

**(1991) 12 PAT CK 0005**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 1703 of 1991 (R)

Virendra Kumar Srivastava

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

---

**Date of Decision :** 11-12-1991

**Acts Referred:**

**Citation :** (1991) 12 PAT CK 0005

**Final Decision :** Allowed

---

## **Judgement**

S.B. Sinha, J.—This application was initially directed against an order dated 29.7.1991 passed by Respondent No. 1 and as contained in Annexure-3 to the writ application, whereby the Petitioner had been placed under suspension as a departmental proceeding was contemplated to be initiated as against him.

The Petitioner, however, filed an application for amendment of the writ application on 9.9.1991 wherein the Petitioner has sought for issuance of an appropriate writ for quashing the chargesheet issued against him and as contained in Annexure 4A thereof.

2. By reason of the aforementioned order dated 29.7.1991 the Petitioner was suspended in relation to his discharge of duties as a Certificate Officer.

3. The fact of the matter lies in a very narrow compass.

4. Admittedly, the Petitioner at the relevant time was a Certificate Officer appointed in terms of the provisions of Bihar and Orissa Public Demands Recovery Act, 1914 (in short to be stated as the said Act). The District Mining Officer filed a Certifiers case as against one Sri Barid Baron Banerjee for realisation of the price of the coal raised by him as also cess and royalty thereon which was registered as Certificate case No. 67 of 1981. Allegedly the said Sri Barid Baron Banerjee was appointed as Receiver by the Calcutta High Court in Special Suit No. 24 of 1978. According to the Petitioner, appointment of Sri Barid Baron Banerjee as Receiver by the Calcutta High Court was also affirmed by the Supreme Court of India for the period of June 1978 to March 1980.

The District Mining Officer, however, initiated the aforementioned certificate proceeding on the ground that the Receiver had been carrying an illegal mining and as such he is liable to pay price of the mineral "Coal" in terms of the provision of the Mines and Mineral (Regulation and Development) Act, 1957.

5. By an order dated 31.7.1986 as contained in Annexure-1 to the writ application, the Petitioner in his capacity as a Certificate Officer held that as the said Barid Baron Banerjee had been appointed as a Receiver, he cannot be directed to pay the value of the coal, but is only liable to pay cess and royalty on the coal extracted and consequently he directed the District Mining Officer Hazaribagh to make a fresh calculation as to how much cess and royalty has to be paid.

6. It is admitted that the State has preferred an appeal as against the said order passed by the Petitioner before the Deputy Commissioner, Hazaribagh, which has been registered as Certificate Appeal No. 118 of 1986 and the same is still pending.

The Petitioner was served with a notice on or about 30.10.1989 alleging that by pronouncing a wrong judgment in the aforementioned Certificate case No. 84 of 1981, he has caused loss to the State.

7. The Petitioner filed a show cause. But by reason of the impugned order dated 29.7.1991 as contained in Annexure-3 he has been put under suspension.

8. A counter affidavit has been filed on behalf of the State wherein inter alia it was contended that as the Petitioner acted mala-fide, he is not protected under the provisions of Judicial Officer Protection Act, 1950.

9. Mr. A.K. Sinha learned Counsel appearing for the Petitioner submitted that the impugned order of suspension must be quashed as there is no material on record to show that the Petitioner has committed any misconduct as a servant of the Government.

Learned Counsel submitted that in view of the provisions of Section 66 of the Act, the Certificate Officer is a Court.

10. My attention was further brought to a decision of the Central Administrative Tribunal, Lucknow wherein in a similar situation, the punishment imposed on a Consolidation Officer for a disciplinary proceeding had been quashed by the State Services Administrative Tribunal as also a decision of the Supreme Court in Civil Appeal No. 3388 of 1988.

11. It was next contended that in any event as the order had been passed by the Petitioner in 1986, there cannot be any justification for issuing the impugned order in 1991 and, thus, the same should be held to be arbitrary.

12. Learned Counsel further contended that even assuming that by reason of the order passed by the Petitioner as a Certificate Officer, the State has incurred any loss, the same may be set aside by the Deputy Commissioner, Hazaribagh in

exercise of its appellate jurisdiction. Learned Counsel submitted that the very fact that the said appeal is pending since the year 1986, further goes to show that even the State is not serious in pressing the appeal so as to obtain the necessary relief from the appellate authority at an early date.

13. Mr. Sinha further submitted that from a perusal of the order dated 31.7.1986 passed by the Petitioner in the aforementioned certificate case, it would appear as to under what circumstances the order had been passed on 31.7.1986, although the date was fixed on 2.8.1986.

In this connection my attention was drawn to the following portion of the order dated 31.7.1986:

The Special Government Pleader appeared to day and expressed his inability to appear 2.8.1986 as he has to remain out of the head quarters.

