
(2003) 12 JH CK 0064
In the Jharkhand High Court
Case No : L.P.A. No. 488 of 2003

Purushottam Kumar Jha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-12-2003

Acts Referred:

Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 — Rule 2
Bihar Reorganisation Act, 2000 — Section 72, 72(1)
Civil Services (Classification, Control and Appeal) Rules — Rule 14
Constitution of India, 1950 — Article 226

Citation : (2004) 52 BLJR 149 : (2004) 1 JCR 285

Hon'ble Judges : Vishnudeo Narayan, J; Gurusharan Sharma, J

Bench : Division Bench

Advocate : In Person, for the Appellant; Ritu Kumar, G.P. IV, for the Respondent

Final Decision : Dismissed

Judgement

Vishnudeo Narayan, J.—This is an appeal under Clause 10 of the Letters Patent directed against the Judgment dated 14.07.2003 by the learned Single Judge of this Court passed in WP (S) No. 711 of 2003, whereby the prayer of the petitioner-appellant for quashing the order dated 06.01.2003 (Annexure 28/A to the writ petition which is Annexure 10 in this appeal) passed by respondent No. 5 Registrar, Co-operative societies, Jharkhand, Ranchi by virtue of which he was compulsorily retired by way of punishment in a disciplinary proceeding has been refused and the said writ petition was dismissed.

2. The learned Single Judge in para 5 of the impugned Judgment while dismissing the writ petition has observed thus :

"From perusal of the affidavits it transpire that the departmental proceeding was conducted and the inquiry report was submitted by the Inquiry Officer. Taking into consideration that the charges against the petitioner were prima facie proved, the impugned order of compulsory retirement was issued. In the light of the facts which have not been disputed by the petitioner. I am of the opinion that

the conduct of the petitioner right from the date of the appointment was not fair. It is clear that since the petitioner was practicing in the Patna High Court, he wanted to continue in the said Court in the capacity of Legal Assistant although his appointment was on the post on clerk of compassionate ground. Despite his appointment as a clerk he refused to discharge the duty of a clerk. In my opinion, therefore, there is no jurisdiction in interfering with the impugned order passed by the respondents."

3. The fact giving rise to the writ petition, in short, is that the petitioner-appellant was initially appointed as clerk in the unrevised scale of pay of Rs. 1200-1800 on 10.06.1996 on compassionate ground following the death of his father on 19.02.1990 while working in the Co-operative Department as Co-operative Extension Officer at Lakhaun, Madhubani by Divisional Joint Registrar, Co-operative societies, Darbhanga, Bihar and he joined as clerk on 10.06.1996 in the office of the Assistant Registrar, Co-operative Societies, Benipatti, Madhubani, Bihar and he was deputed on transfer to the office of the Registrar, Cooperative Societies, Bihar, New Secretariat, Patna and on his joining there he was posted in the said office for discharging legal works vide Annexure 2 to the writ petition and during the period of his posting there he did discharge the job relating to legal works. As a result of the bifurcation of the State of Bihar the petitioner-appellant was transferred provisionally in the office of the Registrar, Co-operative societies, Jharkhand, Ranchi with effect from 15.11.2000 vide, Annexure A to the counter affidavit and he was described therein as clerk. He was relieved on transfer with a direction to join in the Co-operative Department of State of Jharkhand positively on 21.11.2000 vide, Annexure-B to the counter affidavit. However, the petitioner appellant joined in the office of the Cooperative department on 15.02.2001. The petitioner-appellant filed C.W.J.C. No. 12125 of 2000, challenging his allocation to the newly created State of Jharkhand, under the provisions of the Bihar Reorganization Act which was dismissed and against that he preferred L.P.A. No. 98 of 2001, which was disposed of observing therein having regard to the disputed facts as noticed above that it is not possible for this Court to decide whether the petitioner-appellant who is still holding a post of clerk (Lipik) and not substantially absorbed against any of the post of Assistant in the Secretariat can be re-allocated to the newly created State, Jharkhand and in view of the observation the Additional Secretary, Home (Special) Department, Government of Bihar was directed to consider this aspect and if there is any substance with the claim of the petitioner-appellant to take suitable steps in accordance with law. After joining he was allotted clerical work vide, order No. 716 dated 17.07.2001 by respondent No. 5 and the petitioner-appellant filed an application before respondent No. 5 to review his order aforesaid and in the meantime clerical work was assigned to him by the Section Officer vide, order No. 773 dated 28.07.2001, in pursuance of the order aforesaid of respondent No. 5 but the petitioner-appellant gave a reminder to respondent No. 5 in relation to his application aforesaid and, thereafter, allotted clerical work to him was withdrawn vide, order No. 1318 dated 13.10.2001. It is

