

Chandra Pathak Vs. the State of Bihar and Others

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Court : Patna

Decided On : Mar-24-2014

Judge : The Honourable Chief Justice Mr. R.M. Doshit & Ashwani Kumar Singh

Appeal No. : Civil Writ Jurisdiction Case No. 1762 of 2014

Appellant : Chandra Pathak

Respondent : The State of Bihar and Others

Advocate for Pet/Ap. : Mr. Abhinav Srivastava

Judgement :

1. This Petition under Article 226 of the Constitution has been filed by one Shri Chandra Pathak, Sub-Judge, Saharsa for quashing the Notification dated 21st February, 2013 passed by the respondent-State on the recommendation of the Patna High Court on administrative side by which the petitioner has been inflicted upon with the punishment of compulsory retirement in terms of the provisions contained under Rule 14(ix) of the Bihar Government Servant (Classification, Control and Appeal) Rules 2005 (hereinafter referred to as the Rules of 2005?). The further prayer made is to allow the petitioner to resume his duties as a member of the State Judicial Services along with all the consequential benefits including seniority, pay, etc.

2. Learned advocate Mr. Abhinav Srivastava appears for the petitioner. Mr. Abhinav Srivastava has stated that he has no objection, if this Bench hears and decides the matter. Learned advocate Mr. Mrigank Mauli appears for the High Court and learned advocate Mr. Raju Giri appears for the State.

3. The facts and circumstances giving rise to this case are that the petitioner joined Bihar Sub-ordinate Judicial Service in the capacity of Munsif on 12th October, 1986. Over a course of time, he was promoted to the cadre of Civil Judge (Senior Division). While functioning as Sub Judge I-cum-A.C.J.M., Saharsa, the petitioner was placed under suspension with immediate effect vide order dated 29th July, 2009 passed by the Patna High Court, pending a disciplinary proceeding to be initiated against him.

4. Subsequently, a disciplinary proceeding was initiated against the petitioner by the Patna High Court in which memorandum of charges under four heads dated 28th October, 2009 coupled with the statement of allegations in support of articles of charges, list of documents and list of witnesses, by which the charges were to be substantiated, were supplied to the petitioner. The charges under four-heads framed against the petitioner in the said disciplinary proceeding were as follows:

œCHARGE-1

That Sri Shree Chandra Pathak while functioning as Sub Judge-I-cum-A.C.J.M., Saharsa with an intention to favour the Plaintiff of Title Suit No. 41/1976 (Deokrishna Singh Vs. Narmada Jha) adjourned it from 17.12.2008 to 18.12.2008 after having assured Sri Sheo Shankar Sharma, the Advocate of the defendant who had gone there to argue the case from Patna High Court, Patna to hear him on that day but in order to avoid his argument on 18.12.2008, he went on current duty on the fake ground of suffering from cold and fever, which is further corroborated from the fact that despite being on current duty, came back to Court on 18.12.2008 for hearing bail matter in absence of C.J.M. and disposed of altogether fifteen bail applications but he did not hear Sri Sharma in Title Suit No. 41/1976 on the said day. Lastly, the said Title Suit was decreed by Sri Pathak on 13.1.2009 in favour of the plaintiff.

The aforesaid act of his stance of going on current duty on fake ground just to avoid the argument of the learned Advocate who had gone there to argue the case of the defendant is indicative of extraneous consideration which tantamount to gross judicial impropriety, lack of integrity and an act of unbecoming of a Judicial Officer.

CHARGE-2

That Sri Shree Chandra Pathak while functioning as Sub Judge-I-cum-A.C.J.M., Saharsa despite being on current duty on 18.12.2008 on the reported ground of cold and fever came back to Court for hearing bail matter in absence of C.J.M. and allowed all the fifteen bail applications which he heard on that day.

The aforesaid act of his coming back from current duty to allow all the bail applications placed before him is indicative of extraneous consideration which tantamount to gross judicial impropriety, lack of integrity and an act unbecoming of a Judicial Officer.

