IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5617 of 2022

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Sangeeta Rani,

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Generel Administration Department, Govt. of Bihar, Patna.
3. The Under Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The High Court of Judicature at Patna through its Registrar General, Patna.
5. The Registrar General, Patna High Court, Patna.
6. The Registrar (Vigilance) cum Inquiry Officer, Patna High Court, Patna.
7. The Officer of Special Duty cum Presenting Officer, Patna High Court, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Singh, Sr. Advocate
		Mr. Harsh Singh, Advocate
For the High Court	:	Mr. Piyush Lall, Advocate
For the State	:	Mr. Suman Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 17-04-2023

Heard Mr. Jitendra Singh, the learned Senior Advocate, assisted by Mr. Harsh Singh, for the petitioner, a Judicial Officer, Mr. Piyush Lall for the High Court and Mr. Suman Kumar Jha for the State.

2. The writ petitioner/Judicial Officer, while being posted as Sub Judge XIV-cum-A.C.J.M., Patna in the year 2016, passed a judgment of acquittal in a case instituted under Section 138 of the Negotiable instruments Act, 1881 *(in short the N.I. Act)*, which led to the setting up of a departmental proceeding against her for having acquitted the accused for extraneous consideration and not relying on the materials on record for coming to her

conclusion.

3. The departmental proceeding ended in the inquiry authority having concluded a serious lapse on the part of the proceedee, which was indicative of no proper verification or consideration of records/evidence, implying grave negligence and, in turn, leading to the only inference of not having shown absolute integrity and devotion to duty. The officer was found to have depicted lack of judicial fairness which is unbecoming of a Judicial Officer which conclusion was accepted by the disciplinary authority and she was subjected to the penalty of compulsory retirement in terms of Rule 11 (ix) contained in Part-V of the Bihar Judicial Service (Classification, Control & Appeal) Rules, 2020.

4. The afore-noted decision of the disciplinary authority has been affirmed by the Standing Committee of the Patna High Court.

5. We have examined the judgment

delivered by the proceedee in Complaint Case No. 2163(c) of 2012.

6. The Officer has concluded the case by saying that only two witnesses on behalf of the complainant was examined, both of whom were the Supervisors of the company, which was the aggrieved party. The complainant had not examined himself. The return memo and the Advocate's notice were not produced by the complainant. The Officer, thereafter, inferred that no case under Section 138 of the N.I. Act could be established and, ultimately, acquitted the accused.

7. Nothing has been stated either by the High Court or by the proceedee whether the judgment delivered by her was subjected to any challenge before the superior forum; nonetheless, it would be apposite to examine the charge levelled against the petitioner.

8. The sole article of charge against the

petitioner reads that she, in collusion with the accused person, passed the judgment dated 26.08.2017, acquitting him on the ground of absence of sufficient evidence while holding that the complainant did not adduce his evidence nor produced the cheque return *memo* nor the pleader's notice on the record nor got them exhibited, though the bankers' cheque bearing No. 008698 dated 10.01.2012, of Rupees One Lakh, SBI *Memo* dated 25.06.2012, informing the return of the aforesaid cheque and legal notice in the matter dated 02.07.2012 and registered postal receipt were on record, which were marked as Exhibits-1 to 4 respectively *vide* the Court's order dated 30.01.2017. This act, the charge reads, was indicative of lack of absolute integrity, devotion to duty and judicial fairness and appears to be based on extraneous consideration which is unbecoming of a Judicial Officer.

9. The afore-noted charge was supported by statement of allegation that in the afore-noted complaint case, oral and documentary evidence were produced and two witnesses were examined on behalf of the complainant. All the necessary documents, in support of the prosecution, was also brought on record along with the article of charge; the list of documents furnished contained the records of Complaint Case No. 2163(c) of 2012 and the allegation petition dated 17.11.2017 filed by one Mr. Shobhapate Brahmotra, an Advocate of Civil Courts, Patna. Four witnesses were also cited including the two witnesses who have been examined in the case.