alleged by the petitioner- appellant that he has been working in the office of the respondent No. 5 as. Law Officer and Legal Assistant from the date of joining i.e., 15.02.2001, without any objection. The petitioner-appellant filed an "application before respondent No. 3 for vesting him with financial power for drawing his salary leveling certain imputation against the officers of the Co-operative Department as a result of which an explanation was called for from him as to why a departmental proceeding against him be not initiated on charge of indiscipline, disobedience of the order of the authorities and his arrogant approach as per Annexure 17 to the writ petition and the petitioner-appellant submitted his reply in which he sought permission to file criminal cases against the officers, concerned under various provisions of the Indian Penal Code vide, Annexure 18 to the writ petition and, thereafter, the petitioner-appellant was put under suspension and a departmental proceeding was initiated against him and during the pendency of the W.P. (S) No. 3577 of 2002, a letter was sent to him to participate in the departmental proceeding which he did not receive on the ground that departmental proceeding and judicial proceeding cannot be initiated simultaneously and the said departmental proceeding was concluded against him by the Inquiring Officer and the disciplinary authority i.e., respondent No. 5 agreeing with the finding of the Inquiring Officer compulsorily retired him from service by way of punishment.

4. The case of the respondents, inter alia, is that as a result of the cadre bifurcation the service of the petitioner- appellant was placed under the State of Jharkhand under the provisions of Section 72(1), of the Bihar Reorganization Act. 2000 vide, order dated 14.11.2000 wherein he has been shown as clerk (Lipik) and his deputation for working as Law Officer/Legal Assistant by the order of the Co-operative Department. Government of Bihar, Patna does not create any right to the petitioner-appellant to be deputed in the similar position and status in the Jharkhand State and his joining was accepted as clerk during the pendency of C.W.J. C. No. 225Q, of 2001, and he was entrusted to do the clerical work but the petitioner- appellant filed an application on 18.07.2001 to re-consider and review the order in respect of the clerical work and that he may be allowed to do the work of Legal Assistant and in all the correspondence made to the competent authorities the petitioner- appellant has described himself as holding the post of Legal Assistant of the Office of Registrar, Co-operative Department, Jharkhand, Ranchi and the petitioner-appellant was not interested in doing the clerical job assigned to him and the work allotted to him was re-assigned to Smt. Hiramati Kumari by modifying the order as per Annexure 14 to the writ petition and it is false to say that the petitioner-appellant was working in the office of the respondent No. 4 as the Law Officer/Legal Assistant from the date of his joining because no work of Legal Assistant was ever assigned to him and he, in the place of doing the work of clerk assigned to him by the Section Officer, without authority treating himself as Legal Assistant disobeyed the order of the higher authorities and the Section Officer of the department submitted a buffsheet on 14.12.2001 before respondent No. 5 making serious allegation against the