CHARGE-3

That Sri Shree Chandra Pathak while functioning as Sub Judge-I-cum-A.C.J.M., Saharsa granted bail to accused persons in Bihra P.S. Case No. 91/2008 registered u/s 147/148/307/324/452/380 IPC and 27 Arms Act on the ground that injuries was of simple nature although injury No. 2 sustained by the injured Bharat Yadav was grievous caused by fire arm on vital organ lung.

The aforesaid act of his is indicative of extraneous consideration which tantamount to gross judicial impropriety, lack of integrity and an act unbecoming of a Judicial Officer.

CHARGE-4

That Sri Shree Chandra Pathak while functioning as Sub Judge-I-cum-A.C.J.M., Saharsa did not enjoy very good reputation as Judicial Officer which is evident from the fact that nine misc. petition bearing No. 39/2008, 51/2009, 53/2008, 56/2008, 10/2009, 5/2009, 13/2009 and 17/2009 have been filed before the court

of District and Sessions Judge, Saharsa regarding cancellation of bail granted to accused persons by Sri pathak A.C.J.M., Saharsa in Bihra P.S. 91/2008, Nauhatta P.S. Case No. 72/2008, Sourbazar P.S. Case No. 264/2008, 281/2008, 220/2008, 284/2008, Saharsa P. Case No. 623/2008, 360/2008 and Bangeon P.S. Case No. 06/2009 respectively.

The aforesaid act of his is indicative of extraneous consideration which tantamount to gross judicial impropriety, lack of integrity and an act unbecoming of a Judicial Officer.?

5. In the said departmental proceeding, the District Judge, Khagaria was made the Enquiry Officer to inquire into the charges made against the petitioner whereas the Judge-in-charge, Saharsa was made the Presenting Officer.

6. On receipt of memorandum of charge, the petitioner submitted his written statement of defence on 27th November, 2009 denying the allegations made against him and pleading his innocence.

7. It would be relevant to note here that vide order dated 5th July, 2010, the Patna High Court resolved to add a supplementary charge against the petitioner in the ongoing departmental proceeding which reads as under:-

It has been reported that three Civil Misc. Transfer Petitions bearing Nos. 6/2009 and 17/2009 with 18/2009 were filed before the court of District and Sessions Judge, Saharsa for the transfer of Title Suit Nos. 60/1990, and 24/1989 respectively pending in the Court of Sub Judge-I, Sri Shree Chandra Pathak because petitioners of the aforesaid Title Suits namely Sri Yogendra Yadav, Sri Vikash Poddar and Sri Om Prakash Keshari have alleged that Sri Pathak was under the influence of opposite parties.?

Statement of allegations and list of documents in support of the supplementary charge were also supplied to the petitioner.

8. On receipt of the aforesaid supplementary charge, the petitioner furnished his written statement of defence on 24th July, 2010 against the said supplementary charge.

9. The Enquiry Officer, thereafter, proceeded with the inquiry against the petitioner. The petitioner participated in the inquiry proceeding. In course of inquiry, the Presenting Officer examined eleven witnesses and proved 43 documents in support of the charges. The documents so produced were marked as Exhibit 1 to Exhibit 43 by the Enquiry Officer. In support of his defence, the petitioner did not produce any oral evidence but altogether 14 documents were proved by him in course of inquiry, which were marked as Exhibit A to Exhibit N. Apart from the documentary evidence led on behalf of the petitioner in the inquiry proceeding, the petitioner also submitted a written brief of defence in respect of the charges made against him before the Enquiry Officer on 29th October, 2010.

10. On completion of the inquiry, taking into consideration the materials collected in course of inquiry, the Enquiry Officer submitted his report dated 25th August, 2011 in which he held the petitioner guilty of all the charges levelled against him except charge no.1. The petitioner was, thereafter, served with a show cause notice dated 24th September, 2011 issued under the signature of the Registrar General of the Patna High Court along with a copy of the inquiry report seeking explanation as to why the finding of guilt recorded by the Enquiry Officer be not accepted and he be not suitably punished.

