
(2018) 08 P&H CK 0378

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5639 Of 2007 (O&M)

Naginderjit Singh

APPELLANT

Vs

State Of Punjab & Another

RESPONDENT

Date of Decision : 08-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 324, 325, 326
Code of Criminal Procedure, 1973 — Section 173, 438, 439(2)

Citation : (2018) 08 P&H CK 0378

Hon'ble Judges : A. B. Chaudhari , J;Kuldip Singh, J

Bench : Division Bench

Advocate : Puneet Bali, S. S. Rang, Monika Thakur, Anju Arora, Sanjeev Sharma, Divya Sharma

Final Decision : Allowed

Judgement

1. By the present petition the petitioner has sought writ of certiorari for quashing impugned order dated 08.06.2006 (Annexure P-1) passed by the Principal Secretary to Government of Punjab, Department of Home Affairs and Justice, Chandigarh to retire him compulsorily by way of punishment and accordingly the petitioner has sought the relief in the present petition.

FACTS:

2. The petitioner was initially appointed to Punjab Civil Service (Judicial Branch) w.e.f. 17.10.1983 and was subsequently promoted to the Punjab Superior Judicial Services and was posted as Additional District and Sessions Judge w.e.f. 28.02.1999. There were no adverse remarks against the petitioner at any point of time. On 07.09.1999 an FIR No.74 under Sections 326, 325, 324 & 323 IPC read with Section 34 IPC, was registered at Police Station Gurdaspur against four accused persons by one Jatinder Singh-complainant. The then Sessions Judge in an application for grant of anticipatory bail by the accused persons, granted interim bail to the accused persons vide orders dated 13.09.1999, 18.09.1999, 19.09.1999, 21.09.1999 and finally dismissed the first anticipatory bail

application made by the accused on 29.09.1999. The accused persons went to the High Court which also dismissed their bail application vide order dated 15.10.1999. The police had not arrested the accused persons despite the above findings and after the investigation the investigating agency submitted the cancellation report in the said FIR before the CJM, Gurdaspur but the said final report under Section 173 Cr.P.C., was not accepted and the police was directed to file challan against the accused persons. Eventually the said order directing the police to file challan against the accused persons, was set aside by the High Court. However, the challan was filed in compliance to the said order in the Court. In the challan itself it was mentioned by the police that the accused was granted anticipatory bail by the Sessions Judge, Gurdaspur (of course wrongly). Thereafter as late as on 04.12.2001 application for grant of anticipatory bail was filed by the accused persons making a show that it was the first anticipatory bail application. That was entrusted to the petitioner who came into picture for the first time. The petitioner having gone through the record found that a final report under Section 173 Cr.P.C., was already filed as per the directions of CJM. The subsequent event namely filing of challan in the wake of refusal to accept cancellation report, was relevant. As such he passed order on 08.01.2002 (Annexure P-9) granting anticipatory bail stating therein that report under Section 173 Cr.P.C. shows compliance of directions of CJM and after that the recovery already stood effected and what was merely required was the presence of accused to face the trial and nothing more. However, on 14.02.2002 the complainant Jatinder Singh filed complaint (Annexure P-2) to the High Court stating therein that the accused has succeeded in getting anticipatory bail from the Court by playing fraud and corrupt practice. He also filed application for cancellation of bail against all the accused in the said FIR, which was allowed vide order dated 15.06.2002. In the meanwhile acting on the complaint filed by the complainant the Inspecting Judge called for comments from the petitioner in respect of the complaint dated 14.02.2002. On 15.06.2002 the Additional Sessions Judge, Gurdaspur cancelled the order granting anticipatory bail to the accused persons on the ground of concealment of facts with the specific observations that the history of the case was not in the notice of the Additional Sessions Judge, Gurdaspur. The petitioner as well as the prosecution both had suppressed the material facts for obtaining the orders from the Court, though the accused persons were bound to mention that their earlier applications were decided by the court. In para 7 accordingly the Court made the observations. The case went to the High Court against the said order and the High Court vide order dated 05.07.2002 (Annexure P-10) held that accused were entitled to grant of benefit of anticipatory bail but since they had concealed the facts from the Court, fine of Rs.10,000/- was imposed on them payable to the Legal Aid Committee, Punjab and they were allowed the relief of anticipatory bail till the filing of the regular bail before the trial Court. On 06.08.2002, the Additional Sessions Judge, Gurdaspur granted regular bail to the accused persons on the ground that the challan was already presented and recovery was already effected from them and therefore no useful purpose could be served by detaining them in custody.