petitioner-appellant regarding indiscipline and his misconduct and, thereafter, the petitioner-appellant instead of doing clerical job without any authority submitted unnecessary application and representation before the respondent No. 3 and respondent No. 5 levelling imputation against the officers of the Department and he was directed to file the show cause as to why departmental proceeding be not initiated against him for indiscipline, disobedience and not performing the clerical work assigned to him and instead of filing a show cause he filed a representation making uncalled for and unwarranted allegations against the officers of the department and also sought permission to proceed against them under the several provisions of the Indian Penal Code and he was put under suspension and a departmental proceeding was initiated against him and charge and supplementary charges were settled against him and the departmental proceeding was conducted by the Inquiring Officer in which the charges were prima facie established though in spite of service of notice of the departmental proceeding and its publication in the newspaper he did not participate therein and as a result of which after second notice (Annexure 22 to the writ petition) to him, the disciplinary authority i.e., respondent No. 5 agreeing with the Inquiry Report passed the punishment of his compulsory retirement vide, Annexure 28/A to the writ petition corresponding to Annexure 10 to this appeal. 5. It has been contended on behalf of the petitioner-appellant in person that he was provisionally transferred in the office of the Registrar, Co-operative Department, Jharkhand, Ranchi on bifurcation of the erstwhile State of Bihar where he has joined on 15.02.2001 and he has not been finally allocated to the Jharkhand State u/s 72 of the Bihar Re-organization Act, 2000 and his matter has been referred to the State Advisory Committee for taking final decision regarding his allocation to the State of Jharkhand and in this view of the matter he is under the administrative control of the State of Bihar and respondent No. 5 had no jurisdiction to initiate departmental proceeding against him and to impose punishment of his compulsory retirement and it is the State of Bihar which is competent in respect thereof. It has also been contended that respondent No. 5 cannot be the disciplinary authority with regard to this petitioner-appellant and he is definitely not his appointing authority.

6. Mrs. Ritu Kumar, G.P. IV while controverting the contention of the petitioner-appellant has submitted that the employees serving in and posted within the territory forming part of State of Jharkhand are under administrative control of the Jharkhand State and on and from the appointed day the successor State is the appointing authority in respect of government servant. In support of her contention she has referred the ratio of the case of State of Bihar v. Arvind Vijay Bilung and Anr. 2002 (1) JCR 401 (Jhr). She has also referred the ratios of the case of Upender Narain Singh v. State of Jharkhand and Ors. 2002 (2) JCR 395 (Jhr), Vijay Mahto v. Bihar State Electricity Board and Ors. 2002 (2) JCR 602 (Jhr) : 2002 JLR 193, Lalit Mohan Roy v. State of Bihar and Ors. 2001 (3) JCR 489 (Jhr) : 2001 (2) JLJR 267, Rama Shankar Ram and Anr. v. State of Bihar and Anr. 2002 (1) JCR 251 (Jhr) : 2002 (2) JLJR 48.

7. Admittedly the petitioner-appellant was appointed as a clerk on compassionate ground by Divisional Joint Registrar, Cooperative Societies, Darbhanga, Bihar and he was transferred to the office of the Registrar, Co-operative Societies, Bihar, Patna and as a result of cadre bifurcation he was provisionally allocated to the Jharkhand State and transferred in the office of the Registrar, Co-operative Societies, Jharkhand, Ranchi. His allocation to the cadre of Jharkhand has not been made final by the Central Government and the matter in respect thereof is still pending for consideration before the Advisory Committee. Now the pertinent question that arises in view of the facts aforesaid is as to whether which of the States is his appointing and disciplinary authority on his allocation to the cadre of State of Jharkhand. The Parliament has enacted Bihar Re-organization Act, 2000 (hereinafter referred to as the said Act). The preamble of the Act states that it was being enacted to provide for the reorganization of the existing State of Bihar and for matters connected therewith. "Existing State of Bihar" has been defined in Section 2 of the Act to mean the State of Bihar as existing immediately before the appointed day. "Appointed day" has been defined in Section 2(a) of the Act to mean the day which the Central Government may by notification in the official gazette, appoint.

