

(2016) 03 JH CK 0116
In the Jharkhand High Court
Case No : W.P.(S) No. 2200 of 2013

Ashok Kumar Mishra

APPELLANT

Vs

State of Jharkhand and others

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 235, 311

Citation : (2016) 2 AIRJharR 685 : (2017) 1 JBCJ 438 : (2016) 4 JCR 54 :
(2016) 2 JLJR 603

Hon'ble Judges : Virender Singh, C.J. and Shree Chandrashekhar, J.

Bench : Division Bench

Advocate : Manoj Tandon, Shiv Shankar Kumar, Kumari Rashmi and Santosh Soni, Advocates, for the Appellant; Ananda Sen and Vijay Kant Dubey, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. The writ petitioner (hereinafter to be referred to as "petitioner") is a Judicial Officer and when dismissed from service vide impugned order dated 8th of March 2013 (Annexure 13), he was Additional District Judge (Fast Track Court). Through the medium of the instant writ petition, he seeks quashing of the order dated 8th of March 2013, inter alia, on several grounds as averred in the writ petition, which have been repudiated by respondent High Court of Jharkhand by filing a detailed counter affidavit.

2. The career of the petitioner, as a Judicial Officer, started on 25th of November 1986 when he was appointed as Munsif and joined on the said post in the judgeship of Dhanbad. He was promoted first on the post of Sub Judge in the year 2001 and then promoted as Additional District Judge (Fast Track Court) in November 2003. While he was posted at Dhanbad, the then District & Sessions Judge, Dhanbad sent a report to the High Court on 17th of May, 2008 with regard to certain orders passed by the petitioner, whereupon a show cause notice (Annexure 9/1) was given to the petitioner on 24.09.2008 to which he submitted

his reply dated 10.10.2008. In the meantime, he was transferred to the post of Additional District Judge (FTC) at Sahibganj wherefrom he was transferred to Gumla to the post of Additional District Judge (FTC) vide order dated 05.03.2011, which was received by him on 08.03.2011. Vide Notification dated 05.03.2011, the Additional District & Sessions Judges/Additional Judicial Commissioners (including Spl. Judge)/Adhoc Additional District & Sessions Judges & Adhoc Additional Judicial Commissioners of the Fast Track Courts were transferred and directed to join their new place of posting by 01.04.2011 and accordingly, the petitioner handed over the charge of Additional District Judge (FTC) at Sahibganj on 28.03.2011.

3. It appears that taking cognizance of a news item published in daily newspaper (Hindustan) captioned as, "Judge Ne Ek Hye Din Liya Bayan, Sunee Bahas Aur Kiya Riha", a report was called from the District and Sessions Judge, Sahibganj by the High Court and the petitioner was put under suspension on 21.09.2011. Two departmental proceedings were initiated against him by serving a memo of charge on 23.11.2011; one relating to the incident when he was posted at Sahibganj that is, vide D.P. No.03/2011 and the other relating to his alleged misconduct committed in the year 2008 when he was posted at Dhanbad that is, vide D.P. No.04/2011.

Simultaneously, ACRs for 2008-09 and 2009-10 with adverse remarks were also communicated to the petitioner. He submitted his written statement of defence on 01.12.2011 however, that was not accepted by the High Court and the departmental proceeding vide, D.P. No.3/2011 and D.P. No.04/2011 continued. The enquiry officer submitted the enquiry report in D.P. No.03/2011 on 14.03.2012 and in D.P. 4/2011 on 27.03.2012. In the aforesaid proceedings, second show-cause notice was issued to the petitioner on 15.05.2012 which was replied by him on 25.05.2012 and thereafter impugned order of "penalty of dismissal from service" was passed on 08.03.2013.

4. Heard learned counsel for both the sides and perused the records.

5. In the start, the charges framed against the petitioner in both the departmental proceedings may usefully be noticed.

6. In D.P. No. 03/2011, the following charges were framed against the petitioner for the misconduct committed by him when he was posted at Sahibganj:

Charge No. 1

"Sri Ashok Kumar Mishra, while functioning as Adhoc ADJ (FTC), Sahibganj, disposed of as many as 18 Sessions Cases, after receipt of his transfer order on 08.03.2011; by way of unwanted practise.

