

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9745 of 2015

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Anchal Dwivedi, Son of Sri Girija Nandan Dwivedi , Resident of 2/425
Manjupur PO, P.S. and District Hamirpur (UP).

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna
2. The Principal Secretary, General Administration Department , Government of Bihar, Patna.
3. Additional Secretary, General Administration Dept., Govt. of Bihar, Patna.
4. The High Court of Judicature at Patna through its Registrar General .
5. The Registrar General , Patna High Court, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Singh, Sr. Advocate Mr. Bajarangi Lal, Advocate Mr. Yash Singh, Advocate Mr. Ishan Singh, Advocate
For the State	:	Mr. A. B. Sinha, GA-8 Ms. Kalpana, Advocate
For the Patna High Court:		Mr. Sanjeev Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-09-2023

The writ petition is filed by a Civil Judge (Junior Division), whose judicial career was brought to an abrupt end, by the decision of the Standing Committee of the High Court, to not declare his probation. The petitioner stood discharged from service with effect from 19.05.2014 by a termination of probation issued vide Notification dated 27.06.2014, which is



asserted by the respondents to be a termination simplicitor; neither punitive nor stigmatic.

2. The petitioner, on the other hand, pleads that he had a more than successful stint with continued appreciative assessments and the entire problems arose due to the enmity harboured by the District Judge; which led to a number of instigated complaints being raised against him. All of which were, however, consigned, despite which termination occurred in an illegal and arbitrary manner.

3. Shri Jitendra Singh, learned Senior Counsel, instructed by Shri Bajarangi Lal, learned counsel for the petitioner, argued for setting aside the termination order and reinstating the petitioner in service with full consequential benefits. Learned Senior Counsel took us through the records, which indicate a complaint raised against the petitioner, which resulted in a warning; to be careful in behaviour and to maintain judicial aloofness. The petitioner also had a consistent record and his performance was assessed outstanding. Despite all this, on a recommendation for declaration of probation, placed by the District Judge before the Standing Committee, the said recommendation was brushed aside and the officer was terminated on a refusal to declare his probation, which is on the



face of it untenable.

4. The petitioner had spent considerable time in the judicial service when there was no question raised against his judicial acumen or his performance. There was a disciplinary inquiry initiated against him, but the same had ended in his exoneration. The Inquiry Officer found the petitioner to be not guilty of the charges levelled against him and the Standing Committee fully agreed with the same. The exoneration was also on account of the witness who is alleged to have raised the complaint turning turtle in the inquiry proceedings; who even admitted the instigation by the District Judge. In any event, having been exonerated, the Standing Committee had no further material to terminate him. Reliance is placed on ***Transcore v. Union of India & Anr.; (2008) 1 SCC 125***, to emphasize on the *doctrine of election*. The High Court having elected to initiate a domestic inquiry and the same having ended on the exoneration of the delinquent employee; the High Court should not rely on such disciplinary inquiry or the complaint leading to the inquiry, to terminate the services of the petitioner by refusing to declare his probation.

5. Reliance is also placed on ***M.S.Bindra v. Union of India & Ors.; (1998) 7 SCC 310***, to urge a judicial review of



the order of termination on the grounds of no evidence and of conclusions not reasonably borne out from the records. This vitiates the administrative action and even a termination simplicitor should be supported by an objective satisfaction about the incapacity or ineligibility of the employee to be continued in service; at least borne out from the records.

6. Reliance is placed on *Abhay Jain v. The High Court of Judicature for Rajasthan & Anr.* in Civil Appeal No. 2029 of 2022 decided on 15.03.2022. From the said decision, the facts and the law declared are specifically read out to urge that the present writ petition stands on an identical footing. The petitioner is entitled to be reinstated in service with full benefits.

7. We have also heard Shri A.B.Sinha, learned Government Advocate for the State and Shri Sanjeev Kumar, learned Standing Counsel for the High Court.

8. It is argued by the High Court that the termination is not punitive nor does it cast any stigma on the petitioner and it is a termination simplicitor for reason only of the Standing Committee having come to the conclusion that the petitioner's performance is not satisfactory and it would not be in the interest of judicial administration to continue him in service. It is pointed out that merely because a disciplinary



inquiry was initiated and the delinquent officer was exonerated, it would not enable his continuance in service, if his antecedents are otherwise found unsatisfactory. There were a number of complaints raised against the officer and there was also a warning issued against him. It is in the totality of the circumstances that the petitioner has been found to be not entitled to be continued as a judicial officer. The learned Counsel would also place reliance on *High Court of Judicature at Patna v. Pandey Madan Mohan Prasad Sinha & Ors.; (1997) 10 SCC 409*. It was argued that the termination of services of a probationer can only be questioned on the ground that it was arbitrary or punitive and if there is a finding of unsuitability to be continued in judicial service, there is no question of principles of natural justice being attracted. Frequent complaints against a judicial officer can always be a consideration in terminating the services of the judicial officer and it would not be vitiated if it is not found to be punitive or stigmatic; is the compelling argument.