It is an undisputed fact that 15.11.2000 was the day appointed by the Central Government in terms of the aforesaid provision and it is on this day by virtue of Section 3 of the Act that the new State of Jharkhand (comprising the territories mentioned in that Section) came into existence. As is well known the new State of Jharkhand which was formed on and from the "appointed day" (15.11.2000) was carved out of the existing State of Bihar. Section 4 of the Act, therefore, consequentially supported that on and from the appointed day the State of Bihar comprise of the territories of the existing State of Bihar minus the territories which would now form part of the new State of Jharkhand."

8. Part VIII of the said Act deals with the matter relating to services Section 72 and Section 74 of the said Act are relevant regarding the matter in controversy.

"72, Provision relating to services in Bihar and Jharkhand--(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Bihar shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Bihar unless he is required by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Jharkhand.

Provides that no direction shall be issued under this section after the expiry of a period of one year from the appointed day.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order determine the successor State to which every person referred to in Sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of Sub-section (2) to a successor State shall if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.

74. Provisions as to continuance of officers in same post.--Every person who immediately before the appointed day is holding or discharging his duties of any post or office in connection with the affairs of the existing State of Bihar in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that successor State and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or any other appropriate authority in that successor State :

Provided that nothing in this section shall be deemed to prevent a competent authority, on and from the appointed day, from passing in relation to such person any order affecting the continuance in such post or office."

"Successor State" has been defined in Section 2(j) of the said Act which reads thus :

(j) successor State, in relation to the existing State of Bihar, means that State of Bihar or Jharkhand. Section 72(2) of the said Act specifically empowers the Central Government to determine the initial strength and composition of the two cadres of the successor States of Jharkhand and Bihar and it also gives power and authority to the Central Government to allocate the cadres in such manner as it may decide and shall be finally allotted for service and the date with effect from which such allotment shall take effect or deemed to have taken effect and Sub-section (3) of Section 72 further provides that every person who is finally allotted under the provisions of sub-Section (2) of Section 72 to a successor State shall, if he is not already serving therein be made available or serving in the successor State from such date as may be agreed upon between the governments concerned or in default of such agreement as may be determined by the Central Government. By adopting the process of harmonious construction of Section 72 read with Section 74 of the said Act and by invoking the doctrine of necessity, the real intention of the legislature is that on and from the appointed day the State of Jharkhand having come into being, such government servants (other than those covered by Section 71 of the Act) who on the appointed day, were actually and physically posted at and serving in the territories either forming part of the successor State of Jharkhand or the successor State of Bihar should continue to function in and under such successor States and on that reckoning, therefore, the successor State should be undoubtedly the competent disciplinary authority in respect of such government servants. Sub-section (2) of Section 72 in the same breath also lays down that the Central Government as soon as may be after the appointed day, shall by general or special order determine the successor State to which every person mentioned in Clause (1) shall be finally allotted for service sub-Section (3) of Section 72 being the