The aforesaid act on his part, casts reflection upon his integrity and reputation amounting to misconduct and a conduct unbecoming of a judicial officer.

Charge No. 2

Sri Ashok Kumar Mishra, the then Adhoc A.D.J. (F.T.C.), Sahibganj made over charge of the Court and office of A.D.J. (F.T.C.), Sahibganj on 28.03.2011 in the afternoon after 2:00 P.M. and on the same day he has disposed of two Sessions Cases (i.e. S.C. Nos. 88/10 and 44/2011) in the 1st sitting of the Court. In both the cases evidence of the prosecution was closed by him and on the same day statement of the accused persons u/s 313 Cr.P.C. was recorded, argument was heard and judgement was passed by him in haste and it gives an impression that the judgments were delivered on extraneous consideration.

The aforesaid act on his part reflects arbitrariness and doubtful integrity amounting to misconduct and a conduct unbecoming of a judicial officer.

Charge No. 3

Sri Ashok Kumar Mishra, while functioning as A.D.J. (F.T.C.), Sahibganj; merely on the basis of the Compromise petition, acquitted the accused without recording the statement of informant in S.C. No. 227/2005, in which accused were facing trial u/s 342/34, 323/24; 448/34 of I.P.C., whereas admittedly the offence u/s 307 of I.P.C. is not compoundable. Moreover, the informant was previously examined before filing compromise petition, in which he had supported the prosecution case and also identified the accused persons involved in the offence.

It shows that Sri Ashok Kumar Mishra, A.D.J. (F.T.C.), Sahibganj delivered the judgment without re-examining the said witness in order to make undue favour to the accused. The aforesaid act on his part reflects judicial incompetence, poor knowledge of law and lack of integrity, amounting to misconduct and conduct unbecoming of a judicial officer."

7. And, for the misconduct committed while functioning as Additional District Sessions Judge (F.T.C.) when the petitioner was posted at Dhanbad, the following charges were framed against him:

Charge No. 1

Sri Ashok Kumar Mishra, while functioning as Addl. District & Sessions Judge, FTC IIIrd, Dhanbad, disposed of the Cr. Appeal No.15/2006 on 04.03.2008 in which the accused was charged under Section 409 I.P.C.. Though he confirmed the judgment of conviction but modified the sentence. In case of such grievous nature case, the modification of sentence was unwarranted and the modification in the sentence under the circumstances, casts doubt upon the integrity and reputation amounting to misconduct and a conduct unbecoming of a judicial officer.

Charge No. 2

Sri Ashok Kumar Mishra, while working as Addl. District & Sessions Judge, F.T.C. IIIrd, Dhanbad, disposed of Cr. Appeal No. 225/2004 by the judgment dated 10.01.2008. Though, he upheld the judgment of conviction passed by the learned court below but modified the sentence and ordered the convict to enter

in a bond of Rs. Five thousand (Rs. 5,000/-) for keeping peace and be of good behaviour and to maintain peace for a period of one year.

The aforesaid act on his part, reflects doubtful integrity amounting to misconduct and a conduct unbecoming of a judicial officer.

Charge No. 3

Sri Ashok Kumar Mishra, while working as Addl. District & Sessions Judge, F.T.C. IIIrd, Dhanbad, disposed of S.T. Case No. 208 of 2006 by his judgment dated 31.03.2008, in which accused persons were charged u/s 232, 235, 420, 471, 467, 468 and 120-B IPC. Sri Mishra acquitted two of the accused and convicted one accused namely Wasim Khan. The bail of this convict was rejected twice by the Hon'ble Jharkhand High Court and the convict remained in jail for two years. However, Sri Mishra held the convict guilty and again released him by sentencing him for a period of custody of two years already undergone by the convict.