3. Then the petitioner was placed under suspension in contemplation of a regular departmental enquiry on the charge arising out of the aforesaid events and on 12.07.2004 a charge sheet was served on the petitioner in which there were only two articles of charges. The first charge says about purposely concealing the knowledge of earlier applications of anticipatory bail rejected by the Sessions Court and High Court. The second charge says that while posted as Additional District and Sessions Judge, Gurdaspur he had shown undue indulgence to Mr. Harbhajan Singh, Advocate. Out of the above two charges, enquiry officer held that charge No.2 was not proved but the charge No.1 was proved. The District & Sessions Judge (Vigilance), Haryana was appointed as Enquiry Officer who filed his report holding him guilty of charge No.1 only. Petitioner was given a show cause notice on 11.11.2005 as to why the penalty of dismissal from service should not be imposed on him. The petitioner on 30.11.2005 submitted detailed reply. On 08.06.2006 the petitioner was ordered to be retired compulsorily from service, of course, by way of punishment. Hence this petition.

ARGUMENTS:

4. In support of the writ petition learned senior Advocate for the petitioner submitted that in the written statement filed by the respondent-High Court now a new ground has been taken to support the impugned order that the petitioner was given adverse remarks five times in his service career which itself shows that respondent No.2 is not sure about the tenability of the impugned action. The petitioner was retired from services compulsorily by way of punishment and therefore mentioning about adverse remarks five times, is nothing but an attempt to mislead the Court.

5. The next submission is that the Enquiry Officer held that the charge No.2 was not proved but the charge No.1 was proved. Charge No.1 said to have been proved on the ground that the petitioner had knowledge about the dismissal of earlier application for anticipatory bail made before the Sessions Court as well as the High Court and he had purposely concealed the same and granted anticipatory bail. According to Mr. Bali the learned Senior Advocate, in the first place the order passed by the petitioner was a judicial order and not only that in relation to the said charge the Additional Sessions Judge in para 7 as well as this Court specifically held that it was the accused persons who had concealed the material facts from the Court i.e. the petitioner, for obtaining the anticipatory bail order. Not only that the High Court, also returned a finding to the same effect and imposed fine amount of Rs.10,000/- for the concealment of facts from the Court of the petitioner, with further observation that the accused persons were entitled to grant of anticipatory bail. It is in this factual ground that Mr. Bali contended that the Enquiry Officer refused to agree with the finding by the competent higher judicial Court; namely the High Court. The Enquiry Officer has not given any special reason for deviating. The learned senior Advocate then contended that the grant of anticipatory bail that too after a period of more than two years from the earlier dismissal of the anticipatory bail application,

particularly in the background of cancellation report filed by the police and rejection thereof by CJM, the challan having been filed and recovery having been effected, there was no reason to hold that there was any deliberate act on the part of the petitioner. Not only that the same reasons appealed to the High Court as well for granting the relief of anticipatory bail. The learned senior counsel for the petitioner vehemently argued that nowhere the complainant Jatinder Singh had made a single allegation about doubtful integrity of the petitioner or any corrupt practice or as the case may be except saying that 'there was irregularity in the matter' and nothing more. The Enquiry Officer, however, overreached the finding by the High Court. Hence the action to retire the petitioner compulsorily is illegal. He cited various decisions in support of his submissions.

6. Per contra, learned counsel for the respondents opposed the writ petition and submitted that the jurisdiction of the High Court in the matter of finding of fact recorded in the departmental enquiry is very limited and in the present case this Court would not be entitled to go into the merits thereof and test the findings of facts recorded in accordance with the evidence on record. The counsel for the respondent No.2 vehemently opposed the petition and submitted that the petitioner does not even otherwise has good record in service which has already been stated in the written statement in respect of five adverse remarks against him. The charge No.1 was duly proved on record and therefore, the interference in the extraordinary jurisdiction is impermissible. He prayed for dismissal of the petition. He cited the two judgments of Hon'ble the Supreme Court in the cases of Rajendra Singh Verma (dead) through LRs & others versus Lieutenant Governor (NCT of Delhi) & others, (2011) 10 SCC 1 and R. C. Chandel versus High Court of Madhya Pradesh & another, (2012) 8 Supreme Court cases 58.

