

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1780 of 2015

Neelam Sinha,

... .. Petitioner/s

Versus

1. The State of Bihar through the Law Secretary, Bihar, Patna.
2. Patna High Court, Patna through the Registrar General.
3. District and Session Judge, East Champaran at Motihari.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Adv. Mr. Raushan, Adv. Mr. Rudrank Shivam Singh, Adv.
For the High Court	:	Mr. Piyush Lall, Adv.
For the State	:	Mr. Ajay Behari Singh, Sr. Adv. Ms. Kalpana, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 13-03-2023



Heard Mr. Abhinav Srivastava for the petitioner and Mr. Piyush Lall for the respondent/Patna High Court. The State is represented by Mr. Ajay Behari Sinha.

2. The original writ petitioner, a retired Judicial Officer, has been punished with his entire pension having been permanently withdrawn after excluding the pension amount which was commuted by him.

3. A proceeding was initiated against the petitioner under Rule 43 (b) of the Bihar Pension Rules, 1950 for having granted bail to one of the accused persons who was found to be in possession of fake currency notes and in the second instance of discharging an accused who was arrested on hot-chase with narcotics.

4. After the retirement of the petitioner from the post of Additional District and Sessions Judge, Motihari on 31.01.2010, a decision was taken to subject



him to departmental proceeding for having granted bail to one Bhuar Ansari, a resident of Nepal, and one Manoj Sah in connection with Raxaul P.S. Case No. 192 of 2009, which was instituted for the offences under Sections 489 (A) (B) (C), 121 A, 419, 420 and 120 (B) of the Indian Penal Code and Sections 16, 17 and 18 of the U.A.P.A. Act as also for discharging one person who happened to be, at the relevant time, a Member of Bihar Legislative Assembly, in N.D.P.S. Case No. 180 of 1992.

5. The two charges which were levelled against the petitioner were that bail was granted to an accused of Nepal origin on the slender ground of the seized currency notes not having been certified by the Bank authorities to be counterfeit and the discharge of the accused person was on the ground of narcotics having been recovered from another person who had died during the pendency of the proceedings. Thus, the charges which were levelled against the petitioner was that the reasons assigned in both the cases for grant of



bail and discharge of the accused was inappropriate, unjust and, therefore, the presumption was that those decisions were arrived at on extraneous considerations.

6. On the basis of the aforesaid two instances, the third charge framed against the petitioner, as noted above, was that such judicial orders indicated extraneous consideration, tantamounting to gross judicial impropriety, lack of integrity and of an act unbecoming of a Judicial Officer.

7. It appears from the records that in the first round of the departmental proceeding, the charges were found to be proved against the petitioner, but the High Court quashed the report and directed for a *de novo* enquiry, nominating other persons as Inquiry and Presenting Officers. This was done because the High Court was of the view that the proceedings had been conducted *ex parte* without intimation to the petitioner.

8. In the second instance, the Inquiry Officer, namely, the District and Sessions Judge, Muzaffarpur



inquired the charges and submitted his report on 15.04.2014 before the High Court.

9. The Standing Committee of the High Court, in its meeting dated 29.04.2014 resolved to accept such report and issue a show-cause notice to the petitioner to explain as to why he be not held guilty of the charges proved against him and be punished accordingly.

10. After the receipt of the reply of the petitioner, the Standing Committee of the High Court, considering the gravity of the misconduct proved against the petitioner, directed for withdrawal of his entire pension after excluding the commutation of pension effected before passing of such order.

11. A perusal of the inquiry report reflects that in the case of counterfeit currency notes, where unjustly bail was granted to the accused persons by the petitioner, those two accused persons were apprehended by the police on chase and from the possession of one of



whom a mobile telephone and five currency notes of Rs. 500 denomination was recovered. Three of the associates of the two arrested accused persons had managed to flee-away. Rest information was based on the confession of the aforesaid two accused persons which included the fact that three Pakistani nationals had given the accused persons those fake currency notes for circulation in Indian market. These aspects formed part of the confession of the accused persons before the police.

12. The defense of the accused person was that he had visited his sister in Raxual and while returning from her house, he was arrested.

13. Similarly, there were other confessional statements but till that time, as it appears from the defense of the petitioner, there was no report on record that the currency notes recovered from the accused persons were counterfeit or given to them by the Pakistani nationals, the names of whom could not be



gathered, for circulation in Indian market.

14. So far as the case of discharge of an ex-Member of the Legislative Assembly is concerned, custom officials had arrested two persons, out of whom one was carrying a bag containing 14 Kgs. of *Nepali charas*. The person who was discharged had been driving the motorcycle and his driver, who was in possession of the narcotics, namely, Ram Surat Singh had died during the pendency of the proceeding against him.

15. The petitioner had completely over-looked the fact that the accused person in this case was declared a permanent absconder and a permanent warrant of arrest had been issued against him.

16. The defense of the petitioner in both the instances are that the bail was granted on merits for the reason that there was no evidence on record that the currency notes were counterfeit and that while discharging the accused in N.D.P.S. case, the person



from whom recovery had been made had died and there was no F.S.L. report available on record.

17. In both the cases, the orders were unjustified.

18. With the currency notes being doubted as fake currency notes and the accused persons found to be persons of foreign country, the Court ought to have awaited the report of the Bank authorities or forensic report regarding the currency notes. Passing an order in such a case, in the first instance, was definitely not appropriate and reflected a completely non-judicial approach in the matter. Likewise, in the case of discharge of an accused on the ground of one person having died was not justified, especially when the person so discharged had been declared a permanent absconder and permanent warrant of arrest had been issued against him.