In spite of the filing of an application by the learned APP for adjournment of the judgment for filing certain Rulings; the judgment was delivered by Sri Mishra on the same day i.e. on 31.03.2008 ignoring the settled principal of law.

The disposal of the aforesaid case against the norms apparently points to the fact that the sentence passed by Sri Mishra was passed on extraneous consideration.

The aforesaid act on his part shows doubtful integrity and arbitrariness, amounting to misconduct and a conduct unbecoming of a judicial officer."

8. The gravamen of the charges framed against the petitioner in D.P. No. 03 /2011 is that he disposed of cases of serious nature, all Sessions triable cases, in a manner which reflects upon his integrity and gives an impression as if judgments were delivered on extraneous considerations. In D.P. No. 03/2011, the first charge is that after receiving his transfer order on 08.03.2011 the petitioner disposed of 18 Sessions cases (petitioner contends that he disposed of 17 Sessions cases) by the time he handed over charge on 28.03.2011. The statement of imputation of misconduct for which charges were framed, discloses that on 28.03.2011 the petitioner handed over charge in the afternoon however, on the same day he had disposed of two Sessions cases that is, Sessions Case No. 88 of 2010 and Sessions Trial No. 44 of 2011 in the first sitting of the court. In both the cases prosecution evidence was closed on the same day and after recording the statement of the accused persons under Section 313 Cr.P.C., the petitioner heard the arguments and passed the judgment of acquittal in the second half of the day.

9. The record of proceeding of Sessions Case No. 88 of 2010 which has been produced in the present proceeding discloses that in the said case the previous date fixed was for 26.03.2011 for prosecution's evidence and the judgment of acquittal was passed on 28.03.2011. It is stated that 26.03.2011 was a clearance day and normally, evidence is not recorded on such days unless, a special witness turns up and that is the reason, cases are not fixed for evidence

on clearance day. It has also come on record that 27.03.2011 was a Sunday. Besides the above, it appears that service report of the summons issued to the witnesses was not received in the court, still the petitioner closed the prosecution evidence on 28.03.2011 itself.

10. The record of Sessions Trial No. 44 of 2011 in which the accused persons were charged for offence under Section 302/34 I.P.C. discloses that charges were framed on 28.02.2011 when the accused persons claimed trial. It further appears that there were as many as 11 witnesses in the case and three witnesses were examined on 16.03.2011 and next date was fixed for 18.03.2011. On that day another witness namely, Lukhiram Soren was examined, cross-examined and discharged and on 28.03.2011 at the request of the defence, the court closed the prosecution's evidence. The statement of the accused under Section 313 Cr.P.C. was recorded on the same day and after hearing both the sides, the petitioner passed the judgment of acquittal in the second sitting of the day. It, on the face of it, appears to be unusual that after the charge was framed on 28.02.2011, just in four sittings the trial of Sessions Case No. 44/2011 for offence under Section 302/34 I.P.C. stood concluded. Even if we give that much of leverage considering that it was Fast Track Court, still the manner in which the cases have been disposed of by the petitioner and the way he tried to run very fast especially on the day when he had to hand over the charge in the second half of the day is not acceptable, rather it leads to draw an adverse inference, more so when the specific allegation against the petitioner is that he passed judgment in these two Sessions case in such a haste which gives an impression that the judgments were delivered on extraneous consideration.

11. The details of other cases have also been disclosed in the memorandum of charge. We have also perused the proceeding in few cases disposed of by the petitioner after he received his order of transfer on 08.03.2011. For instance, in Sessions Case No. 33 of 2011 without examining the informant and even though service report was not received in the court, the prosecution evidence was closed on 25.03.2011 and judgment was delivered on 26.03.2011, acquitting the accused of criminal charges framed against him. In a case in which one Ramji Mandal was murdered in the jail premises at Sahibganj for which the accused persons were being tried in S.C. No.163 of 1998, the petitioner passed judgment of acquittal in a haste. In S.C. No. 113B of 2009 in which the accused persons were facing trial for offence under Section 302/34 I.P.C., though the record was not traceable on 22.03.2011 charges were framed against the accused persons and on 24.03.2011 the petitioner adopted the evidence of witnesses recorded in another case and acquitted the accused persons for the charges framed under Section 302/34 I.P.C. In this manner, in most of the cases the petitioner disposed of the Sessions triable cases by closing the prosecution's evidence without awaiting the service report of execution of summons/warrant. Also, in most of the cases date for next hearing was fixed only within a week.

