

(2006) 07 JH CK 0111

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 2856 of 2002 and 1620 of 2003

Nand Kumar Verma

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-07-2006

Acts Referred:

Bihar Service Code, 1952 — Rule 74

Citation : (2006) 4 JCR 560

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; Dilip kumar sinha, J

Bench : Division Bench

Advocate : Shashikant and Rajiv Ranjan, for the Appellant; H.K. Singh, S.C.-I, R.S. Mazumdar, Ananda Sen and A.R. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, A.C.J. and D.K. Sinha, J.—In pursuance of decision dated 26th July, 1996, taken by the Standing Committee of Patna High Court, the State of Bihar from its Personal & Administrative Reforms Department issued Notification No. 7/M-2022/97 Ka.- 4323 dated 20th April, 1998 and reduced the petitioner from the rank of Sub Judge (Civil Judge, Senior Division) to the rank of Munsif (Civil Judge, Junior Division). It was challenged by the petitioner before the Supreme Court under Article 32 of the Constitution of India vide W.P.(C) No. 547 of 1999.

2. During pendency of the said writ petition, the petitioner was allocated State of Jharkhand and while functioning as Judicial Magistrate, Koderma, in pursuance of decision of Full Court of Jharkhand High Court, he was made to retire, in public interest under Rule 74(b)(ii) of the Bihar Service Code, 1952 by Order No. 2254 dated 17th July, 2001, issued by the Government of Jharkhand from its Personnel, Administrative Reforms and Rajbhasa Department. It was challenged by the petitioner before this Court in other case i.e. W.P.(S) No. 2856 of 2002.

3. When the writ petition being W.P.(S) No. 547 of 1999 was taken up by the

Supreme Court, it has been noticed that the petitioner has been made to retire in the meantime and has already moved against the said order before this Court (Jharkhand High Court). As such, by order dated 21st November, 2002 the Supreme Court transferred the case to this Court for its hearing along with the other writ petition. On transfer it has been registered as W.P.(S) No. 1620 of 2003.

4. The case of the petitioner is that he joined Bihar Sub-ordinate Judicial Service as Munsif (now known as Civil Judge, Junior Division) in the year, 1976 and was confirmed in the same capacity in the year, 1980. He was promoted to the rank of Sub-Judge (now known as Civil Judge, Senior Division) in the year, 1986 and was confirmed as Sub-Judge with effect from 19th January, 1988 by Notification dated 25th January, 1990. He was also allowed 1st Time Bound Promotion with effect from 27th November, 1985 vide Notification No. 901-41 dated 9th January, 1987 and was made Sub-Judge-cum-Addl. Chief Judicial Magistrate. He was, later on, posted as Chief Judicial Magistrate by Patna High Court vide Notification No. 17633-40 dated 5th November, 1989. Further case of the petitioner is that one of the Hon''ble Inspecting Judge made casual inspection on 9th March, 1994 and put certain adverse remarks against him, otherwise he functioned to the entire satisfaction of the authorities. The criminal power, which was earlier divested, was subsequently restored and he was again allowed to function as Chief Judicial Magistrate, Gopalganj. The petitioner has named certain Hon''ble Judges of Patna High Court, alleging bias against them. According to him, though there was nothing adverse against him, certain Hon''ble Judges of Patna High Court made adverse remarks and he was earlier superseded in the matter. Details have been given in the writ petition.

5. The petitioner, in a departmental proceeding, having been found guilty, on the recommendation of Patna High Court, the then State of Bihar reverted him from the rank of Sub-Judge (Civil Judge, Senior Division) to the lower post of Munsif (Civil Judge, Junior Division) vide Notification No. 7/M-2022/97 Ka-4323 dated 20th April, 1998.

6. In the writ petition, as was preferred before the Supreme Court and now before this Court i.e. W.P.(C) No. 1620 of 2003, though the petitioner has levelled large number of allegation against certain Hon''ble Judges, it is not necessary to discuss the same, as none of the individual has been made party respondents to the writ petition and thereby no finding on malafide can be given by this Court.

7. In this background the allegation of malafide, as suggested and made by the petitioner, is hereby rejected.

8. In these cases, the only thing, which is required to be seen, is the legality and propriety of the order of reduction in rank vide Notification No. 7/M-2022/97 Ka-4323 dated 20th April, 1998, as was made by the then State of Bihar, as also the legality and propriety of the order of retirement, made by the State of

Jharkhand vide order No. 2254 dated 17th July, 2001.