9. Considering the nature of the case and also the assertion of the High Court that the termination simplicitor is without any stigma attached to the officer and not in the nature of a penalty, we were persuaded to call for the service records of



the judicial officer. We were also compelled to do so, from the counter affidavit of the High Court itself, since the service dossier produced as Annexure-A, indicates the officer to have had a consistent outstanding grade in all the quarters of five years of his service; prior to his termination, barring one 'poor' remark in the 2nd quarter of the first of such five-year period.

10. The petitioner was appointed provisionally as a Civil Judge (Junior Division) after qualifying in the 26th Judicial Services Competitive Examination. He was posted at Sasaram (Rohtas) as a Civil Judge (Junior Division) on 22.12.2007 and he joined as a Probationer Civil Judge (Junior Division) on 04.01.2008. The petitioner was then posted as 1st Class Judicial Magistrate at Bikramganj (Rohtas) in the year 2009, from which period he had been graded outstanding. On 27.06.2011, the petitioner was transferred to Saran at Chapra and within two months, the problems commenced; according to him since the District Judge was inimical towards him.

11. As available from the records, while the petitioner was posted as 1st Class Judicial Magistrate at Bikramganj, some advocates raised complaints against him with respect to the consideration of cases in his court. The complaint was forwarded by the District Judge by communication dated



09.06.2011, based on which, explanation was called for and the Standing Committee, at its meeting on 13.09.2011, directed the officer to be careful in his behavior and to maintain judicial aloofness. While so, another allegation petition was forwarded by the District Judge through his communication dated 19.08.2011. Out of the three allegations raised, the first allegation relating to a complaint case and the second allegation regarding dismissal of another case, were found to be not sustainable from the records of the cases. The third allegation was with respect to the officer having granted permission to construct a temple in the court premises and also collecting subscription for the same from the litigants. The Standing Committee, at its meeting on 17.01.2012, directed the files regarding the third allegation to be placed before the Standing Committee. In its meeting dated 03.04.2012, the Standing Committee directed a disciplinary proceeding to be initiated against the officer in respect of the allegation of giving permission to construct temple within the Civil Court precincts and that of collecting contribution for construction of temple. The inquiry report is produced as Annexure-B.

12. A perusal of the inquiry report indicates that the Bench Clerk of the delinquent employee supported the



allegation regarding collection of subscription and deposed that the receipts were given to him by the delinquent officer and on his orders, receipts were issued to the litigants after initialing the receipts and the money used to be kept by the officer. In cross-examination, he has stated that the allegation arose after the transfer of the delinquent officer. The Office Clerk, who was examined as witness No. 2 also supported the allegation of collection of subscription and deposed in the same manner as witness No. 1. Witness No. 3, another court employee, though identified his explanation, stated that he had written the same on instructions of witness Nos. 1 and 2. In cross-examination, he deposed that the District Judge had withdrawn the bodyguard of the Presiding Officer and Bikramganj was a sensitive area and the officers' quarters was situated at a lonely place. It was his deposition that the temple was constructed prior to the joining of the delinquent officer.

13. Interestingly, the complainant, one Jitendera Kumar Singh, who was examined as witness No. 4, though admitted to the complaint, in cross-examination, he denied having given any receipt book to the delinquent officer for collection of subscription; contrary to his assertion in the complaint. It was also stated that he had made the complaint on



the instigation of the District Judge, Rohtas before whom a bail application filed by him was pending. He also deposed that the temple was being constructed from before the delinquent officer was posted in the station and the District Judge himself was visiting the premises of the court at Bikramganj to supervise the temple construction. When the people of the locality protested to the construction and other communities also raised demands for constructing their religious shrines inside the premises, the District Judge got the complaint filed by the complainant. The Inquiry Officer found that there was nothing established to find the delinquent officer having initiated the construction in the premises. The Standing Committee having gone through the inquiry report exonerated the officer from the charges.