The C. Dr. appeared and filed the copy of the letter No. 1124 dated 31.7.1986 addressed to District Mining Officer, Hazaribagh with a copy to the C. Dr. in which the Deputy Commissioner, Commercial Taxes, Hazaribagh has given the figures of despatch of coal as per the return submitted by Sri Barid Baron Banerjee as receiver appointed by the Calcutta High Court in Special Suit No. 24/78 as the colliery was taken in possession by the receiver on 2.4.1978. The figures were also seen by the Special Govt. Pleader on the day. He also filed written argument along with other papers listed in the petition dated 31.7.1986.

14. Mr. Sinha, therefore, contended that the aforesaid order had been passed upon hearing the Counsel of the State in pursuance of the submissions made by him that he could not appear on 2.8.1986 and the said matter was heard with the consent of both the parties.

Learned Counsel further submitted that from the said order, it would further appear that a written argument was filed on behalf of the State which had been perused and considered by the Petitioner while passing the order dated 31.7.1986.

15. Mr. M.Y. Eqbal learned Govt. Pleader No. 1 appearing on behalf of the Respondents submitted that the only protection given to the Judicial Officers is provided in Section 1 of the Judicial Officers Protection Act and as the action of the Petitioner was malafide, the same is not protected under the said Act. The question as to whether his action was malafide or not can be considered only in the departmental proceeding.

It was further submitted that the order of suspension was passed against the Petitioner pending a departmental proceeding, the same must be held to have been legally passed.

16. The said Act has been enacted to consolidate and amend the law relating to the recovery of public demands in Bihar and Orissa.

Section 3 (3) of the said Act reads as follows :

3(3).-Certificate Officer means a Collector, a Sub-divisional Officer and any officer appointed by a Collector with the sanction of the Commissioner to perform the function of a Certificate-Officer under this Act.

17. Sections 43 and 46 of the said Act provide as to the conditions for filing a Civil Suit.

Section 57 mandates that the authorities under the said Act shall be decreed to be acting judicially within the meaning of the Judicial Officers Protection Act, 1950.

Sections 58, 59 and 66 read thus.

58. Officers to have powers of Civil Court for certain purpose.-Every Collector Certificate Officer Assistant Collector or Deputy Collector acting under this Act, shall have the powers of a Civil Court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the production of documents.

59. Control over officers.-All certificate Officers (not being Collectors) Assistant Collectors and Deputy Collectors shall, in the performance of their duties under this Act, be subject to the general supervision and control of the Collector.

66. Certificate officer deemed to be a Court.-A certificate-officer shall be deemed to be a Court, and any proceeding before him shall be deemed to be a civil proceeding within the meaning of Section 14 of the India Limitation Act 1908.

18. The question, thus, which arises for consideration is as to whether a Government servant like the Petitioner when he is assigned to perform judicial duties apart from his duties can be proceeded with departmentally for his acts of omission and commission as a judicial officer ?

19. In K.P. Verma and I.K. Saran Vs. The State of Bihar and Others, a Division Bench of this Court, of which I was a member, inter alia, considered the question as to whether Bihar State Administrative Tribunal was a Court. In that judgment, I held:

The modern sociological condition as also the needs of the time have necessitated growth of administrative law and administrative tribunal. Executive functions of the State calls for exercise of discretion and judgment also and not a mere dumb obedience of the orders so that the executive also forms quasi-judicial and quasi legislative functions and in this view of the matter, the administrative adjudication has become an indispensable part of the modern State activity. However, judicial process differs from administrative adjudicative process. Some time administrative adjudication is understood as the same thing as administration of justice, though both the terms relate to deciding upon disputes yet over the years a great many difference have been noticed in them. In that decision one of the special feature of judicial adjudication was:

8. Judges enjoy a legal immunity from the responsibility of the acts done in

discharge of their duties and their conduct cannot be a subject of discussion in any form, even Parliament.

20. It is well known that the Courts administering judicial power in determining a dispute in adversary system of law must view things with cold neutrality of the impartial judge.

See Schearts in American Administrative Law P. 61.

21. From a perusal of the provisions of the said Act, as noticed hereinbefore, it is evident that a Certificate Officer is a Court and recognised as such by the Statute. Thus, the functions of a Certificate Officer is a Judicial function which is also evident from Section 57 of the said Act.

22. The Certificate Officer is not only a Court within the meaning of Section 3 of the Evidence Act but is also a Court within the meaning of provisions of Contempt of Courts Act, 1971. If persons holding Judicial Office, although they hold executive position, are made amenable to the disciplinary action by executive, in my opinion, there will be a violation of the directive principles of the Constitution of India relating to separation of the Judiciary.

23. Any judge or Judicial Officer who presides over a Court must be given some protection so that he can perform his duties impartially and without any bias, affection or ill-will. He is not supposed to pass judgments only in favour of the State whose servant he is while discharging judicial functions within the meaning of Section 57 of the Act.

24. From a perusal of different provisions of the Act and particularly, Section 46, it would appear that a suit at the instance of a certificate holder shall lie only on the ground of fraud and all other questions arising under the said Act have to be determined by the Certificate Officer himself. The Certificate officers for certain purposes exercise the power of the civil Courts. There cannot, therefore be any doubt that a Certificate Officer should enjoy an immunity from the disciplinary action at the hands of the State. Only he is to act subject to the general supervision and control of the Collector of the district.