11. On receipt of the second show cause notice issued under the signature of the Registrar General of the Patna High Court, the petitioner submitted his detailed show cause on 24th October, 2011. He challenged the findings recorded by the Enquiry Officer in respect of the charges which were held proved against him in the inquiry proceeding.

12. After considering reply of the petitioner, the Patna High Court on its administrative side recommended for punishment of compulsory retirement from service against the petitioner vide letter dated 11th May, 2012 issued under the signature of the Registrar General of the High Court. The State Government accepted the recommendation of the High Court and the petitioner was inflicted with the punishment of compulsory retirement from service in terms of the provisions contained under Rule 14(ix) of the Rules of 2005 vide Notification dated 21st February, 2013.

13. Mr. Abhinav Srivastava, learned counsel for the petitioner has submitted that the inquiry against the petitioner had been initiated at the instance of one Sri Sheo Shankar Sharma, an Advocate but in course of inquiry, Sri Sheo Shankar Sharma admitted before the Enquiry Officer that the petitioner heard him in Title Suit No. 41/1976 in which he was appearing on behalf of the defendants on 19 and 20th December, 2008. He also denied to have filed any complaint or any petition of not being heard by the petitioner in the suit in question. Mr. Srivastava has contended that once the genesis for initiating the departmental proceeding against the petitioner was found to be non-existent, it was not proper for the High Court to proceed against the petitioner in respect of other charges for which no complaint was received.

14. Mr. Abhinav Srivastava has further submitted that the charges made against the petitioner primarily related to the merits of the orders passed by him as a Judicial Officer. He has submitted that the charges framed against the petitioner included some cases wherein the judicial discretion vested in a Judicial Officer had been exercised and the exercise of such power by the petitioner could not be said to be an act tantamounting to judicial indiscipline or misconduct as the statement of allegations in support of articles of charges would suggest that such statements were merely generic and speculative in nature mostly based on conjectures and surmises.

15. Mr. Srivastava has next submitted that the allegations made against the petitioner had no basis. He has contended that there was no proof or evidence with respect to lack of honesty and integrity on the part of the petitioner but the Enquiry Officer erroneously held him guilty for all the charges except charge no.1. He submitted that the entire proceeding against the petitioner was vitiated as the finding of the Enquiry Officer against the petitioner in respect of the proved charges is without any evidence to link the petitioner with the alleged misconduct.

16. Lastly, learned advocate Mr. Abhinav Srivastava has contended that the petitioner may have lacked highest standards of efficiency in discharge of his judicial function but the same per se would not constitute misconduct inviting penal consequences.

17. In support of his submissions, Mr. Srivastava has relied upon the judgments of Honble Supreme Court in the matters of A.L. Kalra Vs. Project and Equipment Corporation of India Ltd. {(1984) 3 SCC 316}; Union of India and Others Vs. J. Ahmed {(1979) 2 SCC 286} and Sher Bahadur Vs. Union of India and Ors. {(2002) 7 SCC 142.

18. On the other hand, Mr. Mrigank Mauli, learned counsel for the Patna High Court has vehemently opposed the petition. He has contended that it is not the case of the petitioner that the proceeding was vitiated in any manner; nor there is any allegation of mala fide. He submitted that the charges leveled against the petitioner were found to be proved by the Enquiry Officer on the basis of evidence led in the proceeding. The Standing Committee of the High Court accepted the inquiry report submitted by the Enquiry Officer and on receipt of explanation to the second show cause notice from the petitioner, the Standing Committee recommended for imposition of punishment of compulsory retirement on the petitioner. The recommendation of the Standing Committee was approved by the Full Court and on the recommendation of the Patna High Court on administrative side the respondent State issued the impugned Notification inflicting punishment of compulsory retirement on the petitioner.

