IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.563 of 2017

Ambika Prasad Gupta S/o Late Mahesh Prasad, Dismissed Ad hoc ADJ, resident of Mohalla- Shanti Nagar, Colony, Near Binnanni Degree College, Mirjapur, P.S.- Bharauna, P.O.- Mirjapur, District- Mirjapur, U.P.

... ... Petitioner/s

Versus

The Registrar General, The High Court Of Judicature At Patna

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhinav Shrivastava, Advocate
		Mr. Shashank Chandra, Advocate
		Mrs. Kumari Shubham, Advocate
		Mr. Vatsal Verma, Advocate
For the P.H.C.	:	Mr. Piyush Lall, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 31-08-2023

The petitioner was an Additional District Judge (A.D.J.), who was dismissed from service and the writ petition is against the dismissal order, passed after due inquiry

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conducted into the allegations levelled against him.

2. The petitioner was recruited into the Bihar Judicial Service as an A.D.J after coming out successful in the Bihar Higher Judicial Services Examination. In the year 2015, the petitioner had completed 25 years of service as Judicial Officer, having worked at different places inside the State of Bihar and was last posted as A.D.J. at Darbhanga. The petitioner was issued with a memorandum of charges as seen from Annexure P-1 and the petitioner was asked to appear before the Inquiry Officer with a written statement of defence. The memorandum contained Annexure-I, a statement of allegations in support of the Articles of Charges framed, Annexure-II, Articles of Charges framed against the petitioner, the delinquent employee, Annexure-III, list of documents and Annexure-IV, list of witnesses. After this the petitioner was issued with another memorandum produced as Annexure P-2 dated 26.08.2014 again enclosed with the statement of allegations (Annexure-I), Articles of Supplementary Charges (Annexure-II), list of documents (Annexure- III) and a list of witnesses (Annexure-IV).

3. The District and Sessions Judge, Darbhanga was appointed as the Inquiry Officer and the Inquiry Officer issued

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notice to the delinquent by Annexure-P4. Annexure- P5, written submissions were made before the Inquiry Officer along with some judgments delivered by the delinquent, which were confirmed by the High Court; especially since the first of the allegations levelled was regarding a judicial order passed. The inquiry report found the delinquent guilty of all the charges levelled against him and the Registrar General of the High Court served a copy of the inquiry report on the delinquent through a covering letter; both of which are produced as Annexure P-6. A reply was submitted by the delinquent as Annexure P-7 after consideration of which the delinquent was dismissed as per Annexure P-8 Order communicated by Annexure P-9.

4. We heard Shri Abhinav Shrivastava, learned counsel appearing for the petitioner and Shri Piyush Lall, learned standing counsel for the respondent. Shri Abhinav Shrivastava at the outset pointed out that there is clear violation of Rule 17(3) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, since there was no show cause issued to the delinquent by the Disciplinary Authority who should have also considered the explanation. It is argued that the allegations were with respect to judicial orders passed by the delinquent employee, which cannot form the subject of an administrative

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action. The Officer had a blemish free career of more than 25 years and merely on unsubstantiated allegations, he was dismissed from service. The petitioner who was nearing his retirement has now crossed the age of superannuation and he is denied his pension by reason of the order of dismissal. Each of the charges and the inquiry findings were read over to convince us that the entire inquiry proceedings were a sham and cannot be sustained for a moment.

5. Shri Piyush Lall, learned Standing Counsel for the High Court on the other hand supported the order of dismissal which was based on the inquiry report. It is pointed out that this Court is not sitting in appeal, and, in judicial review, there is no scope for re-appreciation of the evidence brought out before the Inquiry Officer, to arrive at a different finding from that of the Inquiry Officer, as confirmed by the Disciplinary Authority. ***Muzaffar Husain v. State of Uttar Pradesh and Anr. 2022 SCC OnLine SC 567*** was relied upon to argue that herein also, as in the cited decision, the petitioner had committed a misconduct in the discharge of his duties as a Judicial Officer with total disregard to the established procedure and law, to unduly favour one or other of the parties; which was also actuated by corrupt motives, on the eve of his retirement. It was argued that no

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Officer can get emboldened to slip into corrupt practices, just prior to his retirement, and in that circumstance, there cannot be a plea raised that the Officer had a blemishless career till then. It is urged that if such Officers are not punished appropriately, then there would be frequent recurrence of such occurrences.