9. From the records it appears that the matter regarding promotion from the post of Sub-Judge to the next higher rank of Superior Judicial Services was placed before the Standing Committee of Patna High Court in its meeting, held on 3rd February, 1995. While the cases of 16 Sub-Judges, including the petitioner, were considered, taking into consideration the service records and allegations, as were pending against him, the name of the petitioner and another were not recommended, though the Committee was pleased to recommend the names of 14 Sub-Judges for their promotion to the higher cadre of Superior Judicial Services. The case of the petitioner was deferred, awaiting decision on the allegations, pending against him. Subsequently, in a judgment, passed in Cr.Misc.No. 13 of 1994 by the then Additional District & Sessions Judge, Gopalganj, certain observations were made against the petitioner, who was the Chief Judicial Magistrate. It was considered by the Standing Committee of Patna High Court on 21st July, 1995 when the matter was deferred for the next meeting for production along with other records. Thereafter, in view of the observations, made by one of the Hon'ble Judge in a criminal proceeding being Cr. Misc. No. 11327 of 1994, a departmental proceeding was initiated against the petitioner. In pursuance of the order of the Standing Committee of Patna High Court dated 2nd December, 1995 charge-sheet was served on him and after receipt of reply, the Court, not being satisfied with the same, appointed one Sri Ramayan Pandey, the then District Judge, Samastipur, as the enquiry officer.

10. The petitioner took part in the departmental proceeding and the enquiry officer, after giving full opportunity to the petitioner, submitted its report. The enquiry officer, having found the petitioner guilty of the charges, the Standing Committee of Patna High Court in its meeting dated 16th October, 1996 resolved to forward a copy of the enquiry report to the petitioner for submitting his comments. On receipt of comments from the petitioner, the Standing Committee of Patna High Court in its meeting dated 24th July, 1997, being not satisfied with the reply and having agreed with the findings of the enquiry officer, reduced the petitioner in the rank of Munsif in Junior Selection Grade Scale.

11. On the recommendation of the High Court, the State Government was supposed to pass the orders. However, the order of reduction in rank having been issued by the Patna High Court vide Notification No. 334-A dated 6th August, 1997, it was challenged by the petitioner in C.W.J.C.No. 7666 of 1997, on the ground that the High Court has no jurisdiction to reduce him from higher post to lower post, it being only the recommending body. A Bench of Patna High Court by its order dated 9th March, 1988 quashed the said notification dated 6th August, 1997 with a liberty to the State Government to pass appropriate order. It is only thereafter, the State of Bihar under the orders of the Governor reduced the petitioner in the rank of Munsif (Civil Judge, Junior Division) vide impugned Notification No. 7/M-2022/97 Ka.-4323 dated 20th April, 1998.

12. All the procedures having been followed i.e. the petitioner having been given

opportunity in the departmental proceeding, notification having been issued by the competent authority etc., we find no ground to be made out to interfere with the impugned notification relating to reduction in rank.

13. So far as retirement of the petitioner in public interest, as made by the Government of Jharkhand vide its order No. 2254 dated 17th July, 2001 is concerned, the said order has been issued on the recommendation of the Full Court of Jharkhand High Court after taking into consideration the service records and other records relating to the petitioner, including the vigilance file, as was opened against him. Apart from the order of reversion, issued due to the allegations made in the proceeding, the Annual Character Roll of the petitioner reflects the nature of the petitioner; his reputation in the judiciary and quality of work, including disposal of cases, some of which are quoted hereunder:

Remarks

Year Remarks 1975-76 Quality of work-capable for improvement 1976-77 Quality of work-capable of improvement 1982-83 Out turn of work is quite unsatisfactory. 1983-84 Out turn of work is not satisfactory. His judgments were not well written 1984-85 His performance was wholly unsatisfactory with bad reputation. 1987-88 Becomes irritated quickly. At time, picks up quarrel with the subordinate staff and junior officers. 1993-94 Is he an efficient officer: To some extent reports regarding the manner in which the C.J.M. was dealing with the complaint cases report regarding allegations made by one Basant Kumar and Shri A.H. Siddiqui, Hindustan Times correspondent, Gopalganj. Besides other allegation petitions against the C.J.M. were directly sent to the Hon''ble Court by the different persons who did not have confidence in him 1994-95 Is he an efficient officer: To some extent. Has he maintained a reputation for honesty and impartiality- His power as C.J.M. has been divested by the Hon''ble Patna High Court. 1997-98 Defects if any: In judicial work no defect was found but he has not disposed of cases as per yard stick by the Patna High Court. His disposal was power during the period. 1998-99 Disposal is poor. 14. From the aforesaid facts it will be seen that the Jharkhand High Court has taken decision on subjective satisfaction of unsatisfactory performance of the officer concerned, which was also accepted by the State. Many other officers were also made to retirement from service in public interest simultaneously, who preferred writ petition before this Court. As reported in 2006(1) J.L.J.R. 20 (Shambhu Prasad Sah v. High Court of Jharkhand and Ors.), a Division Bench of this Court by its common judgment dismissed the writ petition and refused to interfere with the orders of retirement, decision having been taken by the Court on subjective satisfaction of the unsatisfactory performance of the officers.

15. We may further add that if the Full Court of High Court having lost its faith and trust on the Judicial Officer that means all the Judges of the High Court having lost their faith on the officer, in question, it is not desirable to interfere with the order of retirement, apart from the fact that the order had been passed

on merit and taking into consideration the subjective satisfaction of his unsatisfactory performance. We, therefore, find no merit in both the writ petitions, which are, accordingly, dismissed.

16. However, in the facts and circumstances, there shall be no order as to costs.