10. The Enquiry Officer examined three witnesses, namely, the Advocate through whom the complaint case was filed and two of the witnesses in such case and found that the judgment of acquittal was passed in a reckless manner, indicative of

collusion with the accused person and the same reflected judicial unfairness. The Enquiry Officer also found that despite ample opportunity granted to the poroceedee to produce evidence in her defence, she did not chose to examine any witness but placed certain documents on record, most of which were the copies of her ACRs. of successive years and her self assessment reports of various quarters of successive years in her service.

11. During the proceeding, the proceedee took the plea that the documents contained in Exhibits-1 to 4 were not available on record on the date of the judgment and only therefore she could not take it into consideration. She referred to it as a *bona fide* mistake.

12. In her (the petitioner / proceedee / Judicial Officer) Court, there was tremendous work load and therefore she could not find out that the records were not available as it had gone in the

Copying Department. The Enquiry Officer, therefore, noted that Exhibits-1 to 4 were complete in itself so far as evidence with respect to dishonour of a cheque was concerned and, therefore, her missing out on such details while pronouncing judgment could not have been a *bona fide* mistake. The plea of the poceedee that those documents were sent to the Copying Department is not correct as those documents were sent to the Copying Department only on the date when the judgment was pronounced. Nonetheless, the depiction of the exhibits on record would clearly give an idea that such important documents, forming the bedrock of the accusation of dishonour of cheque, were available on record.

13. The Enquiry Officer appears to have gone a bit further while deciding about the accusation of extraneous consideration. He went through the allegation petition filed by the Advocate

for the complainant. But he could discern no allegation on that count in the deposition of witnesses in the proceeding. There was no remark about the integrity of the Judicial Officer or her general reputation by the witnesses. The conclusion of the Enquiry Officer is that notwithstanding that there is no direct evidence and material to show that there was any extraneous reason for delivering erroneous judgment but it could be presumed indirectly that such judgment could not have been passed without unfair reasons. This was termed as falsification of facts. The reckless misconduct on the part of the proceedee, while discharging her judicial duties, reflected gross negligence which could be likened with misconduct.

14. Based on the aforesaid report of the Enquiry Officer, the proceedee was subjected to the punishment of compulsory retirement with nothing payable to her except subsistence allowance for the

period that she had spent under suspension.

15. Mr. Jitendra Singh, the learned Senior Advocate has argued that if the records are seen in its entirety, it would appear that on 03.11.2016, the case of the complainant was re-opened on payment of cost of Rs.5,000/-. Thereafter, several opportunities were given to the complainant to appear and adduce his evidence, but he failed to appear to record his evidence. *Vide* order dated 15.05.2017, the evidence on behalf of the complainant was closed, which order was never challenged. It was only thereafter that the statement of the accused was recorded under Section 313 Cr.P.C. on 06.07.2017 and on the request of the defence, their evidence also was closed on the said date. The complainant and the defence were heard on different dates and the judgment of acquittal was pronounced in open Court on 26.08.2017.

16. Under such circumstances, it has been urged that it was only a *bona fide* mistake that the documents which were on record could not be noticed. It has further been urged that merely because of this lapse on her part, no act of dishonesty or any misdemeanor could be attributed to her reflecting badly on her judicial conduct so as to be shown the door finally. It has further been submitted that even in a *quasi* judicial proceeding, like domestic enquiry/departmental proceeding, there is no place of any inference and the finding of guilt has to be on the basis of materials brought in such proceeding.

17. True it is that the manner of proving such misconduct may not be the same as is practised in criminal cases; nonetheless, there has to be some evidence on record and the decisions with respect to such materials have to be taken on objective standards with preponderance of evidence

in sight**.**

18. There has never been, the petitioner argues, any instance where she has been subjected to such departmental proceeding for a lapse in recording a fact in a judicial order, which is beyond the records of the case. The Officer may have acquitted an accused who is said to have dishonoured a cheque of Rupees One Lakh, but that does not necessarily mean that it was for some undue consideration or with any intention to help the accused against the interest of the complainant.

