

(2005) 08 JH CK 0052

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4402 of 2001

A. Arjehanul Gouri

APPELLANT

Vs

Jharkhand High Court and Others

RESPONDENT

Date of Decision : 10-08-2005

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 89
Constitution of India, 1950 — Article 235, 311
Jharkhand Service Code, 2001 — Rule 74

Citation : (2005) 3 JCR 526

Hon'ble Judges : Altamas Kabir, C.J.; R.K. Merathia, J

Bench : Division Bench

**Advocate : Jay Prakash Jha, Prakash Jha and R.C. Kiskoo, for the Appellant;
R.S. Majumdar and A.R. Choudhary, for the Respondent**

Final Decision : Dismissed

Judgement

Altamas Kabir, CJ.

1. This writ application involves the invocation of Rule 74(b)(ii) of the Jharkhand Service Code in respect of the petitioner's service as a judicial officer and the matter has been referred by the learned Single Judge to the Division Bench for hearing and disposal, along with several other cases of similar nature.

2. The petitioner was selected and appointed as a Judicial Magistrate with the approval of the Patna High Court and on 2nd April 1975, he joined the service as Munsif In Khagaria and was also confirmed in service as Judicial Magistrate/ Munsif Magistrate by the Patna High Court. In the year 1989, he was granted promotion and posted at Sahebganj and subsequently, he was transferred and posted as Sub-Judge-1-cum-Addl. Chief Judicial Magistrate. Katihar in the year 1992. Thereafter, he was transferred to Shekhpura in the district of Monghyr with Sessions power. According to the petitioner, he had always enjoyed a very good reputation as a judicial officer which would be reflected from his Annual Confidential Reports while he was posted in the district of Sahebganj and

thereafter at Katihar. But after he was transferred to Shekhpura under Monghyr Judgeship in 1996, he was targeted by people with vested interests, including the Inspecting Judge of the Patna High Court, Justice S.K. Singh and the then District Judge, Monghyr. The petitioner has mentioned that one Vijay Kumar, an Advocate of Shekhpura, made a complaint against the petitioner to the Patna High Court on 26th June, 1996 and even resorted to agitation in front of the petitioner's chambers for which the petitioner had to be provided with security, both in and outside the Court. According to the writ petitioner, even after his transfer from Shekhpura to Bokaro, he was subjected to the same humiliation and harassment, since Hon'ble Mr. Justice S.K. Singh of the Patna High Court was coincidentally made the Inspecting Judge at Bokaro Judgeship. According to the writ petitioner, while, on the one hand, in the report dated 13th August, 2000, the Inspecting Judge had indicated that no complaint had been heard regarding the petitioner's integrity, he, however, categorized the petitioner as an officer of average quality. It will appear from paragraph 20 of the writ petition that the petitioner had been placed under suspension and the same was challenged by him in Patna High Court in CWJC No. 5058 of 2001, which was withdrawn by him on 3rd May, 2001 as in the meantime, after the enactment of the Bihar Reorganisation Act, 2000, the petitioner was ordered to report to the Jharkhand cadre.

3. Soon thereafter, by order dated 17th July, 2001 passed under Rule 74(b)(ii) of the Jharkhand Service Code, the petitioner was made to retire compulsorily.

4. Appearing in support of the writ petition, Mr. Jay Prakash Jha, learned Senior Advocate, contended that the petitioner's miseries had started after he had been posted as Sub-Judge-1-cum- Addl.-CJM-cum-Assistant Sessions' Judge, Incharge Nazarat at Shekhpura under Monghyr Judgeship on account of various factors, including caste factor, which prejudice the Hon'ble Inspecting Judge of the Patna High Court and learned District Judge, Monghyr against the petitioner. The activities of Sri Vijay Kumar, Advocate, of Shekhpura caused the petitioner to file Criminal Contempt proceeding against Sri Vijay Kumar and another, being Cr. Misc. No. 20 of 1996 which was ultimately dropped as the said Sri Vijay Kumar and other concerned lawyers tendered their unconditional apology.

5. Mr. Jha also urged that it was the writ petitioner's misfortune that wherever he was posted on fresh posting, the Hon'ble Inspecting Judge of the Patna High Court also happened to be placed in charge of the said Judgeship and on account of grudge borne by him against the petitioner, various remarks were made against him by the Hon'ble Judge. According to Mr. Jha, although a disciplinary proceeding was commenced against the writ petitioner, he was never made aware of the charges and he was subjected to utter humiliation and was ultimately punished when order of compulsory retirement was passed without even informing him of the charge on which the said disciplinary proceeding was supposed to have been initiated. Mr. Jha urged that the entire exercise against the petitioner was in violation of Section 89 of the Bihar Reorganisation Act, 2000, and also in violation of the principles of natural justice.

6. In support of his submissions, Mr. Jha, firstly relied on the decision of the Hon"ble Supreme Court in the case of M.S. Bindra Vs. Union of India and Others, in which it was observed that when an officer was compulsorily retired on the ground of doubtful integrity, such action was improper, since doubt about integrity should not be entertained merely on surmises. The Hon"ble Supreme Court after placing reliance on its earlier decisions in the case of Union of India (UOI) Vs. Col. J.N. Sinha and Another, and Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, , observed that an order of compulsory retirement was always subject to judicial review and could be challenged if it was found to be arbitrary or mala fide and based on no evidence. Mr. Jha submitted that the principles of natural justice were well established and the Hon"ble Supreme Court had repeatedly held that cancellation of any appointment without any opportunity being given to the concerned officer amounted to violation of the principles of natural justice and such an order must be deemed to be illegal.