14. We cannot but observe that, two witnesses had spoken about the subscription having been collected, but one another witness denied the same; all court staff. We reiterate that the Standing Committee having gone through the inquiry report exonerated the officer. We see from the records that there were also other complaints forwarded to the High Court, which were 'consigned' by the Inspecting Judge. While matters stood thus, the Registry put up a note before the Standing Committee relating to the confirmation of the Officer, a Munsif (Civil



Judge) (Junior Division). The petitioner, who was continuing as a Judicial Magistrate-cum-Additional Munsif, Chapra, an officer of the 26th Batch of Bihar Judicial Service, had passed the departmental examination as well as completed more than two years of service. The petitioner also had been granted first increment vide communication dated 18.03.2014. A fitness report of the aforesaid officer from the concerned District & Sessions Judge, different from the one at Rohtas, was also placed before the Standing Committee. The reports of the Vigilance Cell, Legal Cell, Allegation Table and Observation Table were also placed before the Standing Committee. No departmental proceeding was pending against the officer and no allegation matter or observation was pending. The Registrar General also did not raise any adverse remarks and it was emphasized in the report of the District Judge that the officer is fit to be confirmed. The Standing Committee, at its meeting on 29.04.2014, however, recommended that the petitioner be terminated and he be discharged from service. The recommendation of the Committee was approved by the Full Court at its meeting on 14.05.2014, consequent to which the termination order was issued.

15. We first look at the application of the *doctrine*



of election insofar as the aspect of refusal to confirm the probation of an officer; whose service was found to be unsatisfactory, based on a charge of misconduct in which he was exonerated in a disciplinary proceeding, the findings in which, were accepted by the disciplinary authority. It is trite that in passing a termination simplicitor, even if there is a complaint of misconduct, the appointing authority could decide on such termination simplicitor, without initiating an inquiry proceeding against the officer, based on the complaint raised, but without the termination order being stigmatic or punitive. The satisfaction of the appointing authority insofar as the officer being not suitable for continuation in employment or his probation not being entitled to be declared, is an objective satisfaction, which should be justified from the records. The mere fact that it is on the basis of an allegation that the probation was not declared, does not vitiate the consequent termination, if the order refusing to declare the probation does not refer to such allegation. The order then is treated as a termination simplicitor, which cannot be complained of and refuge taken under Article 311(2) of the Constitution of India; especially a probationer who has no vested right to be continued, unless the appointing authority is satisfied of his



eligibility to be confirmed in such post, substantively. There is also no hard and fast rule that once an allegation is levelled as a charge of misconduct and an inquiry is contemplated or initiated, a termination simplicitor cannot be made; without taking the inquiry to its logical conclusion; if again the termination is simplicitor as above mentioned.

16. In *Transcore* (supra) the learned Judges specifically emphasized three elements of election, namely (i) existence of two or more remedies, (ii) inconsistencies between such remedies and (iii) a choice of one of them. The remedy of proceeding for disciplinary inquiry, by itself, cannot be termed as inconsistent with or repugnant to the remedy of termination simplicitor. But when it reaches the point of conclusion with an exoneration of the delinquent, then a further termination, based on the very same allegation on which he was exonerated, becomes inconsistent and the choice made earlier which was followed up to its logical conclusion would stand against the employer then resorting to termination simplicitor on the very same allegation, on which the delinquent was exonerated. Having proceeded with the domestic inquiry on the allegation of a misconduct and the person having been exonerated from the said allegation, there cannot be a further termination on the very



same grounds.

17. However, there could be other complaints on which such a termination could be effected or a consistent poor assessment could also lead to it. In the present case, we find that there was no such complaint existing or placed before the Standing Committee, which would have enabled the Standing Committee to come to such a finding. We have also noticed the service dossier of the officer produced in the counter affidavit of the High Court as Annexure-A, which has consistently graded him outstanding for four and a half years, all the eighteen quarters, just prior to his termination.

18. ***Pandey Madan Mohan Prasad Sinha*** (supra) was a case in which the officer was assessed consistently with adverse remarks in the successive years from 1976-77 to 1981-82. The Inspecting Judge had also remarked about the conduct and antecedents of the officer, which were reported to be very much undesirable and unbecoming of a judicial officer. There were also complaints touching upon his integrity in his judicial work, serious complaints regarding his character and morality, allegations of being prone to drunken behaviour and continued interaction with different persons of the locality by playing cards with them. The remarks of 1976-77 and 1979-80 were



communicated to the officer and this was prior to the decision of the High Court to terminate him. The adverse remarks of the other years were communicated later to the termination, which was found to be not necessary and it was held that this should not vitiate the action taken of termination of services on the ground that the officer was not fit for confirmation in the post of Munsiff. The learned Judges elucidated the well settled law that a probationer has no right to hold a post and he cannot be equated to an employee substantively appointed to a post, whose termination from services would require compliance of the provisions under Article 311(2) of the Constitution. There is also no right to be heard before an order terminating the services is passed, was the categorical finding.