CONSIDERATION:

7. We have heard learned counsel for the rival parties at length. We have perused the entire record of the petition as well as the High Court record with the assistance of learned counsel for the rival parties. The petitioner was charged and found guilty of charge No.1 in the departmental enquiry that was held against him. But he was not found guilty of charge No.2. We quote charge No.1, which reads thus:

"Whereas you Sh. Naginderjit Singh while working as Additional District & Sessions Judge, Gurdaspur, while dealing with the application for anticipatory bail bearing No.335/22.12.2001, filed by Paramjit Singh alias Pamma & Amarjit Singh alias Goldy, bearing No.338 dated 27.12.2001, filed by Pardeep Kumar alias Bhandari and bearing No.15 dated 18.01.2002, filed by Navneet Kumar alias Raju, purposely concealed the knowledge of earlier applications filed by the accused and the rejection thereof by the Sessions Judge, Gurdaspur, and also by the Hon'ble High Court and the knowledge of which has been concealed by you even while submitting comments dated 24.04.2002, in response to the fact finding enquiry, which indicates that you have granted indulgence for consideration or undue influence and thereby you have acted, conducted and

projected yourself in a manner which is unbecoming of a Judicial Officer."

8. There are two parts in charge No.1. The first is that the petitioner has purposely concealed the knowledge of filing of and rejection of earlier applications by the accused (rejection by Sessions Court/High Court). The second part is that such knowledge was concealed by him while submitting comments dated 24.04.2002 in response to the fact finding enquiry.

9. It is significant to note the parameters laid down by the Apex Court in the case of Union of India and others versus P. Gunasekaran, (2015) 2 SCC 610, the Apex Court has stated thus, in Para-12:-

"12. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence."

10. Putting ourselves into the prohibitions laid down by the Apex Court as above we proceed to deal with the present matter.

11. It is not in dispute that the complainant PW-2 Jatinder Singh, who had made a complaint, did not in the complaint or before the enquiry officer, utter a single word about any doubt or evidence of corruption or extraneous consideration or influence qua the petitioner in the matter. His complaint was that despite the rejection of first anticipatory bail application, second application for anticipatory bail was granted by the petitioner and nothing more. To repeat, from the dates it is clear that the FIR No.74 was lodged on 07.09.1999 and the accused persons were granted interim bail by the Sessions Judge on 13.09.1999, 18.09.1999, 19.09.1999, 21.09.1999 and finally bail application was

dismissed on 29.09.1999. When the accused went to High Court against that

order, same was dismissed by order dated 15.10.1999. In the meanwhile, the police filed challan against the accused persons in which it was stated that the accused were on anticipatory bail. Then there was a lull. It appears that earlier to filing of the challan the police had filed cancellation report, finding the accused as innocent but the concerned CJM had directed the police to file challan and accordingly the challan was filed in compliance. Eventually the said order passed by the CJM being illegal was quashed and set aside by the High Court. Be that as it may, on 04.12.2001, the petitioner came into picture after almost more than two years when another anticipatory bail application was filed by the same accused which was placed before him as per the allotment order made by the District and Sessions Judge. The said application was, in fact, second anticipatory bail application but a show was made by the counsel for accused that it was first application and nothing was disclosed about the filing of the first bail application. The petitioner gave notice to the public prosecutor. Upon perusal of the record he found that the final report in the form of challan was filed by the police, recovery was made from the accused persons and accused persons were then merely required to face the trial and therefore, granted the concession of anticipatory bail. Obviously the accused persons as well as public prosecutor both had suppressed the fact from the petitioner that two years before, the first bail application was dismissed by the Sessions Court as well as by the High Court. The complainant then filed an application for cancellation of bail on 18.04.2002 (Annexure P-12) and the Additional Sessions Judge, Gurdaspur allowed cancellation application by making the following observations:

".....The accused-respondents filed fresh application for anticipatory bail under Section 438 Cr.P.c. which was entrusted to the Court of Shri Naginder Jit Ld. Addl. Sessions Judge, Gurdaspur. In those applications, the accused submitted that these are their first applications under Section 438 Cr.P.C. after the challan was put in the Court. The Ld. Addl. Sessions Judge, Gurdaspur relying upon the averments made in the applications as well as in the affidavit of the accused that these are their first bail applications under Section 438 Cr.P.C. granted concession of pre-arrest bail to accused Amarjit Singh and Parmjit Singh vide order dated 8.01.2002 to accused Pardeep Kumar, vide order dated 8.1.2002 and to accused Navneet Kumar alias Raju, vide order dated 29.01.2002 because the prosecution has also not brought to the notice of the Ld. Addl. Sessions Judge, Gurdaspur that the earlier applications for anticipatory bail filed by the accused have already been dismissed by the Court of Ld. Sessions Judge, Gurdaspur as well as by the Hon'ble High Court. So all this shows that the history of this case was not brought to the notice of the Ld. Addl.

Sessions Judge, Gurdaspur by the applicants as well as by the prosecution that their earlier applications for anticipatory bail had already been dismissed by the Ld. Sessions Judge, Gurdaspur as well as by the Hon'ble High Court. So it is clear that the accused-respondents concealment of facts. They have not written in their applications that their earlier applications for anticipatory bail have already been declined by the Ld. Addl. Sessions Judge, Gurdaspur as well as by the

Hon'ble High court. It was the duty of the applicants to bring all the facts to the notice of the Court so that the Court should fully appreciate the facts, history of the case. So that no party should feel aggrieved by the order obtained from the Court. Here in this case accused respondents have clearly concealed the facts that their earlier bail applications have already been declined by the Ld. Sessions Judge, Gurdaspur as well as by the Hon'ble High Court. Rather they have stated that these are their first bail applications. However, to further mislead the Court, they have mentioned that these are their first bail application after the challan has been put in the Court. The accused respondents were bound to mention that these were their third application for anticipatory bail under Section 348 (sic) Cr. P.C.

because their earlier two applications for anticipatory bail have already been declined by the Ld. Session Judge, Gurdaspur as well as by the Hon'ble High Court. It has been held by our own Hon'ble High Court in Naib Singh Vs. State of Punjab 1997(4) RCR (Criminal) page 643 that where the accused have obtained concession of bail by concealing the facts that court had already declined the bail, the bail is liable to be cancelled and it was held that non-mentioning of earlier order declining bail cannot be construed to be omission but is suppression of fact. xxx.... xxx.... xxx....

7. In view of my above discussion, I have come to the conclusion that the accused-respondents have got the concession of anticipatory bail for the court of Shri Naginderjit Singh, Addl. Sessions Judge, Gurdaspur by concealment of facts that their earlier applications for anticipatory bail have already been declined by the Court of Ld. Sessions Judge, Gurdaspur as well as by Hon'ble High Court. So the concession of anticipatory bail already granted to the accused-respondents by the Ld. Addl. Sessions Judge, Gurdaspur, vide orders dated 8.1.2002 and 29.01.2002 is hereby withdrawn/cancelled under Section 439 (2) Cr.P.C. and the Ld. Trial Court is directed to arrest the accused-respondents.

12. The above order dated 15.06.2002 cancelling the bail was challenged before the High Court and this Court had made the following order:

"The petitioners did not disclose that earlier bail application was dismissed and were granted anticipatory bail. The same has been cancelled.

In the facts of the case, on merits, the petitioners may be entitled to bail, but they cannot escape their liability for concealment. The petitioners are granted anticipatory bail and in the event of arrest, the petitioners will be released on bail on furnishing bail bonds to the satisfaction of the arresting officer on the conditions that the petitioners will not interfere with the prosecution evidence directly or indirectly; they will not leave the country without the permission of the court and that they will associate with the investigation as and when called by the police. Anticipatory bail will continue for one month, within which period the petitioners may move the trial Court for regular bail in accordance with law. The petitioners will pay jointly a sum of Rs. 10,000/- to the Legal Aid Committee,

Punjab, as costs.

The petition is disposed of."