7. In support of his said submission, Mr. Jha relied on a Bench decision of the Patna High Court in the case of Smt. Lalita Kumari Vs. State of Bihar and Others, .

8. Reliance was next placed on the decision of the Hon"ble Supreme Court in the case of Bishwanath Prasad Singh v. State of Bihar, reported in 2001 (1) JCR 334 (SO, wherein while considering the provisions of Article 311 of the Constitution in relation to compulsory retirement of a Government Servant, it was observed that such compulsory retirement is one of the penalties inflicted on a delinquent Government servant consequent upon finding of guilt recorded in a departmental proceeding. Such penalty involves stigma and cannot be inflicted without following the prescribed procedures and the principles of natural justice. In relation to the administrative control of the High Court over subordinate Courts in terms of Article 235 of the Constitution, it was observed that control over subordinate Courts vested in the High Court is a trust and confidence reposed by the founding fathers of the Constitution in a high institution like the High Court. The trust has to be discharged with a great sense of responsibility.

9. The Hon"ble Supreme Court also took note of the observations made in the All India Judges" Association and Others Vs. Union of India and Others, .

10. Mr. Jha then referred to the decision of the Hon"ble Supreme Court in the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, in which it was observed that an order of compulsory retirement has to be passed by the Government on forming an opinion that it is in the public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government and in order to arrive at such satisfaction the Government is required to consider the entire record of service before taking a decision in the matter, of course, attaching more importance to the record of and performance during the later years. It was also observed that if a Government servant is promoted to a higher post

notwithstanding adverse remarks, such remarks lose their sting, more so if the promotion is base upon merit (selection) and not upon seniority. The Supreme Court also observed that although an order of compulsory retirement is not liable to be quashed merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration it did not mean that adverse remarks need not be communicated or that the representation, if any, submitted by the Government servant against such remarks need not be considered or disposed of. Adverse remarks ought to be communicated in normal course as required by the rules.

11. Mr. Jha submitted that in the instant case, while disciplinary proceedings had been commenced against the petitioner, he was not even informed of the charges and ultimately, the matter was concluded by passing the impugned order of compulsory retirement. Reliance was also placed on the decision of the Hon''ble Supreme Court in the case of High Court of Judicature at Allahabad Through Registrar Vs. Sarnam Singh and Another, and Pepsu Road Transport Corporation v. Lachman Das Gupta and Ors., reported in 2001 (2) JCR 467 (SC), wherein the earlier principles have been reiterated in keeping with the observations made in the All India Judges'' Association case (supra). Mr. Jha contended that having regard to the arbitrary and unconstitutional manner in which the impugned order of compulsory retirement had been made in utter violation of the principles of natural justice, the said order was liable to be quashed.

12. Opposing the writ application, Mr. Majumdar appearing for the High Court of Jharkhand submitted that although an attempt had been made to paint the picture of the officer as being a person who had been sinned against, in fact, the circumstances were just the reverse as would appear from the Annual Confidential Reports of the writ petitioner, right from the beginning of his service till decision was taken by the Jharkhand High Court to recommend to the State Government to invoke the provisions of Rule 74(b)(ii) of the Jharkhand Service Code in petitioner''s case. Mr. Majumdar contended that it was on a dispassionate consideration of the petitioner''s total service record that such a decision was taken. The High Court of Jharkhand not only found that the petitioner''s performances was poor, but that there were doubts with regard to his integrity. In such circumstances, the High Court took the decision to recommend that the petitioner be compulsorily retired from service in keeping with the guidelines enunciated by the Hon''ble Supreme Court in the All India Judges'' Association case (supra) for weeding out inefficient officers whose continued utility was found to be of negative import and it was necessary to retire them in the public interest.

13. As in various other cases, which we have heard recently on the same issue, we find little scope for interference with the decision of the High Court and the State Government, which was based on a total evaluation of the petitioner''s performance and reports as to his integrity during his entire period of service. The petitioner has made certain reckless comments regarding the Inspecting

Judge, which are, without any foundation and merely reflects the petitioner's recalcitrant and intemperate nature.

14. Be that as it may, sufficient materials have been disclosed in the affidavit affirmed on behalf of the Jharkhand High Court on which a subjective satisfaction could have been arrived at for the purpose of recommending that the petitioner be compulsorily retired from service. We see no reason to interfere with the said decision and the consequent order passed by the State Government. Various decisions cited by Mr. Jha reflect the mind of the Hon'ble Supreme Court in matters of compulsory retirement and do not help the petitioner's case in any way.

15. On the question of violation of natural justice, the law has now been well-settled and has been explained, in fact, in some of the cases cited by Mr. Jha himself that in case of compulsory retirement, the question of following the principles of natural justice does not arise and that such an order of compulsory retirement under Rule 74(b)(ii) of the Jharkhand Service Code does not also amount to a penalty.

16. For the reasons aforesaid, this writ application fails and is dismissed, but there will be no order as to costs.

R.K. Merathia, J.

I agree.