12. It is not in dispute that the petitioner received his transfer order on

08.03.2011 and he admits that within 20 days which includes Sundays and holidays also, he disposed of 17 Sessions cases. A specific allegation has been made against the petitioner that after receiving the order of transfer on 08.03.2011, the petitioner started proceeding in haste and the manner in which he passed the order of acquittal in all 17 cases leads of an inescapable conclusion that he acted on extraneous considerations. In view of the specific allegation against the petitioner and the nature of evidence produced in support of the charges framed against him, which are all documentary evidence except, the District Judge who proved the documents produced during the departmental enquiry, the plea taken on behalf of the petitioner that there was no allegation against him of taking the bribe and only on "rumors" the departmental proceeding vide D.P. No. 03/2011 was initiated, merits rejection. The dictionary meaning of the word extraneous is "irrelevant or unrelated to the subject or matter being dealt with". It is not that a charge of extraneous consideration can be framed only in cases where the allegation is of taking bribe. If one reads the charge of delivering judgments on extraneous considerations framed against the petitioner, it has amply been made clear that judgments were delivered on considerations extraneous to the subject matter.

13. May be, the misconduct of the petitioner came to the knowledge of the High Court only when a news item was published in the newspaper on 02.02.2011 however, it would not shake the foundation of the charges framed against the petitioner. The High Court in exercise of its administrative as well as disciplinary powers can order initiation of proceeding against a judicial officer, suo-moto. It is really not relevant how the proceedings were initiated because there is no allegation of arbitrariness or malafide levelled against any one by the petitioner. What matters is the evidence produced during the departmental enquiry in support of the charges framed against the delinquent judicial officer. The order passed by the petitioner and the record of proceedings of the aforesaid Sessions cases are matters of record and obviously, the petitioner could not deny the same. The only plea taken by the petitioner is that in the light of order of the High Court he was required to dispose of at least 14 cases in a month and to achieve the said object he disposed of 17 cases by 28.03.2011.

14. Wherever power is conferred to achieve a purpose, the power must be exercised reasonably and in good faith to achieve the said purpose. A judicial officer at all times is under a duty to impart justice and not to slaughter the justice. The alleged instruction of the High Court, which was never brought on record and if at all there, it was not a license to kill the justice. The plea taken by the petitioner turns out to be a lame excuse offered by him when it is examined in the context of his experience as a judicial officer for 25 years. The manner in which the petitioner proceeded in disposing of 17 Sessions cases after he received his transfer order on 08.03.2011 does not reflect conduct of court's business by a judicial officer of 25 years' experience. The charges framed in D.P. No.4/2011 have also been proved against the petitioner. The proceedings in Criminal Appeal No.15/2006, Criminal Appeal No.225/2004 and S.T. Case No.

208/2006 also disclose disposal of aforesaid cases improperly. It is not a case of mere mistake or an error of judgment on the part of the petitioner. The manner in which the aforesaid cases have been handled by the petitioner and decided gives an impression as if the Judicial Officer is not at all aware of the procedure, which can not be true in the case of the petitioner who was having experience of 25 years as a Judicial Officer. It rather establishes that judgments were rendered by him on extraneous considerations who now wants to take the undue advantage of the plea of achieving the target of disposal fixed by High Court.