6. Annexure P-1 contains the facts regarding the first allegation levelled against the Officer; which was with respect to the judgment passed in Sessions Trial Number 109/2013/ 24/2013 arising out of Pakribarawn P.S. Case No. 185 of 2012. The charge against the accused in the said case was under Section 302 of the Indian Penal Code (I.P.C.). Four witnesses were examined from amongst whom, only PW4, the mother of the deceased supported the case of the prosecution. She deposed that on her arrival at the house of the accused; her son-in-law, she saw the dead body of her daughter with blood oozing from the nose and ears. It was also deposed that there were matrimonial disputes which had been settled by the Panchayat. PWs 1 to 3 were the villagers of the accused, who did not support the prosecution case. The allegation in the inquiry was that the delinquent officer did not examine the Investigating Officer and the Medical Officer. The evidence of the prosecution was closed; allegedly on the basis of a petition

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filed by the prosecution, which was not found in the records of the case, and acquitted the accused on 11.06.2013. It was further alleged that on 11.06.2013, the accused was examined under Section 313 of the Cr.P.C., and on the same day, the judgment was delivered. The date of judgment was written in ink while the month and year were printed; which allegedly raises a presumption that the judgment was prepared even earlier to the examination of the accused under Section 313 of the Cr.P.C. It was alleged that the delinquent had not followed due procedure and had prepared the typed judgment in advance; all of which are indicative of extraneous consideration, gross judicial incongruity, lack of integrity and an act unbecoming of a Judicial Officer.

7. Annexure P-2, the supplementary charges were from multiple facts emanating from a number of cases. One allegation was that in Sessions Trial No. 175 of 2013 wherein *inter alia*, accusation was under Section 302 of the I.P.C. Two accused were shown as discharged in the margin of the order-sheet of the records, respectively on 16.01.2014 and 30.01.2014. While fixing the case for orders and for framing of charges on 05.03.2014, the discharge order was not passed nor the factum of such discharge mentioned in the cause list dated 29.01.2014.

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The next allegation was with respect to bail having been given to an accused, on the ground that the District & Sessions Judge had granted the same, while it was declined earlier by the District & Sessions Judge. There were also 13 allegation petitions against the delinquent officer wherein the different complainants had sought for transfer of their cases pending before the A.D.J., Darbhanga from the Court presided over by the delinquent. We will deal with the allegations at the time of considering the inquiry report, but as of now suffice it to notice that the additional facts leading to the supplementary charges also resulted in the allegation of extraneous consideration, gross judicial impropriety, lack of integrity and acts unbecoming of a Judicial Officer.

8. We cannot, but notice that the first opportunity to be granted to the delinquent was denied insofar as the show cause notice having directed submission of the written defence before the Inquiry Officer and not the Disciplinary Authority. However, it has to be observed that the entire issue was considered on the basis of evidence brought forth in the inquiry, ordered by the Disciplinary Authority. The final orders were passed after appreciating the evidence led at the inquiry and also the defence set up by the delinquent. Even if procedural

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irregularity is found, the matter can only be remanded for resumption of the departmental proceedings from the stage at which the irregularity occurred. In the present case, there is no scope for conducting a *de novo* inquiry since the allegations were of the year 2015, and the delinquent has now passed the age of superannuation. There is absolutely no purpose of resuming the inquiry from the stage of such defect, since it would only lead to further harassment of the delinquent, without any purpose served.

9. We have looked at the inquiry report, not for the purpose of appreciation of evidence leading to substitution of the findings of the Inquiry Officer; but to ensure that the findings on facts are not perverse, which examination is permitted, even in judicial review.

10. As far as the first charge alleged, we find from the inquiry report that after examining the informant (PW4), she was discharged on 06.05.2013 and summons were issued against the Doctor and Investigating Officer in Session Trial No. 109/2013/24/2013. On 23.05.2013, bailable warrant was issued against the Doctor and Investigating Officer and the same was handed over to the learned Additional Public Prosecutor, for service. On 03.06.2013, neither was a service report filed nor

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did the witnesses appear for evidence. The case was then adjourned to 10.06.2013 on which date an order was passed in which mention was made about a petition filed by the prosecution that there was no requirement to examine the husband of the informant as a witness and seeking closure of evidence from the prosecution side. The evidence was closed on 10.06.2013 and the accused examined on 11.06.2013, on which date the judgment was also delivered acquitting the accused.

11. It is seen from the inquiry report that the records of the case did not indicate a petition having been filed by the prosecution; when the order dated 10.06.2013 indicated such a petition. The prosecution having not opposed the filing of a petition to chose the evidence, it was incumbent upon the department to examine the Prosecutor in the inquiry conducted. It is also very evident that steps were taken against the Doctor and the Investigating Officer and the prosecution did not follow it up diligently. The prosecution later filed an application to close the evidence which is clearly recorded in the order dated 10.06.2013 based on which the accused was summoned on 11.06.2013. With the scanty evidence available, we cannot find any irregularity in the judgment having been passed on 11.06.2013 itself; on which date the accused was examined

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under Section 313 of the Cr.P.C.