19. Mr. Mrigank Mauli has further contended that the scope of judicial review under Article 226 of the Constitution of India against the impugned order of punishment is permissible on extremely limited grounds. He contended that the judicial service not being a service in the sense of an employment, as it is commonly understood; as the judicial officers exercise sovereign judicial function; the standard principles of judicial review of an administrative action cannot be applied for examining the conduct of a judicial officer. He contended that in the given case judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and this Court would not examine the matter as an appellate court for re-evaluating the evidence collected in course of inquiry. He submitted that since the petitioner has failed to point out any flaw in the process of reaching the impugned decision, it would not be open to him to assail the decision itself.

20. Mr. Mauli has further contended that the submission made by learned counsel for the petitioner that there could not have been any enquiry for the charges for which no complaint was received is thoroughly misconceived. He contended that even if a formal complaint in respect of a misconduct is not made but if it comes to the notice of the Disciplinary Authority even otherwise there would be no legal impediment in proceeding against a delinquent in respect of such misconduct. He submitted that simply because Sri Sheo Shankar Sharma did not support the allegation in toto in respect of charge no.1, the same would not mean that the petitioner would be absolved of all other charge for which reliable evidences are available on record.

21. Mr. Mauli has taken us through the inquiry report in order to show that the finding of Enquiry Officer against the petitioner in respect of all proved charges was based on cogent evidence. In support of his submissions, Mr. Mauli has relied upon the judgment of Honble Supreme Court in the matter of Pyare Mohan Lal Vs. State of Jharkhand and Ors. {(2010) 10 SCC 693}; Registrar General, High Court of Patna Vs. Pandey Gajendra Prasad and Ors. {(2012) 6 SCC 357}; and High Court of Judicature, Patna Vs. Shiveshwar Narayan and Anr {Civil Appeal No. 6103 and 7372 of 2005 decided on 22nd September 2011}. He submitted that the petition lacks merit and is liable to be dismissed.

22. Mr. Raju Giri, learned counsel for the State has adopted the submissions made by the counsel appearing on behalf of the Patna High Court.

23. Having heard respective counsels appearing on behalf of the contesting parties, we find substance in the argument advanced on behalf of the respondents. However, in order to fortify our thinking we also proceed to examine the record of inquiry proceeding.

24. In respect of afore-stated charge no. 2, we find from the record that while the petitioner was working and posted as Sub Judge-I-cum-A.C.J.M., Saharsa on 18th December, 2008 on account of suffering from cold and fever, he submitted a written application to the District and Sessions Judge, Saharsa requesting him to allow the petitioner to remain on current duty and to perform the duty from his residence. The District and Sessions Judge, Saharsa acceded to the request of

the petitioner in writing and, accordingly, permission to the said effect was granted to the petitioner. However, the petitioner came back to the Court in the late afternoon at about 4.00 p.m. and allowed several bail petitions in absence of the Chief Judicial Magistrate on that day as incharge Chief Judicial Magistrate.

25. The petitioner took a defence that while he was on current duty, he took medicine and got some relief. At about 12.30 p.m. the Bench clerk reported that the litigants and their representatives were pressing hard for hearing of bail petitions and in order to avoid chaotic situation, he came to the Court in the later afternoon at about 4.00 p.m. and allowed the 18 bail petitions which he heard on that day. The petitioner also pleaded that hearing of bail petition is permissible under the rule even when the officer remains on current duty. He contended that that bail petitions were allowed on merits and not on extraneous consideration. He also took a defence that it was a sheer chance that all the 18 bail applications which he heard on that particular day were allowed and no adverse inference should be drawn against him in this regard.

26. The petitioner failed to produce any evidence in support to his defence in respect of charge no. 2. On the contrary, the Bench Clerk, Arun Kumar Yadav was examined as P.W. 8 before the Enquiry Officer. He has not uttered a word about assembly of litigants or their representatives on the relevant date. The petitioner did not confront him with any question in this regard. The Enquiry Officer has also placed reliance on certain letters issued by the High Court as also the general practice prevailing all over the State and has come to a conclusion that while on current duty, the Judicial Officers remain absent from Court. They are required to be available at the residence and dispose of only urgent works which do not require hearing of contesting parties, such as, signing of summons, issuance of warrant of arrest, remand of accused and acceptance of bail bonds etc. The Enquiry Officer, after looking into the materials produced before him opined that the petitioner who was Incharge Chief Judicial Magistrate on the relevant date ought not to have sat in the Court beyond normal time at about 4.00 p.m. as bail petitions are to be heard in presence of both the parties.