19. As opposed to the aforesaid contention, Mr. Lall has submitted that it was not a minor lapse on the part of the Judicial Officer but from the facts of the case, it would clearly appear that it was deliberate. The Officer had been *in-seisin* of the case since its inception and was also aware of the documents placed on record. There could have been no justification for having missed out on necessary

documents which was the basis for filing the complaint petition. With some uncalled for adroitness, the case of complainant has been rejected on the ground of there being no evidence on record for proving the offence under Section 138 of the N.I. Act and the complainant not electing to examine himself as a witness. The return *memo*, the bankers' notice and the Advocate's notice were sufficient materials on record and there could be no justification of missing out on such important documents. Even if the judgment is pronounced in open Court, that is no defence for ignoring the claim of one of the parties and passing a laconic judgment. Such act not only reflects recklessness, Mr. Lall argued, but studied indifference to the rights of a person who has moved the jurisdiction of the Court and such act cannot be but without unjust consideration.

20. Mr. Lall further submits that there

could be no direct evidence of a Judicial Officer being guided by unjust considerations but more often than not, such unjust considerations are to be inferred when the facts speak for themselves. It may have been a case of a small quantum of money, but that does not absolve the Judicial Officer of the charge against her that her judgment was bad not only on law but on facts as well, which could not be because of mere lack of understanding or experience but something else and that something else which is purely unjust and unfair.

21. Having heard the learned counsel for the parties, we too find that the judgment delivered by the proceedee/writ petitioner misses out on certain basic facts even though the Officer had herself examined the prosecution witnesses and had exhibited the documents; but to accept the proposition that it was guided by unjust and extraneous considerations, especially in the absence

of any evidence on record towards that effect, is difficult.

22. In ***K. P. Tiwari Vs. State of M.P.; 1994 Suppl. (1) SCC 540***, the Supreme Court had the occasion to examine the appropriateness of the remarks which was made against a Judicial Officer by the High Court while reversing the order of bail granted by that Officer. In that case, the records revealed that the bail was granted without hearing the State Counsel or verifying the facts, which in the estimation of the High Court pointed towards the interestedness of the Judicial Officer granting bail. That interestedness was found in about five cases in which bail was granted by that Judicial Officer. The High Court went on to observe that "one gets the impression that the Judicial Officer has been won over and, therefore he was open to write any judgment or order, releasing the accused on bail." The inference of the High Court was that

such an act not only reflected that the Judicial Officer had shown disregard to the law and the judicial process, but it also raised reasonable suspicion of the Judicial Officer being corrupt in his ways.

23. While expunging such observation, the Supreme Court was of the view that no matter how unmerited was the bail order granted by the Judicial Officer, the High Court ought not to have ignored the judicial precaution and propriety even momentarily. A wrong judicial order could be modified or set-aside. This is one of the functions of the superior Courts. The legal system acknowledges the fallibility of the Judges and, hence, there is provision for appeals and revisions. A Judge tries to discharge his duties to the best of his/her capacity but while doing so, he/she may err sometimes. The Supreme Court went on to observe that every error, howsoever gross it may look,

should not be attributed to improper motive. Even in cases, where a particular Judicial Officer has been consistently passing orders, creating suspicion of judicial conduct not being wholly or partly attributable to innocent functioning, but even in such cases, the proper course for the High Court to adopt is to make note of his conduct in the confidential report of his work and to use it on proper occasions. A word of caution was sounded that the respect for the judiciary is not enhanced when the Judges at lower levels are criticized intemperately and castigated publicly. No greater damage can be done to the administration of justice and to the confidence of the people in the judiciary than when the Judges of the higher Courts publicly express lack of faith in the subordinate Judges for one reason or the other.