25. This matter has been considered by the U.P. Public Services Tribunal in Claim case No. 500(1) of 1982 wherein the Petitioner before it was punished for his action as Assistant Consolidation Officer under the Provisions of U.P. Consolidation of Holdings Act.

This much is admitted that charge No. 1 is based upon Court proceedings taken by the Petitioner in 3 cases u/s 9A of the U.P. Consolidation of Holdings Act 1953 as is clear from charge No. 1 itself. Now the question is whether the decision taken by the Petitioner in three cases mentioned in the charge sheet are judicial decisions and no action could be taken against the Petitioner except by way of appeal or revisions.

26. The Tribunal, therefore, considered the provisions of Sections 40 and 49 of

the said Act and came to the conclusion that the proceedings before the Assistant Consolidation Officer under the provisions of the said Act are Judicial proceedings. As in present case, therein also the Assistant Consolidation Officer was chargesheeted on the ground that his actions were malafide. The Tribunal held:

The allegations of malafide cannot be looked into except by way of appeal or revision to the superior Court. If the action of the Petitioner was malafide involving decisions in the cases mentioned in the chargesheet, the State should have filed appeal or revision but under no circumstances a presiding officer having concluded judicial proceedings can be charge-sheeted on that account. The contention of the learned Presiding Officer is fallacious.

The aforementioned decision of the Tribunal is contained in Annexure-8 to the writ application.

27. However, it appears that in a similar matter, the State of U.P. filed a writ petition from a similar decision of the Service Tribunal before the Lucknow Bench of the Allahabad High Court being writ Petition No. 801/87 and by an order dated 10.4.1987 (Annexure-9) a learned Single Judge of the said Hon"ble Court held:

It is clear enough that the benefit of Section 49A of the Consolidation of Holdings Act would be available only when it is shown that the impugned act has been done in good faith. The Tribunal observed that the question of good faith could be decided only by the appellate or revisional Court against the orders which might have been passed by opposite party No. 1 which is the subject-matter of disciplinary proceedings. That is not the correct position. The matter regarding good faith will be decided by the Tribunal itself. In this situation, the impugned order passed by the Tribunal cannot be sustained.

28. A SLP was filed before the Supreme Court of India against the said judgment being SLP No. 3202 of 1987 and the Special leave having been granted by the Supreme Court, the same was registered as Civil Appeal No. 3388 of 1988. By an order dated 22.9.1988 the Supreme Court held:

Special leave is granted. We have heard the learned Counsel for the parties. In a very fair statement Mr. Gopal Subramanian appearing for the State of U.P. has placed the facts before us and upon that we are of opinion that the impugned judgment and order of High Court should be set aside and the order of the Tribunal be restored. Accordingly we set aside the judgment and order dated 10.4.1987 of the High Court and restore the order dated 28.7.1986 of the Tribunal. The appeal is disposed of accordingly. There will be no order as to cost. Time granted by the tribunal for compliance with its order is extended three months.

29. It is, therefore, evident that a Court cannot be proceeded with departmentally except by the authorities exercising control and supervision over it. Further in this case the Petitioner has been placed under suspension after five

years from the date of passing of his order. No reason has been assigned as to why an officer of the State of Bihar had to be placed under suspension after such a long period. It is, therefore, clear that the Petitioner has been placed under suspension for an unauthorised purpose which constitutes malice in law, particularly in view of the fact that the State is pursuing its appellate remedy and the question as to whether the said order is good or not is pending decision before a competent Court of law. If the State was anxious to see that it may not continue to lose its revenue, to which, according to it, it is entitled. I do not see any reason as to why, no step has been taken by it to get the appeal disposed of expeditiously.

30. It is now well known that even for the purpose of placing an employee under suspension and proceeding against him departmentally, there must be some material on records to suggest that *prima facie* he is guilty of such charges. While taking such a decision, the concerned authority is bound to ask itself a correct question and must try to acquaint itself with the relevant facts.

See *State v. Tameside* 1976 (3) All ELR 665, which has been quoted with approval by a Division Bench of this Court in *Dr. Shyamanand Singh v. State of Bihar and Ors.* reported in 1978 P.L.J.R. 588.

In the aforementioned decision, a Division Bench of this Court while considering a case of suspension held:

Learned Counsel for the State contended that the order of suspension is passed on subjective satisfaction of the State Government. Such an order was not justiciable. We do not think that this argument can be accepted, contrary as it is to the decision of the Supreme Court see (2) *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, . Had there been factual foundation on the basis of which reasonable conclusion could be arrived at that the Petitioners were guilty of actual misappropriation, it would have been a different matter. Here it appears that the authority passing the impugned order did not ask itself the right question and take reasonable step to acquaint itself with the relevant information to enable it to answer it correctly.

31. For the reasons aforementioned, this application must be allowed and the departmental proceedings as also the order of suspension passed as against the Petitioner being illegal and without jurisdiction are liable to be quashed and is ordered accordingly. However, in the facts and circumstances of this case, there will be no order as to costs.