

(2022) 05 PAT CK 0051

In the Patna High Court

Case No : Letters Patent Appeal No. 205 Of 2020 In Civil Writ Jurisdiction Case No. 16948 Of 2007

District And Sessions Judge Sitamarhi

APPELLANT

Vs

Vijay Kumar

RESPONDENT

Date of Decision : 17-05-2022

Acts Referred:

Bihar Civil Court Staff (Class III and Class IV) Rules, 1998 — Rule 18

Citation : (2022) 05 PAT CK 0051

Hon'ble Judges : Ashutosh Kumar, J;Anjani Kumar Sharan, J

Bench : Division Bench

Advocate : Sanjeev Kumar

Final Decision : Dismissed

Judgement

Re. I.A. No. 01 of 2022 and L.P.A. No. 205 of 2020 :

For the reasons stated in the interlocutory application, the delay of 166 days in preferring the appeal is, hereby, condoned.

2. The I.A. No. 01 of 2022 is allowed.

3. Heard Mr. Sanjeev Kumar, the learned Advocate for the High Court of Judicature at Patna, who has challenged the order dated 16.08.2018 passed by the learned Single Judge in C.W.J.C. No. 16948 of 2007, whereby, the order of punishment of respondent No. I dated 04.11.2006 has been set-aside.

4. The respondent No. I, who was a clerk in the judgeship of Sitamarhi, who later rose to become a Saristedar with Senior Selection Grade, had presumably misbehaved with the then District Judge of Sitamarhi. He was suspended on 15.02.2005 and a disciplinary proceeding was initiated against him with the charge that he had procured illegal benefits from the encroachers in the Court campus and when he was asked to remove the encroachment, instead of following the orders, he had proceeded on leave and when the leave application

was rejected by the concerned District Judge, he visited the residence of the District Judge with a request to permit him to go on leave.

5. The further charge against respondent No. I is that he masqueraded illness but before that, he exhibited uncharitable behaviour which required to put him to departmental proceeding as his conduct was unbefitting of an employee of a Civil Court.

6. From the order of the learned Single Judge, it appears that he took note of the fact that most of the accusation against the respondent No. I were on the basis of the personal knowledge of the then District Judge, who himself had initiated disciplinary proceedings and had framed charges against him. After the enquiry was conducted by the Enquiry Officer and a report was submitted, he himself recorded the punishment of dismissal of service.

7. The learned Single Judge has taken note of the fact that the order in question was passed on 04.11.2006, when the then District Judge had made an endorsement on the file that he was proceeding to join as a Judge of the High Court.

8. Nonetheless the appeal against the aforesaid order was also dismissed.

9. The learned Single Judge, it appears to us, was absolutely justified in holding that the time tested principle of natural justice, namely, "a man cannot be a Judge in his own cause" was flouted with impunity and the order of dismissal against respondent No. I was passed. He has referred to Gullapalli Nageswara Rao & Ors. Vs. Andhra Pradesh State Road Transport Corporation & Anr. [A.I.R. 1959 SC 308] and has opined that the concerned District Judge ought to have got the matter decided by another Judge of the same rank, notwithstanding the provisions contained in Section 18 of the Bihar Civil Court Staff (Class III and Class IV) Rules, 1998.

10. Be it noted that the aforesaid provision of the Rules of 1998 declares that the District Judge shall be the disciplinary authority of Class III and Class IV employees, who could suspend or initiate any departmental proceeding or issue a charge-sheet and inquire into the charges against the delinquent employee himself or cause the same to be done by any other judicial officer and impose any one of the penalties specified in Bihar and Orissa Sub-ordinate Service (Discipline and Appeal) Rules, 1935.

11. The aforesaid rule vests the District Judge of a Sessions Division with a power to suspend and initiate any disciplinary proceeding. He could inquire into the charge himself and could impose any one of the penalties provided under the Bihar and Orissa Sub-ordinate Service (Discipline and Appeal) Rules, 1935. This does not however gives a carte blanche to such District Judge to decide in case of his own complaint against an erring employee. There could be no more stark illustration of being a Judge in his own cause.

12. It is difficult for us to accept the contention of the appellant that there was

no element of bias, institutional or personal, when the District Judge accepted the finding of guilt and imposed punishment, notwithstanding the fact that he had himself initiated the complaint against the erring employee.

13. In the aforesaid circumstance, there was no necessity of giving a literal interpretation to Rule 18 where the disciplinary authority is the District Judge only.

14. We also find that the order passed by the learned Single Judge is sustainable on the ground that "justice should not only be done, but should be seen to be done".

15. There is no reason for us to interfere with the order of the learned Single Judge, who has set-aside the order of punishment by an officer, who himself had initiated the complaint against respondent No. I.

16. There is no merit in this appeal and the same is dismissed.