15. Annexure-3 to the Memorandum of Charge contains the list of documents in support of Article of Charges which includes xerox copies of the relevant judgments and the report of the District and Sessions Judge, Sahibganj dated 05.04.2011. A grievance has been raised on behalf of the petitioner that he, after the second show-cause notice was issued on 15.05.2012, requested for supply of documents, however the documents were not supplied to him and he was only permitted to inspect the documents. The learned counsel for the petitioner contended that denial of supply of documents on the basis of which penalty of dismissal from service has been passed, vitiated the penalty order dated 08.03.2013. This contention, in fact, has been raised in ignorance of the settled proposition in law.

16. The charges against the petitioner were framed on the basis of orders passed by him in various Sessions triable cases. The same is made further clear when one notices the list of documents mentioned in Annexure-3 to the Memorandum of Charge. The petitioner himself has admitted that he was permitted to peruse the documents. The case against the petitioner entirely rests on the documentary evidence, the genuineness and veracity of which the petitioner could not have disputed and he has not done so, rightly.

17. In "Jasodhar Misra v. State of Bihar & Ors.", reported in (1979) 4 SCC 322, when a contention was raised that some vital documents were not made available to the delinquent employee, the Hon"ble Supreme Court observed thus;

"The evidence on which the principal charge viz. the second charge was based, consisted of two reports of the SDO and the khas mahal Tahsildar taken on record in the presence of the appellant and he was accorded full opportunity to meet the reports. The fact that certain other documents were found missing will not vitiate the proceeding. Therefore, the third contention is also without any force."

18. The learned counsel for the petitioner contended that departmental proceeding against a judicial officer cannot be instituted on the basis of judicial orders. The judgment in "Ramesh Chander Singh v. High Court of Allahabad and another" reported in (2007) 4 SCC 247 and "Iswar Chand Jain v. High Court of Punjab and Haryana and another" reported in (1988) 3 SCC 370 have been referred to by Mr. Manoj Tandon, learned counsel for the petitioner. This contention does not merit acceptance. The reliance on the aforesaid judgments

of the Hon"ble Supreme Court does not rescue the petitioner from facing departmental enquiry against him. The charge against the petitioner is not that he delivered erroneous judgments, rather in the departmental proceeding, the petitioner faced the charge of procedural impropriety in conducting Sessions triable cases which reflects upon his honesty and integrity and gives an impression that the judgments were delivered on extraneous consideration. The various expressions used in different charges such as "arbitrariness", "judicial incompetence", "poor knowledge of law", would not take away the sting from the charges framed against him and render the same a mere charge based on erroneous or unsustainable judicial orders passed by him. Long back, in "Pearce v. Foster" reported in (1866) 17 QBD 536, 542 Lopes, L.J. observed that, "if a servant conducts himself in a way inconsistent with the faithful discharge of duty in the service, it is misconduct which justifies immediate dismissal". About a quarter and century thereafter, the Hon"ble Supreme Court in "Union of India and others v. K.K. Dhawan", reported in (1993) 2 SCC 56 (a Three Judge Bench decision) observed that, the test is whether the act or action has cast any reflection upon the reputation of the members of the service in integrity or devotion to duty as a public servant. In fact, the Court has gone to the extent to observe that the officer who exercises judicial or quasi-judicial powers if acts negligently or recklessly or in order to confer undue favour on a person is not acting as a judge.

19. Mr. Manoj Tandon next submitted that no reason has been disclosed why the Registrar (Vigilance), High Court of Jharkhand, though cited as a witness, was not examined during the departmental proceeding and the sole witness examined in D.P. No. 03/2011 deposed that he submitted a report "on the basis of rumors" still, the enquiry officer erroneously held the petitioner guilty of the charges framed against him. It is contended that the penalty order is based on mere suspicion, conjuncture and surmises and thus, liable to be quashed.

20. Mr. Ananda Sen, the learned counsel for the High Court of Jharkhand however, contends that the High Court under Article 226 of the Constitution of India while examining the challenge thrown by the petitioner to the order of dismissal dated 08.03.2013 is exercising the power of judicial review and it is not acting as an appellate authority. Mr. Ananda Sen contends that the enquiry report was accepted by the High Court on its administrative side and now any interference by this Court with the penalty order dated 08.03.2013 would amount to substituting its own decision to the decision taken by the Full Court of the High Court which, considering the materials brought during the enquiry proceeding against the petitioner, is not permissible in law.

