

(2005) 08 JH CK 0039

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4920 of 2001

Ram Pravesh Sharma

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-08-2005

Acts Referred:

Jharkhand Service Code, 2001 — Rule 74

Citation : (2005) 4 JCR 90

Hon'ble Judges : Altamas Kabir, C.J.;R.K. Merathia, J

Bench : Division Bench

Advocate : Chandra Shekhar, Rana Randhir Singh and Yashraj Bardhan, for the Appellant; R.S. Majumdar and A.R. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

Altamas Kabir, C.J.—This writ petition is one of several matters, which have been referred to the Division Bench for hearing and disposal, inasmuch as, it involves a question regarding invocation of Rule 74(b)(ii) of the Jharkhand Service Code in terms of which the writ petitioner has been compulsorily retired from service.

2. The writ petitioner, who was initially appointed as a temporary Munsif, joined his duties at Bhagalpur on 9th April, 1975 in the erstwhile State of Bihar. Thereafter, he was posted as Judicial Magistrate, First Class, Sikrahana at Motihari, where certain adverse remarks were recorded against him and he was asked by the District and Sessions Judge, East Champaran, Motihari, to submit his explanation in respect thereof. According to the petitioner, the said adverse remarks were waived and he was promoted to the junior selection grade post from 9th April, 1985 in the cadre of Munsif. Subsequently, he was also appointed as Sub-divisional Judicial Magistrate and posted at Motihari in East Champaran from where he was transferred to Lakhisarai in Monghyr. According to the writ petitioner, vide notification dated 3rd June 1987, he was promoted to the post of Subordinate Judge and was posted at Begusarai, where he joined on 14th July, 1987. The petitioner claims to have been confirmed in the post of Subordinate

Judge with effect from 1st March 1991. While posted as Chief Judicial Magistrate at Buxar from 18th August 1985 to 10th January 1997. Certain adverse remarks were again communicated to the petitioner and although he made representation to the High Court regarding the said remarks, the same was rejected by the Patna High Court. According to the petitioner, a subsequent representation made by him for expunging the adverse remarks recorded on 17th June, 1997 by the District and Sessions Judge, Buxar, was ultimately allowed and all the adverse recorded by the District Judge, Buxar for the period 1996-97 were expunged and such decision was communicated to the petitioner vide letter dated 24/26th March, 1999. The writ petitioner appears to have submitted yet another representation on 17th April, 2001 regarding promotion to the post of Additional District and Sessions Judge. But after bifurcation of the State of Bihar, the petitioner's services were allocated to the State of Jharkhand and he was appointed as Sub-Judge/Chief Judicial Magistrate and Sessions Judge, Garhwa in the State of Jharkhand. After joining his post at Garhwa, the petitioner sent a further representation regarding promotion to the post of Additional District and Sessions Judge and also applied for personal hearing in connection therewith. Such prayer made by the writ petitioner was rejected and ultimately according to the petitioner, without considering his prayer for promotion, he was served with the order dated 17th July, 2001 passed by the Deputy Secretary, Department of Personnel Administrative Reforms and Rajbhasha, Govt. of Jharkhand informing him of his compulsory retirement from service from the said date.

Aggrieved thereby the writ petitioner has filed the instant writ application questioning the decision of the Jharkhand High Court in recommending the invocation of Rule 74(b)(ii) in the petitioners' case and the consequent order passed thereupon by the State of Jharkhand.

3. Appearing in support of the writ application, Mr. Chandra Shekhar, learned Senior Advocate, submitted that the provisions of Rule 74(b)(ii) of the Jharkhand Service Code had been wrongly invoked in the case of the petitioner. Mr. Chandra Shekhar pointed out that on different occasions, when adverse remarks had been recorded against him, the same had been expunged upon representation made by him. In this regard, Mr. Chandra Shekhar referred to Annexure II, 18 and 19 of the writ petition, which are communications indicating that the adverse remarks which had been recorded against the petitioner while he was posted at Buxar had been expunged after consideration by the High Court.

4. Mr. Chandra Shekhar submitted that apart from the said adverse remarks against the writ petitioner, which were subsequently expunged, there was no material on record to convince the respondents that the writ petitioner should be compulsorily retired from service. Mr. Chandra Shekhar also submitted that after being promoted at different stages of the petitioner's service career, anything adverse prior to his posting at Buxar must be taken to have been extinguished and could not, therefore, be taken into consideration for the purpose of invoking the provisions of Rule 74(b)(ii) of the Jharkhand Service Code. Mr. Chandra

Shekhar urged that the impugned order was not sustainable in law and was liable to be quashed.

5. Appearing for the Jharkhand High Court, Mr. R.S. Majumdar contended that it was upon a total assessment of the petitioner's service record that the High Court had ultimately recommended that the writ petitioner should be compulsorily retired. Mr. Majumdar submitted that there was no stigma attached to such a decision and the writ petitioner would not also be deprived of any service benefit having regard to the fact that different adverse remarks made against the writ petitioner during his posting at Buxar had been expunged on his representation.

6. We have looked into the complete record of the petitioner's service career from which it appears that the petitioner's performance was far from satisfactory from the time he was admitted in Judicial Service till he was compulsorily retired. Even if the adverse remarks which were subsequently expunged are not taken into consideration, the situation does not change to a great extent since even after his posting at Buxar as Sub-Judge the petitioner was not promoted to the post of Additional District and Sessions Judge. It was for the High Court to decide whether the petitioner deserved such promotion or not and the very fact that such promotion was denied makes it obvious that the High Court was not satisfied with the performance of the writ petitioner and in keeping with the observations made by the Hon'ble Supreme Court in the case of All India Judges' Association and Others Vs. Union of India and Others, , was of the view that it was not conducive in the public interest or the judicial service to continue with the petitioner's services.

In the circumstances aforesaid, we see no reason to interfere with the decision taken to compulsorily retire the petitioner from service.

The writ application is, accordingly, dismissed. There will be no order as to costs.

R.K. Merathia, J.

7. I agree.