24. True it is that such observation came in view of a request by the Judicial Officer for

expunction of such remarks by the High Court against the bail order drafted by him, but the underlying principle applies with all vigour in cases where judicial orders are on scrutiny. Howsoever gross a mistake could be, in the absence of positive materials, there could be no inference simplicitor of unjust, unholy and extraneous consideration for passing such order.

25. From the records of the departmental proceeding, we do not get to know as to what was the material collected in reference to the context of the charge levelled against the Officer justifying an inference of guilt and the punishment of compulsory retirement. We are conscious of the fact that in the disciplinary proceeding, a charge is not required to be proved like in a criminal trial, *i.e.*, beyond all reasonable doubts, but since this is in the nature of a *quasi* judicial function, the Enquiry Officer must arrive at a conclusion on the basis of materials on

record. While testing such decision-making in a departmental proceeding, the only thing what a Court has to see is to ascertain whether the conclusion reached against the proceedee is based on fact or set of facts on which any prudent person would have arrived at the same result. (refer to ***Nirmala J. Jhala Vs. State of Gujarat & Anr.; (2013) 4 SCC 301*** and ***M. V. Bijlani Vs. The Union of India & Ors.; (2006) 5 SCC 88***).

26. In fact, the Supreme Court in ***Ramesh Chandra Singh Vs. High Court of Allahabad; (2007) 4 SCC 247*** has specifically disapproved the practice of initiation of disciplinary proceedings against the Officers of subordinate judiciary merely because the judgments/orders passed by them are wrong. The logic behind such verdict is that the appellate and revisional Courts have been established to rectify the mistakes committed by the Judge of the first jurisdiction. For taking disciplinary action based on

judicial orders, extra care and caution is required.

27. Similarly, in ***Krishna Prasad Verma (dead) through legal representatives Vs. The State of Bihar and Ors.; 2019 SCC On-Line SC 1330***, the provisions contained in Article 235 of the Constitution of India has been referred to through which the High Courts control the subordinate Courts. A High Court, therefore, ought not to take action against the Judicial Officer only because a wrong order has been passed. Nobody can claim that he has never ever erred in his life. Though one has to guard against corruption in judicial office, but it cannot be done only by identifying wrong judgments/orders passed by the Judges.

28. We do not subscribe to the view that if wrong judgments/orders are passed, there should be no disciplinary action, but such action should be initiated only if there is definite and pointed evidence that the wrong judgment/order has been

passed for extraneous reasons and considerations and not because of the reasons which are available in the file of a case. Jumping to the conclusion of corruption and corrupt practice at every wrong judgment/order or unsustainable judgment/order that one comes across, is not going to serve the purpose. Putting a Judicial Officer to a departmental proceeding for a wrong order does not serve as a panacea for any ill which is being faced by judiciary or for that matter any department of the Government. In fact, reckless proceeding only lowers the moral of the judiciary. [refer to ***Neelam Sinha Vs. The State of Bihar and Ors. (C.W.J.C. No. 1780 of 2015)*** disposed off on ***13.03.2023***.*)*

29. In the instant case, we have found that there is a solitary charge against the Judicial Officer of having recorded a verdict of not guilty in a complaint case, relating to an offence under Section 138 of the N.I. Act, 1881. *Prima facie*, the records

reveal that necessary documents in support of the prosecution were available on record.

30. The petitioner as a Judicial Officer cannot be permitted to say that those documents could not be noticed while pronouncing the judgment for any reasons whatsoever. The acquittal in this case was highly unmerited; but the question before us is whether such unmerited acquittal amounted to falsification of the records by ignoring to consider the documents on record.

31. On a careful consideration of the totality of the circumstances, we are inclined to give benefit of doubt to the petitioner as a Judicial Officer, who might well have passed an order in a hurry. Many a times, such orders do reflect a motive of helping the accused which in turn could be without any unjust consideration, but that cannot be taken as the sole motivating factor in all cases where the judgments do not pass the test of

constitutionality and legality, facts, law or otherwise.

