
(2005) 08 JH CK 0032

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3370 of 2002

Yogendra Prasad Bhagat

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 267

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

Bench : Division Bench

Advocate : Rajeev Sharma and Reeta Kumari, for the Appellant; R.S. Majumdar and A.R. Choudhary for High Court, for the Respondent

Final Decision : Dismissed

Judgement

Altamas Kabir, C.J.—This is one of those cases referred by the learned Single Judge to the Division Bench for hearing and disposal, since the question regarding the invocation of Rule 74(b)(ii) of the Jharkhand Service Code, is involved.

2. The petitioner was appointed as a Munsif in the Bihar Judicial Service in the year 1975 and joined at Siwan on 7th June, 1975. Thereafter, the petitioner was posted as Judicial Magistrate at Patna and was also promoted to the post of Sub-Judge at Patna. From Patna, the petitioner was posted as Sub-Judge at Naugachia from where he was transferred to Nawada and posted as the Additional Chief Judicial Magistrate-cum-Special Judge-1 and was posted with the power of Assistant Sessions Judge.

3. While at Nawada, the petitioner was suspended and a departmental proceeding was initiated against him. Having been found guilty in the said proceeding, the petitioner was reverted to the post of Munsif and posted at Koderma in the judgeship of Hazaribagh. From Koderma, he was sent to Raj Mahal in the judgeship of Sahebganj in the same capacity, where he was served

with an order dated 17th July, 2001 passed by the Deputy Secretary, Personnel and Administrative Reforms, Government of Jharkhand, informing him that he had been compulsorily retired from service. Being aggrieved by the said order, the petitioner has filed the instant writ petition.

4. Appearing in support of the writ petition, Mr. Rajeev Lochan Sharma contended that since the petitioner had once been punished in the disciplinary proceedings and had been reverted to the post of Munsif, the decision to retire the petitioner compulsorily amounted to double jeopardy which could not be sustained. Apart from the above, Mr. Sharma also submitted that after the petitioner had been promoted to the post of Sub-Judge-cum-Addl. Chief Judicial Magistrate, the earlier defaults, if any, of the petitioner stood wiped out and the case of the petitioner was required to be considered on the basis of his performance after he was promoted. Mr. Sharma submitted that after 1990, there was no allegation against the petitioner and he had been discharging his duties as a judicial officer with distinction and without any blemish. Mr. Sharma urged that the order impugned in the writ petition was not in keeping with the decision of the Hon''ble Supreme Court in the case of All India Judges'' Association and Others Vs. Union of India and Others, .

5. Appearing on behalf of the High Court, Mr. R.S. Majumdar submitted that the decision to recommend the invocation of Rule 74 (b)(ii) of the Jharkhand Service Code in the case of the petitioner had been taken by the High Court after an assessment and evaluation of his service career. Mr. Majumdar submitted that not only had the petitioner been found consistently to be an officer of average merit, but he had also, been proceeded against departmentally and had been reverted in rank. Subsequently, between 1996-99, the petitioner was put under suspension and it was felt by the Court that it was not in the public interest to allow the petitioner to continue in service and accordingly, recommendation was made to the State Government to retire the petitioner compulsorily. Mr. Majumdar submitted that this did not warrant any interference by the Court.

6. We have carefully considered the submissions made on behalf of the respective parties and after perusing the extract from the Annual Confidential Reports of the petitioner over the years, we are constrained to agree with the decision taken by the High Court that it was not conducive in the public interest to continue with the petitioner''s service. Not only was the performance of the petitioner consistently poor, but he had to be proceeded against departmentally and was ultimately punished.

7. No amount of subsequent promotion could take away the blemish which was recorded against the petitioner and it was, no doubt, taken into consideration while making assessment of the petitioner''s usefulness in terms of the direction given by the Hon''ble Supreme Court in the case of the All India Judges'' Association (supra).

8. We see no reason to interfere with the impugned order of the petitioner''s

compulsory retirement passed by the State Government. The writ application is, accordingly, dismissed. However, there will be no order as to costs.

R.K. Merathia, J.

9. I agree.