consequential provision lays down that after an order of final allotment has been passed by the Central Government, such person if he is not already serving therein would be made available to serve in the successor State to whom he has been allotted by the Central Government. The stipulation, or the provision, as one may call it, that the government servants on and from the appointed day would "provisionally continue to serve in connection with the affairs of the State of Bihar" as occurring in Sub-section (1) by a harmonious reading of Section 74 and the proviso to the said Section and by invoking the doctrine of necessity should clearly be held to mean that as from the appointed day, if a person is actually serving in the territory which from that day became a part of the successor State of Bihar, such person would continue to serve from and would be deemed to be a part of the establishment of the State of Bihar and similarly, on the same reckoning and by adopting the same process of interpretation if, on the appointed day any person was serving in the territory which formed part of the State of Jharkhand, he would continue to serve, but as a part of the establishment of the State of Jharkhand, and both the said persons, first one in Bihar and second in Jharkhand, would be on and from the appointed day deemed to have been duly appointed to the "post" or "office" by the Government of Bihar or Government of Jharkhand as the case may be or other subordinate competent authorities in one or the other of the two governments. The expression "and shall be deemed, on and from that day, to have been duly appointed to the post or office clearly being a deeming clause the legal fiction connotes that because of the bifurcation of the existing State of Bihar into two States the successor States of Bihar and Jharkhand, the government servant and employees physically serving in one of these two States as on the appointed day would be considered for all intents and purposes to be the civil servants appointed by the successor State and that the competent authority in the successor State would have all the powers to deal with them, including the power of passing orders affecting continuance in service. Therefore, from the appointed date the successor State to the existing State would be the appointing authority in respect of the government servant and that the competent authority on and from that day shall have all powers to pass any order in any respect against the government servants including the order affecting his continuance on such a post or office and the existing State of Bihar cannot be said to be the appointing authority of such government servant. The test as to which of the successor States of the erstwhile State of Bihar is very simple. If an employee on the appointed day is serving in and posted in a territory forming the part of State of Jharkhand or he has been provisionally allocated to the State of Jharkhand, the State of Jharkhand would be the appointing authority and it is only the competent authority in the successor State which has power and jurisdiction to initiate disciplinary action and pass orders. It has been observed in the case of *State of Bihar v. Arvind Vijay Billing* (supra), that on and from the appointed day successor State to the existing State is the appointing authority in respect of a government servant. In the case of *Vijay Mahto* (supra), it has been observed that after 01.04.2001, i.e., creation of the Jharkhand State Electricity Board, the

Bihar State Electricity Board has no jurisdiction to initiate departmental action against an employee posted under the jurisdiction of Jharkhand State Electricity Board. In the case of Rama Shankar Ram and another (supra), it was observed that the State of Bihar has no jurisdiction to dismiss a person holding post in the State of Jharkhand till final allocation is made and even a person placed provisionally in the State of Jharkhand cannot be subjected to disciplinary action by the State of Bihar. In the case of Lalit Mohan Roy (supra), it has been observed that the State of Bihar has no jurisdiction to have disciplinary/penal action in respect to a person holding post and office in Jharkhand even though no notification allotting cadre/post have been issued by the Central Government. Similar is the observation in the case of Upender Narain Singh (supra). Here in this case the petitioner-appellant stands allocated as a result of cadre bifurcation to the successor State of Jharkhand by the Central Government in exercise of the powers u/s 72 of the Said Act though his allocation is provisional but in spite of that he is working within the State of Jharkhand and in this view of the matter the State of Jharkhand is his appointing authority as well as disciplinary authority. Therefore, there is no substance in the contention of the petitioner-appellant.

9. It has further been contended that the impugned order of his compulsory retirement is against the mandate of Rule 74 of the Bihar Service Code and there is no other provision anywhere else whereby the order of compulsory retirement may be passed regarding a government servant. It has further been contended that the petitioner-appellant has only put in six years of service on the relevant date and he has also not attained 50 years of age and in this view of the matter the order of his compulsory retirement of the disciplinary authority is ab-initio illegal. There is no substance in this contention as put forward by the petitioner-appellant. A departmental proceeding was Initiated against the petitioner-appellant in accordance with law for dereliction of duty on his part and his unbecoming conduct as a government servant. Charges were framed against him which was enquired into by the Enquiry Officer who opined on the basis of the materials available on the record that the charges prima facie, stand substantiated and the disciplinary authority i.e., respondent No. 5 after serving second show cause notice passed the impugned order imposing punishment of his compulsory retirement. Rule 14 of the Civil Service (Classification, Control and Appeal) Rules has classified the public services and the subordinate services appear at Clause (6) of the said Rule. Rule 54 of the said Rules empowers the State for framing of the Rules prescribing the penalties that may be imposed on members of subordinate services under the administrative control of a government, the authorities which may impose such penalties the appeal which may be preferred for orders imposing such penalties the condition subject to which and the authorities by which such orders may be reversed or altered in ease in which no appeal lies, or in which no appeal is preferred. In exercise of the powers conferred by Rule 54 of the said Rules the government framed the Rules which is "the Bihar and Orissa Subordinate Services (Discipline and