13. Thus the High Court categorically recorded the finding that the accused persons (petitioners) did not disclose that earlier bail application was dismissed. In other words the petitioner was misled by non-disclosure as held by the High Court. Could the Enquiry Officer in his report overreach this finding, the answer has to be 'No'. But that Enquiry Officer has chosen not to mention a word about these two orders made by the competent judicial Courts which, in our opinion, was wholly improper and unjustified and contrary to judicial discipline. The aforesaid High Court order shows that the accused persons were held guilty by the High Court for not disclosing about the earlier bail application before the petitioner. It is also stated that in the facts of the case, on merits, the petitioner may be entitled to grant of bail and they were accordingly granted bail by the High Court by the same order but were penalized with a fine of Rs.10,000/- for concealment. It is thus manifest that the submission of the petitioner throughout that he was misled, was accepted by the High Court as well. There was no reason for the Enquiry Officer to ignore the aforesaid aspect of the matter which is nothing but a perversity and act of judicial indiscipline. On the contrary, the Enquiry Officer made unwarranted remarks whether the order passed by the petitioner was justified or not was another aspect and that he should have verified about the earlier application, if any, was decided as there was mention about the grant of interim bail order in the application. In this behalf what has been stated by the Enquiry Officer, reads thus:

"Even if the accused had not placed on file the result of dismissal of their earlier bail applications, however, the mention in the applications that earlier bail applications had been filed in which interim bail was allowed and mention by the delinquent office that accused had been allowed interim bail by the learned Sessions Judge, Gurdaspur, in his orders, was a sufficient caution for the delinquent officer to have at least verified either from the record or the public prosecutor, the fate of earlier bail applications. Further, the mention by the delinquent officer in his orders referred to in the earlier part of this report that before interim bail could be confirmed, the investigating agency submitted cancellation report, was again a sufficient caution for the delinquent officer. This was again an intelligent way of putting the things, clearly indicating that delinquent officer had knowledge of earlier anticipatory bail applications of the accused, thought intelligently putting off to mention the result."

14. From the reading of the above findings by the Enquiry Officer, an easy inference can be drawn that the Enquiry Officer has blamed the petitioner for not making search from the record or verified from the public prosecutor and further that he should have acted in intelligent way of putting the things. But then the petitioner had noticed the Public Prosecutor. In our opinion, from this very observation itself at the most a case for issuing a caution to be careful in future, only could be said to have been made out rather than destroying the career of

the petitioner. At any rate, we have reasons not to agree with the above finding also. The reasons are that the accused persons as well as the public prosecutor both had suppressed the facts about the history of the earlier bail applications. Secondly, the first bail application was rejected in the year 1999 and after two years the bail application, in question, was filed before the petitioner with suppression of material facts. Thirdly, there was subsequent event namely that the police had declared the accused person innocent and not only that police had filed cancellation report but the CJM had asked them to file charge sheet which was filed. Not only that, the very order of CJM asking the police to file challan, was quashed by the High Court being illegal. The accused were required only for their presence in the trial and there was no need to put them in custody in a case for offence under Section 326 and 325 IPC etc. after such a long period. In our opinion, entertaining second bail application even as fortiori in the above factual ground and subsequent events could not be faltered. The law is trite that even second bail application can be entertained if there are justifiable subsequent events. We, therefore, find that the finding by the Enquiry Officer is not only preposterous but whimsical. The finding that petitioner purposely concealed the earlier filing of bail application, is wholly unwarranted and not based on record. The finding on the second part of the charge that the petitioner has concealed knowledge of rejection of earlier bail application is also equally perverse as there was material change in the factual situation because of the subsequent events which have been already stated above. Apart from that the accused persons were never arrested by the police and on the contrary they were found innocent during the investigation and the police had filed cancellation report. The order made by the CJM to file chargesheet was set aside by the High Court vide order dated 24.07.2002. The accused persons came before the Court by way of second anticipatory bail only after issuance of warrant by the Court. We have absolutely no hesitation in saying that these events were all subsequent material events which were very much relevant for granting anticipatory bail to the accused and the reason given by the petitioner for grating the same were legal, correct and proper. The Enquiry Officer could not have recorded contrary finding. The same is absolutely perverse and must be set aside.