19. However, we are unable to find any parallel, to the present case, insofar as the petitioner herein having been graded outstanding in all the four and a half years, just prior to the termination and it was consistent in all the quarters of the four and a half years. There was also no complaint or adverse remark existing against him. There was only a warning as we noticed earlier, evidenced by Annexure-12, after which much water had flowed under the bridge. The District Judge, under whose control the petitioner was working, had also



recommended him as fit for confirmation. A disciplinary action initiated had ended in exoneration. There is nothing available on the records to sustain the order of the Standing Committee.

20. ***M.S.Bindra*** (supra) was a case in which an officer, decorated for his dedication and perseverance in duty, was suddenly labelled as of unreliable integrity and unfit to be entrusted with any position of responsibility in the Government service; on which finding, he was compulsorily retired. There were three specific instances recorded by the Screening Committee against the Officer while considering his continuance in the Revenue Department. It was found that none of the instances relied upon by the Screening Committee, reveal any objectionable conduct on the part of the officer and on the contrary, it only furthers the reputation he maintained in the organization. The Hon'ble Supreme Court relied on ***Union of India v. Col. J.N.Sinha; (1970) 2 SCC 458***, wherein it was declared that if the appropriate authority forms the requisite opinion bona fide, its opinion cannot be challenged before the courts though it is open to contend that the requisite opinion has not been formed or is based on collateral grounds and that it is an arbitrary decision. A three-Judge Bench in ***Baikuntha Nath Das v. Chief Distt. Medical Officer; (1992) 2 SCC 299***,



following the above dictum, while considering a case of compulsory retirement, laid out five principles, of which No. (iii) is extracted hereinbelow:

“(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary — in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.”

21. In *M.S.Bindra* (supra), it was held so in para-11, which is extracted hereinbelow:

“11. Therefore, judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order is either arbitrary or mala fide or if it is based on no evidence. The observation that principles of natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion, the same can be obviated on the assumption that other materials alone need be looked into.”

In that case though the appellant had made an endeavour to show that there were mala fides on one of the members of the Screening Committee, such contention was repelled.

22. In the present case also, the records reveal an allegation against the District Judge, who had forwarded the complaint to the High Court. We cannot but observe that in the inquiry, the complainant himself raised such an allegation



against the District Judge and admitted to the complaint having been instigated by the District Judge. We also have to notice that both the witnesses No. 1 and 2, who deposed on the subscriptions being taken by the delinquent officer were serving under the particular District Judge even at the time of the inquiry. We say this despite, as we noticed, even the Standing Committee, after perusal of the inquiry report found the officer to be entitled for exoneration from the allegations levelled and the allegation of enmity and malice raised against the District Judge need not be gone into. It is trite that the disciplinary authority would have the capacity to go into the evidence led at the inquiry and find a delinquent officer guilty of the misconduct alleged; even if the inquiry officer exonerates the delinquent. The only requirement would be that reasons for deviating from the findings in the inquiry report would have to be stated and the delinquent officer given an opportunity to explain and represent against the reasons so stated. In the present case, no such attempt was made by the Standing Committee.

23. Having perused the records, we find absolutely no material on which the Standing Committee could have denied confirmation of the petitioner's probation, resulting



in termination of his services. A termination simplicitor, if it is not punitive or does not cast any stigma, cannot be challenged by a probationer, especially since he has no right to be continued in the post. A disciplinary inquiry, on the allegations raised against him, would not also be necessary but the question is whether such termination can be made on the *ipse dixit* of the appointing/disciplinary authority. It is trite that when allegations are raised against a probationer, the appointing authority could either conduct a disciplinary inquiry or based on the allegations, even without an explanation called for, could terminate the services of an employee without confirming his probation. But there should be some material available in the records for the appointing authority to come to the objective satisfaction that it would not be in the interest of the administration to continue the employee in service; here, in judicial service. That the termination itself is one termed as simplicitor, neither punitive nor stigmatic is not to say that the decision should not be based on some relevant material, either of an allegation or of deficient performance. When the decision to so terminate is challenged, the appointing authority must be able to satisfy the Court that it was on reasonable grounds the termination was ordered and if there are in existence sufficient contemporaneous material in the



records, then the Courts would not look into the advisability of a termination as such; since then the Court would be substituting its opinion for that of the employer, which is impermissible. There is total absence of such material in the present case.