32. For our own satisfaction, we have gone through the materials which have been exhibited at the instance of the Judicial Officer, though under protest, by the disciplinary authority, that never in the past, the Officer had been charged with anything to be desired regarding her integrity. This was a solitary instance and not a repeated case of such unmerited acquittals. Even if it is assumed that the lapse was reckless, it would still be a venial lapse. Lest we may not be misunderstood and taken amiss, we clarify that a Judicial Officer has to guard against many such peccadilloes while dispensing with the judicial function but for a solitary act of recklessness, it would be unjust to the Judicial Officer to be shown the door at such an early stage in service.

33. We, therefore, are not in agreement

with the final outcome of the departmental proceeding of the petitioner. The punishment awarded to her is much too harsh even for the recklessness having been exhibited by her as a Judicial Officer.

34. We have also examined the issue from another angle.

35. Compulsory retirement is one of the major punishments provided under the Rules in a departmental proceeding in which fixing the quantum of punishment is within the discretion of the disciplinary authority. However, for such decision to be sustained, the sentence should not be vindictive or unduly harsh. If the choice of sentence imposed on a proceedee is way disproportionate to the charge, such a decision could be questioned on grounds of proportionality, which by now has become an inherent part of the concept of judicial review.

36. In the words of ***Lord Diplock*** in ***R Vs. Goldstein; (1983) 1 All E.R. 434***, such disproportionate punishment would be like "using a sledge-hammer to crack a nut".

37. A concept of "balancing test" and "necessity test" were introduced in the overall concept of judicial review. The "balancing test" means scrutiny of excessive/onerous penalties disclosing manifest imbalance of relevant considerations, whereas the "necessity test" mandates that infringement of human rights in question must be by the least restrictive alternative.

38. In ***Union of India & Anr. Vs. G. Ganayutham; 1997 (7) SCC 463***, the Supreme Court but left open the issue whether a Court will apply the principle of proportionality to test the administrative or executive action and held that it can be decided in an appropriate case where the choice of punishment does not suit the wrong doing

and is outrageous. It was also held that only on grounds of irrationality, a punishment cannot be quashed and the matter has to be remitted back to the appropriate authority for reconsideration. However, in rare cases, as has been pointed out in ***B.C. Chaturvedi Vs. Union of India & Ors.; 1995 (6) SCC 749***, a Court might, in order to shorten the litigation, think of substituting his own views as to the quantum of punishment in place of punishment awarded by the competent authority.

39. Mr. Lall vehemently pressed, at this stage, that if the observations of this Court is against the quantum of punishment awarded to the petitioner, then it would be more appropriate that the matter is remanded to the disciplinary authority for revisiting the quantum of sentence which would be appropriate in the aforesaid case displaying a non-judicial approach while deciding a case even if it were a case involving lower quantum of money.

40. After having given anxious consideration over such suggestion, we find that doing so it would only be counter productive as the petitioner is a Judicial Officer, who would again be subjected to such rigors unnecessarily when there does not require any other evidence to prove that the judgment of acquittal was totally unmerited. To prove that there was extraneous consideration behind such unmerited acquittal would require a revisit of the entire charge before a disciplinary authority, which is neither warranted nor necessary, as it was a solitary instance which has been reported.

41. Thus, exercising our powers under Article 226 of the Constitution of India, we set aside the decision of compulsory retiring the petitioner and modify the sentence by directing for withholding of three increments of pay with cumulative effect.

42. The petitioner should immediately but be inducted in the service.

43. The petitioner, however, shall not be paid for the period that she remained out of service. Needless to state that the continuity with respect to her service shall be maintained.

44. The writ petition stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

(Harish Kumar, J)

Anjani/Praveen

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