15. In the above factual scenario, we are entitled to interfere with the impugned orders as there is a miscarriage of justice caused to the petitioner. The Apex Court as well as this Court has emphasized need to be circumspect about judicial orders passed by the trial Courts, unless the orders are found to be made with extraneous considerations or for monitory gain or due to any influence. We quote the relevant paragraph from the decision of Apex Court in the case of Ramesh Chader Singh versus High Court of Allahabad and another, (2007) 4, SCC 247, which reads thus:

"14. In *K.P. Tiwari v. State of M.P.* where the High Court reversed the order passed by the lower court making remarks about interestedness and motive of the lower court in passing the unmerited order, this Court observed that one of the functions of the higher court is either to modify or set aside erroneous orders

passed by the lower courts. Our legal system acknowledges fallibility of judges. It has to be kept in mind that a subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure-contestants and lawyers breathing down his neck. He does not enjoy the detached atmosphere of the higher court. Every error, however gross it may be, should not be attributed to improper motives. The judges of the High Court have a responsibility to ensure judicial discipline and respect for the judiciary from all concerned. No greater damage can be done to the administration of justice and to the confidence of the people in the judiciary if the higher courts express lack of faith in the subordinate judiciary for some reason or the other. That amounts to destruction of judiciary from within."

16. Further in *Nirmala J. Jhala versus State of Gujarat and another*, (2013) 4 SCC 301, in paras 18 to 21 the Apex Court stated thus:

II. Duty of Higher Judiciary to protect subordinate judicial officers:

18. In *Ishwar Chand Jain v. High Court of Punjab and Haryana & Anr*, AIR 1988 SC 1395, it was held:

"14. Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control it is under a, constitutional obligation to guide and protect, judicial officers. An honest strict judicial officer is likely to have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial orders no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a sine qua non for Rule of law..... It is therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants."

19. In *Yoginath D. Bagde v. State of Maharashtra*, AIR 1999 SC 3734, it was held:

"48....The Presiding Officers of the Court cannot act as fugitives. They have also to face sometimes quarrelsome, unscrupulous and cantankerous litigants but they have to face them boldly without deviating from the right path. They are not expected to be overawed by such litigants or fall to their evil designs."

20. A subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure - contestants and lawyers breathing down his neck. If the fact that he renders a decision which is resented by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution. "Judge bashing" has become a favourite pastime of some people. There is growing tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure an order which they desire. For functioning of democracy, an independent judiciary, to dispense justice without fear and favour is paramount. Judiciary should not be reduced to the position of flies in the hands of wanton boys. (Vide : *L.D. Jaikwal v. State of U.P*, AIR 1984

SC 1374; K.P. Tiwari v. State of Madhya Pradesh, AIR 1994 SC 1031; Haridas Das v. Smt. Usha Rani Banik & Ors., etc. AIR 2007 SC 2688; and Ajay Kumar Pandey, AIR 1998 SC 3299)

21. The subordinate judiciary works in the supervision of the High Court and it faces problems at the hands of unscrupulous litigants and lawyers, and for them "Judge bashing" becomes a favourable pastime. In case the High Court does not protect the honest judicial officers, the survivor of the judicial system would itself be in danger."

17. We agree with the submission made by learned senior counsel for the petitioner regarding mention of 5 adverse remarks against the petitioner that the same is a faint attempt to justify the unwarranted illegal action. The issue is about the validity of the departmental proceedings.

18. The upshot of the above discussion is that the present petition must succeed. The petitioner has already attained the age of superannuation and therefore the question of reinstatement does not arise. However, as held by us, the petitioner was illegally retired compulsorily from service by way of punishment after holding the departmental enquiry. The charge No.1 against him was not at all proved. In ordinary course, the petitioner would be entitled to grant of full relief. But then the fact remains that the petitioner had not worked during the entire period till the age of his superannuation. He must have been gainfully self-employed/employed. At the same time, he cannot be left in the lurch. Hence, striking a balance we think, the petitioner should be paid 50% of his salary for the entire period till his superannuation from the date of his compulsory retirement with continuity of service throughout for the purpose of all terminal benefits including pension. In the result, we make the following order:

ORDER

(i) CWP No.5639 of 2007 is allowed.

(ii) The impugned order dated 08.06.2006 as well as the findings by the Enquiry Officer in the departmental enquiry are quashed and set aside.

(iii) The respondents shall make payment of 50% salary of the petitioner from the date of order of retirement till the date of his superannuation and shall also grant him continuity of service throughout for the purpose of granting terminal benefits, including pension etc. within a period of six months from the date of obtaining certified copy of the present judgment.

(iv) No order as to costs.