12. We are quite aware of the fact that, not always a judgment is delivered on the same day, but the routine practices shall not be a reason to raise a presumption against the Officer; especially of having acted with extraneous considerations. There is absolutely no accusation levelled against the Officer of extraneous consideration nor does the facts disclose any such extraneous reason having regulated the proceedings in the sessions trial. The judgment having been delivered on the same day and the date alone having been incorporated in hand also cannot be a reason to presume that the order was written earlier. The evidence recorded was only of four witnesses, three of whom turned hostile and the mother of the deceased did not incriminate the accused on the offence of murder, directly. The judgment could have been delivered on the date of questioning under Section 313 of the Cr.P.C. We find that the first charge levelled against the delinquent to have been not at all proved in the inquiry, and the Inquiring Officer having found the delinquent to be guilty, in a cursory manner which would result in the same being termed a perverse finding.

13. The next charge is with respect to Sakatpur P.S. Case No. 53 of 2011, wherein a petition for discharge under

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Section 227 of the Cr.P.C. was filed on behalf of two accused. It was alleged that the discharge petition though heard on 29.01.2014, there was no detailed order passed and the matter was posted to 16.01.2014 with a note on the margin of the order-sheet that the matter is taken for orders. Detailed order is said to have been passed later, but there is no date of order ascertained by the Inquiry Officer, in the inquiry conducted. Merely because the sessions trial was fixed on 05.03.2014 for orders and framing of charge and the discharge order passed by the delinquent officer not having mentioned in the cause list dated 29.01.2014, the delinquent officer was found to have committed irregularities, based on extraneous considerations. We find absolutely no basis for the aforesaid finding, especially when there were multiple accused in the case and only two were discharged by the delinquent officer. It was only natural that after the discharge of the two accused, the case was posted for framing of charge against the other accused. The evidence led on this accusation does not bring forth any corrupt practices or an extraneous consideration and at the worst there is only an irregularity in the discharge order not being made available on the date on which it is said to have been passed.

14. In so far as S.T. No. 371 of 2013, bail was

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granted to an accused, allegedly on the ground that it was granted by the District Judge by order dated 12.09.2013. By a perfunctory finding, the Inquiry Officer found the bail order to be indicative of extraneous consideration since the order dated 12.09.2013, rejected the bail sought for by the accused. In fact, it is evident from the statement of facts itself that the allegation itself was that the order on 12.09.2013 rejected the bail and permitted the accused to move for fresh bail after three months. It was later on, in a subsequent bail petition, the delinquent officer granted bail on 03.01.2014. The fact of an earlier bail granted having been reflected in the order dated 03.01.2014 is at best an inadvertent mistake. Probably, the order only intended to speak about the liberty granted to the accused in the earlier order. In fact, if bail was granted in the earlier order, there was no requirement for a subsequent application for bail or an order granting such bail. The second charge, especially with respect to extraneous consideration, also has been perfunctorily found without any evidence, again bordering on perversity.

15. Now, we come to the third charge which is with respect to 13 allegations made by PW1 to 13 against the delinquent officer. It has to be emphasized that the evidence led is only with respect to the delinquent officer having talked with

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the accused, the advocate for the opposite party having been seen entering the chambers of the delinquent and so on and so forth, which by itself does not raise any presumption of extraneous consideration or acting or conducting himself in a manner unbecoming of a Judicial Officer. However, we have to notice one of the complainants having specifically spoken of the delinquent officer having informed him about the opposite party having given the delinquent Rs. 70,000/- to pass an order in his favour, and demanded amounts in excess of that from the complainant. The complainant when he was examined in chief admitted that he had given the transfer application and that the case was fixed before the A.D.J. -2, for orders. He also stated that there was some talk about money and that he is a poor person who has no source of money. However, in cross-examination the witness stated that the clerk of the opposite party informed him that he has purchased the Judge Sahab for Rs. 70,000/-. The complainant hence talked with the Judge Sahab when he was called to the residence. It is also stated that when he went to the residence, the Judge himself told him that the other party is giving Rs. 70,000/- and asked how much the complainant would give. It cannot, but be observed that there is a ring of falsity in the deposition. It is very improbable that a

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party would talk directly to the Judge on information received from the clerk and then go to the house of the Judge before whom the case is posted. The statements made in cross-examination has also to be considered in juxtaposition with no such case having been put forth in the chief examination. There was no other evidence regarding the demand of bribe except the testimony of the complainant before the Inquiry Officer. As facts remained, the case was also transferred from the Court of the delinquent officer.