21. We, entirely agree with the contention raised by Mr. Ananda Sen, the learned counsel for the High Court. No doubt, suspicion howsoever strong cannot take the place of proof. However, this is not a case in which the enquiry officer has held the charges framed against the petitioner proved, on suspicion. The enquiry officer has returned a firm finding of charges having been found proved, on the

basis of the documentary evidence. In fact, a contention can be raised by the petitioner that the charge itself has been framed on suspicion however, such contention also could not have rescued the petitioner for the reason that the manner in which Sessions cases were disposed of by the petitioner not only raised suspicion about his integrity, the order of acquittal passed by the petitioner in 17 Sessions cases including, cases registered under Section 302 IPC, without examining the informant or wrongly recording that all the witnesses turned hostile or discarding the evidence of the eye witnesses on frivolous grounds and closing the prosecution evidence without awaiting the service report of summons/warrants, definitely gives an impression that orders were passed by the petitioner on extraneous consideration. We are conscious of the fact that the State or the private complainant party has not filed any Appeal/Revision against the order of acquittal, but that aspect would not dilute the gravity of charge against the petitioner. In view of the nature of evidence relied upon in support of the charges framed against the petitioner, non-examination of the Registrar (Vigilance) is in-consequential and no exception can be taken to the report of the District and Sessions Judge, Sahibganj in which it is indicated that he has not received any complaint regarding bribery against the petitioner. Noticing the report of the District and Sessions Judge that there were "rumors", the High Court was careful enough to frame the charge of "reflection upon the integrity which gives an impression that the orders were passed on extraneous consideration".

22. It is a matter of record that on 20.09.2011 the report of the District and Sessions Judge, Sahibganj was considered by the Standing Committee of the High Court and it resolved to initiate departmental proceeding against the petitioner. A charge-memo was served upon the petitioner and the reply submitted by the petitioner was considered by the Standing Committee and referred to the Full Court. Vide, order dated 18.10.2011 the Full Court rejected the same, and the departmental proceeding against the petitioner continued. The enquiry report in both the departmental proceedings were considered and accepted by the Standing committee of the High Court on 09.05.2012 and second show-cause notice was issued to the petitioner. On 05.11.2012, the Full Court after taking into consideration all the materials on record and the reply filed by the petitioner to the second show-cause in D.P. No. 03/2011 and D.P. No. 04/2011, resolved that the petitioner shall be dismissed from the service. The decision of the Full Court resolving to dismiss the petitioner from service was communicated to the petitioner vide, letter dated 08.03.2013.

23. The aforesaid facts coupled with the fact that the evidences available on record against the petitioner are all documentary in nature, thus close the doors of judicial review of the penalty order slapped upon him. The petitioner has failed to establish breach of rules of natural justice or any procedural irregularity committed in the departmental enquiry which has resulted into miscarriage of justice, nor has the petitioner been able to establish that it is a case of "no evidence at all". Mr. Ananda Sen, the learned counsel for the High Court has

referred to various decisions of the Hon"ble Supreme Court on this aspect, however we do not feel the necessity of reproducing all those judgments and suffice it would be to refer to decision in "High Court of Gujarat v. Hitendra Vrajlal Ashara and Another", reported in (2014) 15 SCC 614, wherein the Hon"ble Supreme Court has observed thus,

7. "It is a well-accepted principle of law that the High Court while exercising powers under Articles 226 and 227 of the Constitution does not act as an appellate court and its jurisdiction is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of the principles of natural justice....."

24. As a sequel to the aforesaid detailed discussion, the net result now surfaces is that the petitioner has no case for indulgence of this Court so as to give him the relief as asked for while exercising its jurisdiction under Articles 226 of the Constitution of India. Resultantly, the writ petition on hand merits dismissal. Ordered accordingly.