27. We have perused the application dated 18th December, 2008 submitted by the petitioner to the District Judge, Saharsa. In the said application the petitioner had sought leave to remain on current duty and to perform duties from his residence as he was indisposed. Leave to this effect was granted by the District Judge, Saharsa. The petitioner admits in his defence that he came to the Court at about 4.00 p.m. and, what is more, by strange coincidence, he allowed all the 18 bail petitions which he took up as Incharge Chief Judicial Magistrate on that day. In the facts of the case, we are of the view that the Enquiry Officer in his report has rightly held that under no circumstance while the petitioner was on current duty, he could have sat in the Court without prior permission of the District and Sessions Judge, Saharsa or the Patna High Court.

28. The Enquiry Officer has also noticed after looking into the record that the petitioner had manipulated the daily progress report dated 18th December, 2008 marked as Exhibit - N in the proceeding wherein at the bottom just above signature the petitioner mentioned 'Bail-18?'. The said entry does not mention as to whether 18 bail petitions were filed, heard, disposed of, allowed or rejected. Having seen the evidence on record, we find no illegality in the finding of the Enquiry Officer in respect of charge no.2.

29. In respect of charge no.3 relating to Bihra P.S. Case No.91/2008 registered, inter alia, under Section 307 of the Indian Penal Code and 27 of the Arms Act, we find from the record that the petitioner granted bail to the accused persons on the ground that the injuries were all simple in nature although injury no.2 sustained by the injured Bharat Yadav was grievous in nature caused by firearm on vital part lung. In course of inquiry, the doctor who had examined Bharat Yadav was produced before the Enquiry Officer and in his deposition as well as in his cross-examination, he specifically stated that injury no.2 on the person of Bharat Yadav was dangerous to life and was grievous in nature.

30. It is apparent from the record that although initially the petitioner tried to defend his action by saying that injury no.2 of victim Bharat Yadav does not come under mischief of Section 320 of the Code of Criminal Procedure (hereinafter referred to as 'the Code?') but, subsequently, he conceded that it was an obvious error on

his part which occurred due to pressure of work. He tendered apology for the said so-called inadvertent error. However, when we closely scrutinized the record, we found from record that in the said case a large number of persons sustained injuries on different parts of bodies including one Bharat Yadav who had sustained five firearm injuries on his person. On 2nd September, 2008 in the said case altogether five named accused persons surrendered in the Court and prayed for bail. The bail petition was filed annexing several documents containing 70 pages. The petitioner granted bail to all the five accused persons on the date of surrender itself, after wrongly recording in the order that all the injuries were simple in nature. Subsequently, other two accused persons named in the FIR surrendered on 4th September, 2008 and they too were granted bail on the ground that similarly circumstanced co-accused persons were already granted bail and lastly, three of the remaining named accused persons surrendered on 5th September, 2008 and prayed for bail which too was allowed on the date of surrender itself taking into consideration the fact that the injuries were all simple in nature and other co-accused persons having identical allegation were already granted bail.

31. We find from the record that in the aforesaid case nine persons including four ladies had sustained injuries at the hands of the accused persons. Out of the nine injured, seven had sustained firearm injuries on different parts of their bodies. In the orders granting bail, the petitioner did not discuss regarding number of persons who sustained injuries in the alleged incident of occurrence. He wrongly mentioned in the orders that the injuries were simple in nature in order to minimize the gravity of offence.

32. As noted above, the case was registered for the offence, inter alia, under Section 307 of the Indian Penal Code and 27 of the Arms Act. The petitioner allowed the accused persons the privilege of bail on mere asking by distorting facts of the case. The plea of inadvertent error due to pressure of work advanced by the petitioner cannot be believed simply for the reason that the same factual error committed to benefit the accused persons crept into the order on three different dates when the petitioner heard bail application of different accused persons in the same case.