16. ***Muzaffar Husain*** (*supra*) is a case in which it was held that there was enough evidence and material to show that the appellant had misconducted himself while discharging his duties as a Judicial Officer and had passed the judicial orders in utter disregard of the specific provisions of law, "to unduly favour the subsequent purchasers of the acquired lands who had no right to claim compensation, and that such orders were actuated by corrupt motive"*(sic-Para14)*. The delinquent employee was also found to have conducted the proceedings in a manner which reflected sadly on his reputation and integrity. We cannot, but refer to the cited decisions in ***Abhay Jain v. High Court of Judicature at Rajasthan; 2022 SCC OnLine SC 319, Sadhna Chaudhary v. State of U.P.; (2020) 11 SCC 760***

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and ***Krishna Prasad Verma (Dead) through Legal Representatives v. The State of Bihar and Ors; 2019 SCC OnLine SC 1330,*** wherein it had been declared that suspicion cannot constitute misconduct and that any probability of misconduct needs to be supported with oral or documentary evidence.

17. ***Ramesh Chander Singh v. High Court of Allahabad; (2007) 4 SCC 247*** disapproved the practice of initiation of disciplinary proceedings merely on ground of the judicial orders passed, being wrong, which wrong can be corrected by the higher Courts. ***Krishna Prasad Verma (Dead)*** *(supra)* was a case in which the Hon'ble Supreme Court again cautioned the High Courts from taking action on the basis of judicial orders, only on the ground of an error committed in the order passed and held that "To err is human and not one of us, who has held judicial office, can claim that we have never passed a wrong order"*(sic)*. While emphasizing that there should be zero tolerance for corruption, it was also cautioned that wrong judicial orders passed cannot lead to disciplinary action unless there is evidence that the wrong orders were passed for extraneous reasons. ***Ishwar Chand Jain v. High Court of P & H; (1988) 3 SCC 370,*** while reiterating the above principle held

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that 'it is imperative that the High Court protects its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants'. It was also observed that strict judicial officers often create adversaries, especially in the mofussil courts and the High Court cannot initiate inquiry on trifling matters relating to judicial orders.

18. With the above conspectus of principles in the background, we have to verify the allegations raised against the delinquent officer. We have found that in none of cases, except one, where there is an allegation of demand of bribe, there is any factual substantiation of extraneous reasons having weighed with the Judicial Officer, the delinquent officer. However, there is one case in which there was a demand of bribe as stated by the complainant; which was omitted to be stated in chief examination. The oral testimony made in cross examination was the sole evidence, but however, this casts a suspicion on the integrity of the officer. Suspicion, cannot take the place of positive proof, but in the present case it has to be noticed that there has been a number of instances where the litigants had sought for transfer of the cases from the Court of the Officer concerned. Hence, though there is no positive proof or any corrupt practices or reflection of the integrity of the Judicial

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Officer; definitely the conduct of the Judicial Officer was wanting.

19. Insofar as the allegation with respect to the acquittal of an accused charged with murder, we have noticed that the prosecution was not diligent in pursuing the matter. As we observed, there cannot be any finding of extraneous consideration merely for reason of the judgment acquitting the accused having been passed on the same date on which the accused was questioned under Section 313 of the Cr.P.C.; especially considering the fact that there was only one witness who also did not incriminate the accused personally and directly; with the other three witnesses having turned hostile. However, justice should not only be done, but also seen to be done and it was only proper that the Judicial Officer took sometime in considering the matter, especially after questioning the accused under Section 313. Insofar as the grant of bail is concerned, there is lack of sufficient care in passing orders; especially when the earlier rejection of a bail petition was noticed as a grant of the bail sought for. The very same lack of care and caution is reflected in the order of discharge having not been dictated on the date on which it is said to have been pronounced.

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20. As we notice, we do not find any sustainable allegation of corrupt practice or lack of integrity. However, the conduct of the Judicial Officer was wanting and the instances alleged specifically bring forth impropriety and irregularity in the procedure followed. Considering also the fact that the petitioner had a blemishless career of more than 25 years, we are of the opinion that there should be interference caused to the penalty imposed, especially considering the gravity of the allegations; which does not bring forth any specific instance of a corrupt practice or lack of integrity. We hence, allow the writ petition partly setting aside the order of the Disciplinary Authority to the extent it affirms the order of the Inquiry Officer regarding the guilt of the accused on the charges of allegation of extraneous considerations in passing the judicial orders. However, we find that the delinquent officer did not conduct himself as a Judicial Officer should have conducted and there was gross impropriety and irregularity coming forth from the allegations raised. We set aside the penalty of dismissal and impose on him the penalty of compulsory retirement, especially considering the fact that the delinquent officer was at the fag end of his carrier.

21. The writ petition stands allowed to the above extent

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and the petitioner shall be given all consequential benefits based on the modification in penalty. Parties shall suffer their respective costs.

(K. Vinod Chandran, CJ)

Parth Sarthy, J **I agree**

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
CAV DATE	18.08.2023
Uploading Date	31.08.2023
Transmission Date	

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