08.2015 whereby Full Court of Patna High Court again recommended for dismissal of the petitioner and other two Judicial Officers dispensing with the departmental enquiry in exercise of power under Clause (b) of the 2nd Proviso to Article 311(2) of the Constitution. Hence he is also precluded to question



the legality and reasonability of the outcome of the disciplinary authority i.e. Patna High Court, on the basis thereof the final consequential order of his dismissal from the Judicial Service has been passed by the Government of Bihar in the Department of General Administration (Annexure-P/30 B to the writ petition).

41. Be it observed that for invoking the powers under Clause (b) of the 2nd Proviso to Article 311(2) of the Constitution of India dispensing with a departmental enquiry must record a finding that such enquiry cannot be conducted and record specific reasons for the same and the reasons must be to the subjective satisfaction of the disciplinary authority.

42. It would also be worth to observe here that the confidence of the litigating public gets affected or shaken by lack of integrity and character of Judicial Officer. Judicial officers cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity.

43. A judge is acknowledged not only by his



conduct but his conduct outside the court also. He is specified to lead a life of a recluse and hermit. He defines the role model of a senior citizen, who arbiters between two warring factors. Any loose conduct will not only besmirch his personality but will also not auger well for the respect of judiciary. It does not need reiteration that the District judiciary is the kingpin in the hierarchical system of administration of justice. It is the Trial judge, who comes in contact with the litigant during the day to day proceedings in the court and, therefore, a heavy responsibility lies on him to build a solemn, unpolluted atmosphere in the dispensation of justice, which is an essential and inevitable feature in a civilized democratic society.

44. Considering the entire gamut of the facts, the reasons assigned by the Patna High Court, which is the controlling as well as disciplinary authority under Articles 233 and 235 of the Constitution in our opinion, is sufficient to dispense with the enquiry under Clause (b) of the 2nd Proviso to Article 311(2) of the Constitution.

45. In view of the discussions made hereinabove, this Court finds no reason to interfere with the



impugned order and, accordingly, the writ petition stands dismissed.

(Harish Kumar, J)

Ashutosh Kumar, J:

I agree

(Ashutosh Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	24.02.2023
Uploading Date	22.06.2023
Transmission Date	