19. The basic parameters of granting bail and discharging accused were flouted by the Judicial



Officer/the petitioner.

20. However, two facts appear to us to be rather surprising.

21. There is nothing on record to indicate that the orders so passed by the Judicial Officer was assailed before the superior Court and if so, what was the result.

22. During the course of argument, Mr. Lall, the learned Advocate for the High Court submitted that he is in possession of a report that one of the accused persons, after grant of bail, never returned from Nepal. However, such facts have not been brought on record during the proceeding or were placed before the High Court when the decision to punish the petitioner was taken.

23. There is nothing on record also to indicate that after the grant of bail in the counterfeit currency case, how the bail bonds were accepted, which also would have given some idea about the petitioner as a Judicial Officer, showing any unnecessary interest in the



release of the accused persons. Merely because the two orders are not justified according to the parameters of law fixed would not lead to the only inescapable conclusion that there was any extraneous consideration in passing of such orders, justifying punishment to the Judicial Officer/the petitioner.

24. The other aspect of the matter is that the proceedings were initiated on the complaint of an Advocate, who never appeared in the proceedings nor could it be known as to how was he involved in both the cases.

25. The orders passed by the Judicial Officer/the petitioner may not be justified on any account, but it would be difficult to accept the finding of the Inquiry Officer that because such orders were passed by a Judicial Officer only shortly before his superannuation, those positively indicated towards extraneous and illegal consideration. It would be too presumptive in the absence of any other collateral fact.



No effort has been made in the departmental proceeding to bring such facts to the fore.

26. In ***Ramesh Chander Singh Vs. High Court of Allahabad; (2007) 4 SCC 247***, the Supreme Court has specifically disapproved the practice of initiation of disciplinary proceedings against the officers of sub-ordinate judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional Courts have been established and given powers to set aside such orders. The higher Courts after hearing the appeal may modify or set aside erroneous judgments of the lower Courts. Thus, it has been cautioned that while taking disciplinary action based on judicial orders, the High Court ought to take extra care and caution.

27. In the afore-noted case, it was also found by the Bench that the Judge, inquiring the matter, eventually came to the conclusion that bail had been granted by the Judicial Officer in utter disregard of the



judicial norms and on insufficient grounds and based on extraneous consideration with oblique motive and that the charges had been proved. The Bench took exception to the fact that the Judge who conducted the enquiry had not stated in his report as to what was the oblique motive or the extraneous consideration involved in the matter.

28. It is nobody's case that under similar circumstance bail of other accused persons were rejected or that the case was taken out of turn or that the requirements of bail bonds were not carefully verified.

29. Thus, even accepting that both the orders for which charges have been framed against the petitioner showed immaturity and indiscretion by the concerned Judge but that by itself, would not be indicative of such orders having been passed on extraneous considerations.

30. For the absence of any material to justify the charge of extraneous reasons while passing the



orders referred to above, we find that the inquiry report and the decision of the Standing Committee of the High Court in withdrawing the entire pension of the petitioner is unsustainable in the eyes of law.

31. In ***Krishna Prasad Verma (Dead) through Legal Representatives Vs. The State of Bihar and Ors.; 2019 SCC OnLine SC 1330***, the Supreme Court has reiterated that Article 235 of the Constitution of India vests control of the subordinate Courts upon the High Courts. The High Courts exercise disciplinary powers over the subordinate Courts. High Courts ought not to take action against judicial officers only because wrong orders are passed *"To err is human and not one of us, who has held judicial office, can claim that we have never passed a wrong order"*.

32. Paragraph 4 of the above decision reads as hereunder :-

"4. No doubt, there has to be zero tolerance for corruption and if there are allegations of corruption, misconduct or of



acts unbecoming of a judicial officer, these must be dealt with strictly. However, if wrong orders are passed that should not lead to disciplinary action unless there is evidence that the wrong orders have been passed for extraneous reasons and not because of the reasons on the file."

33. In ***Ishwar Chand Jain Vs. High Court of P & H; (1988) 3 SCC 370***, the Supreme Court has held as follows :-

"14. *Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control it is under a constitutional obligation to guide and protect judicial officers. An honest strict judicial officer is likely to have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial orders which may have been upheld by the High Court on the judicial side no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a sine*



qua non for rule of law. If judicial officers are under constant threat of complaint and enquiry on trifling matters and if High Court encourages anonymous complaints to hold the field the subordinate judiciary will not be able to administer justice in an independent and honest manner. It is therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants. Having regard to facts and circumstances of the instant case we have no doubt in our mind that the resolution passed by the Bar Association against the appellant was wholly unjustified and the complaints made by Shri Mehlawat and others were motivated which did not deserve any credit. Even the vigilance Judge after holding enquiry did not record any finding that the appellant was guilty of any corrupt motive or that he had not acted judicially. All that was said against him was that he had acted improperly in granting adjournments.”

[Also refer to **Union of India Vs. A.N.**



Saxena-(1992) 3 SCC 124; Union of India Vs. K.K. Dhawan-(1993) 2 SCC 56; P.C. Joshi Vs. State of U.P.-(2001) 6 SCC 491; Zunjarrao Bhikaji Nagarkar Vs. Union of India-(1999) 7 SCC 409].

34. We, thus, quash and set-aside the report of the Enquiry Committee as also the decision of the High Court. The consequences of setting-aside of such order of punishment shall follow and the petitioner shall be entitled to his pension.

35. The writ petition stands allowed and disposed off accordingly.

36. Interlocutory application/s, if any, also stands disposed off.

(Ashutosh Kumar, J)

(Harish Kumar, J)

Praveen-II/Anjani

AFR/NAFR	AFR
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