Appeal)Rules. 1935, (hereinafter referred to as the said Rules. 1935) which was published and notified vide, Notification No. 1995-AR dated 14.06.1935, and these Rules shall apply to all members of subordinate services under the administrative control of the Government. Rule 2 of the said Rules, 1935 is relevant which runs thus :

"2. The following penalties may, for good and sufficient reasons, be imposed upon any member of a subordinate service viz.

(i) Censure.

(ii) withholding of increments or promotion including stoppage at an efficiency bar.

(i-ii) reduction to a lower post or time scale or to a lower stage in a time scale.

(iv) recovery from pay of the whole or part of any pecuniary loss caused to government by the negligence or breach or order.

(iv a) compulsory retirement.

(v) fine.

(vi) suspension. .

(vii) removal from the civil service of the crown, which does not disqualify from future employment.

(viii) dismissal from the civil services of the crown which ordinarily disqualifies from future employment.

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Rule 3 of the said Rules 1935, is equally relevant which runs thus :

"3- Any of the penalties mentioned in Rule 2 may be imposed or member of a subordinate service--

(a) by the authority empowered to impose such penalty by any Rule or order in force at the time when these rules come into operation, or by any Rule or order may from the time when these Rules come into operation; or

(b) if no authority has been so empowered by the Head of the Department or the Head of the Office having the power to appoint the member of the subordinate service on whom the penalty is to be imposed.

Admittedly the petitioner-appellant is a clerk (Lipik) i.e., a member of the subordinate services. He was allocated to the successor State of Jharkhand as a result of the cadre bifurcation provisionally by the order of the central Government and he was transferred from the office of the Registrar, Co-operation Societies., Bihar, Patna to the office of the Registrar, Co-operative Societies, Jharkhand, Ranchi where he joined on that post. A departmental proceeding was

initiated against him for the charges of indiscipline, disobedience and his arrogant behaviour unbecoming of a government servant. The charges were framed against him and notices were sent to him which he refused to receive and thereafter, the notices were also published in the daily newspaper. The petitioner-appellant did not participate in the departmental proceeding. In view of the materials available on the record the charges were established against him in the inquiry conducted by the Enquiring Officer duly appointed and being satisfied with the report of the Enquiry Officer and having found good and sufficient reasons punishment of compulsory retirement was imposed upon him after the second show cause notice. Therefore, the punishment of compulsory retirement imposed on the petitioner-appellant is under Rule 2 of the Rules, 1935. Civil Services (Classification, Control and Appeal) Rules read with the Bihar and Orissa Subordinate . Services (Discipline and Appeal) Rules, 1935, when it is a complete Code in itself providing a complete scheme in respect of initiation of disciplinary proceeding imposition of punishment as well as appeal in respect of the punishment. It appears that the- petitioner-appellant has not taken recourse to prefer appeal against the imposition of the punishment awarded against him and without exhausting the remedies of appeal in respect thereof he has come before this Court under writ jurisdiction and on this score also the writ application also does not appear to be maintainable. There appears no illegality in the conduction of the disciplinary proceeding against the petitioner-appellant as well as imposing of the penalty of compulsory retirement as a result of the said proceeding. Section 74 of the Bihar Service Code has no application to the facts of this case. Viewed thus the contention of the petitioner-appellant has no force.