24. We have to also look at **Abhay Jain** (supra), which was heavily relied on by the learned Senior Counsel for the petitioner. Therein, the dismissed employee was a judicial officer, who entered the service in the year 2013 and got discharged in 2016. The ground for discharge was also a bail granted by the appellant in a case under the Prevention of Corruption Act, 1988. The allegation was that the officer did not wait for sanction of prosecution and that a High Court order declining bail to the very same accused was ignored. The officer having adjourned the matter for production of sanction, eventually granted bail to one of the appellants, especially noticing that a co-accused was granted bail by the High Court. It was alleged that the grant of bail by the District Judge was after the dismissal of the bail application by the High Court; which was asserted, in defence, to have been not produced before the District Judge. Though an inquiry was initiated, while the same was pending, the officer was discharged on the finding of the Full Court that the appellant's services were unsatisfactory



during the probation. The inquiry was closed, subject, however, to the right to reopen the same.

25. The Hon'ble Supreme Court in **Abhay Jain** (supra) refused to accept the contention of the High Court that the discharge of the appellant was a discharge simplicitor and not violative of Article 311(2). It was found that the High Court had failed to provide a reasoning as to how the allegation of misconduct pertaining to the bail order was not the foundation of the order of discharge; especially when an inquiry was initiated and it was pending at the time of discharge. The Hon'ble Supreme Court also referred to the material placed before the Higher Judicial Committee, which recommended the discharge of the appellant, wherein there was total absence of adverse remarks against the appellant, except in relation to the grant of bail. The work and conduct of the appellant were consistently assessed as good and his integrity was never doubted. The ACR of the officer for the year 2013 assessed him as very good and specifically mentioned that his integrity was never doubted, which was followed in the year 2014 (Part-I) also. In the second part of 2014 though he was assessed as good, there was a remark to improve the judicial work, which was also found to be based on the bail order issued. The High Court had



relied on the ACR for the year 2015 wherein the Administrative Judge had recorded that *“Integrity of the officer is doubtful. In my over-all assessment, I rate the officer average”*; which entry was after the discharge of the Officer.

26. The Hon’ble Supreme Court refused to accept that it was based on these later comments that the discharge was carried out; since they were made after the appellant was discharged from service. It was categorically found that there was nothing adverse in the officer’s record and the entire recommendation of discharge by the Higher Judicial Committee was based upon the passing of the bail order for which an inquiry was initiated, but not continued. On the grant of bail, the records revealed that the prosecution was given sufficient time to bring the sanction on record, which was not done. The Investigating Officer only indicated the file having been submitted to the State Government for sanction. The denial of bail to the said accused by the High Court was also not placed on record, before the Court. Above all, the co-accused was granted bail by the High Court, which was also a relevant consideration in the grant made by the officer. The very grant of bail upon which the allegations were raised was found to be not faulty as it was permissible under Section 439 of the Code of



Criminal Procedure, even if the request for bail was declined by the High Court. The officer was reinstated with all consequential benefits, including continuity of service and seniority, but found to be entitled to only 50% wages.

27. We cannot, but notice that in **Abhay Jain** (supra) at least, there was an allegation of grant of bail pending against the officer, based on which the discharge was made. In the present case, there was absolutely no allegation or complaint pending against him and there was also no disciplinary inquiry pending. The only adverse remark against him was of the year 2011 and the inquiry initiated on charges of misconduct stood concluded; with the exoneration of the petitioner. There were seven other complaints against the Officer, none of which were proceeded with. The Officer was consistently graded 'outstanding' in his ACR in the 18 quarters immediately prior to his termination.

28. Having gone through the records of the case and also the records placed before us by the High Court, we are of the opinion that there was absolutely no material available to the Standing Committee to terminate the services of the officer, refusing the probation to be declared so as to confirm the petitioner in the post to which he was appointed.



29. We set aside the order passed and direct the petitioner to be reinstated with all consequential benefits, seniority and continuance in service, however, the back wages being limited to 50%.

30. The writ petition is allowed and parties are left to suffer their respective costs.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	31.08.2023
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