10. Lastly it has been contended that the impugned order of the disciplinary authority suffers with malice, bias and malafide. Elucidating further it has been contended that though he was appointed as clerk but he was discharging the work of Legal Officer/Legal Assistant and he has never discharged the functions of a clerk in the office of the Registrar, Co-operative Societies, Bihar, Patna and on his being allocated of the State of Jharkhand he was asked to perform the work of a clerk and he was allotted clerical work vide, An-nexure 12 to the writ petition and on his representation vide, dated 13.10.2001 (An-nexure 14 to the writ petition) the clerical work allotted to him was withdrawn and entrusted to Smt. Hiramati Kumari and since the date of his joining he was not allotted and work to discharge and due to malice, any bias a departmental proceeding was initiated against him and the order of compulsory retirement of the disciplinary authority cannot be said to be a bona fide, order. It has been stated in the counter affidavit of respondent Nos. 7 and 8 that the petitioner-appellant was initially appointed as a clerk and on his representation he was transferred to the office of Joint Registrar, C.S.Patna Division and deputed to work in the office of the Registrar, Co-operative Societies, Bihar, Patna for discharging ministerial legal work likewise to obtain necessary document from the Hon''ble High Court, Patna and submitting vouchers and bills and there is no created or sanctioned post of Law Officer or Legal Assistant in the Co- operative Department and when the

Legal Cell was constituted an employee was to be deputed to obtain information regarding cases pending before the Hon'ble High Court and any employee to whom legal work allotted can do this work in the absence of any sanctioned post of Law Officer or Legal Assistant. It has been averred in para 8 of the counter affidavit of respondent Nos. 4 to 6 that the petitioner-appellant is basically a clerk and he was assigned the clerical job to be performed but instead of obeying the order in respect thereof he always declared himself as Legal Assistant and he was not interested in doing the clerical job as a result of which the order of the allocation of the clerical work was modified and it was assigned to Smt. Hiramati Kumari and as such the Statement of the petitioner-appellant in writ petition that the assigned clerical work was withdrawn is no correct. It also appears from the materials on the record that the petitioner-appellant did not discharge any work during the period of his posting in the office of the Registrar, Co-operative Societies, Jharkhand, Ranchi and time and again he filed petitions and representations before the Registrar, Co-operative Societies, Ranchi imputing allegations against the officers of the department coupled with the fact that he had denied to perform the work of the clerk assigned to him and a disciplinary proceeding was initiated against him which resulted in his compulsory retirement from service. There is no specific allegation averred in the writ petition disclosing specific instances of any malice, or bias against respondent No. 5. Bias means one side inclination of mind coupled with any special influence that sways the mind. Malice, means the presence of some improper and wrongful motive that is to say an intent to use the legal process for some other than its legally appointed and appropriate purpose. It further means an improper or indirect motive other than a desire to vindicate justice or a private right. It need not necessarily be a feeling of enmity spite or ill will and it may be due to a desire to obtain a collateral advantage. Malice, in law means an act done wrongfully and willfully without reasonable or probable cause and not necessarily an act done from ill feeling and spite or a desire to injure another. It is pertinent to mention here that there must be specific pleadings regarding bias, malice and malafide, on the basis of which Court can arrive at its conclusion. Mere use of words such as bias, malice, malafide, etc is not enough. It is necessary to give full particulars of such allegation and to set out the material facts specifying the particular person against whom such allegations are made so that he may have an opportunity of controverting such allegations and in the absence of such allegations in the pleadings the Court can-not make any observation in regard to bias, malice, and malafide, etc. Here in this case the non allocation for discharging any legal work to the petitioner-appellant by respondent No. 5 and allotting him to discharge clerical work does not give an inkling that respondent No. 5 had harboured any bias malice, and the impugned order of the respondent No. 5 cannot be said to be malafide one in the facts and circumstances of this case. In this view of the matter there is also no force in the contention of the petitioner-appellant.

11. Viewed thus there is no illegality in the impugned Judgment requiring an interference therein. There is no merit in this appeal and it fails. The appeal is

here by dismissed but without costs.

Gurusharan Sharma, J.

12. I agree.