33. Moreover, since the case was under Section 307 of the Indian Penal Code, the offence was punishable with life imprisonment. Except in the cases of children, women and sick or infirm persons, the discretion to grant bail by a Magistrate has been taken away by Section 437(1) (i) of the Code in cases of non-bailable offences punishable with death or life imprisonment. Apparently, while passing the order on bail petitions arising out of Bihra P.S. Case No. 91/2008, the petitioner not only distorted the medical report to the benefit of accused persons but while passing the orders he deliberately over-looked the statutory mandate as prescribed under Section 437 (1)(i) of the Code. In our view, such an act on the part of a Judicial Officer certainly tantamounts to gross judicial impropriety.

34. So far as charge no.4 and the supplementary charge are concerned, it is true that the same related to discharge of judicial functions by the petitioner and in normal circumstances the orders passed by a Judicial Officer in discharge of his duties may not amount to misconduct. However, in the present case, we find that in several other cases as noticed in charge no.4, the petitioner granted bail to the accused persons in cases instituted under Section 307 of the Penal Code in which the victim(s) did sustain serious injuries. In those cases petitions were filed under Section 439(2) of the Code for setting aside the orders passed by the petitioner as also for cancellation of bail granted to the accused persons.

35. There is no doubt that grant of bail is an exercise of judicial discretion vested in a Judicial Officer to be exercised depending on the facts and circumstances before him. However, exercise of such discretion must be judicious and not as a matter of course. Moreover, as discussed above the jurisdiction of Magistrate in exercise of such discretion is limited in cases where punishment provided is life imprisonment or death. The restrictions imposed upon the Magistrate in terms of Section 437(1)(i) of the Code are statutory and the same requires to be followed scrupulously having regard to the facts and circumstances of the case. Unfortunately, in case of the petitioner, we find that the orders passed by him do suggest that he had an extraordinary propensity to grant bail to the accused persons. While doing so, he never hesitated in violating the statutory mandate of law as prescribed under Section 437(1)(i) of the Code. To put it differently, while passing orders on bail petitions, the petitioner made no difference between

bailable and non-bailable offences as also between the offences in which punishment prescribed was life imprisonment or death and other lesser offences.

36. We, thus, find that the finding of the Enquiry Officer is based on evidence led in the Court. Even the defence taken by the petitioner in respect of the charges alleged against him amounts to his tacit admission of guilt. The petitioner has accepted that he sat in the Court in the late afternoon at 4.00 p.m. on 18th December, 2008 and granted bail in all the 18 cases which he heard on that day while he was on current duty. He has also accepted that in Bihra P.S. Case No. 91/2008 while granting bail to the accused persons, it was wrongly recorded in the orders that the injuries were simple in nature. It is also a matter of record that in several other cases in which the offence was punishable with life imprisonment, the petitioner granted bail to the accused persons on the date of surrender itself violating the mandatory provision as prescribed under Section 437(1)(i) of the Code.

37. After considering the factual aspect of the matter in detail, we have also considered the judgments relied upon on behalf of the petitioner. In *A.L. Kalra Vs. Project and Equipment Corporation Ltd.* (supra), the Honble Supreme Court while considering the case of removal from service of an employee of Project and Equipment Corporation of India Ltd. under the PEC Employees (Conduct, Discipline and Appeal) Rules held that where misconduct when proved entails penal consequences, it is obligatory on the employer to satisfy and if necessary, define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. While interpreting the facts of the said case and the relevant rules, the Honble Supreme Court came to a conclusion that what was alleged against the delinquent as misconduct in the said case did not constitute misconduct. In those factual background, the order of removal from service of the appellant in that case was set aside.

38. In *Union of India and Ors Vs. J. Ahmed* (supra), the Union of India and the State of Assam had preferred appeal by Special Leave before the Honble Supreme Court against an order passed by the High Court of Assam and Nagaland. In the said case, the respondent, an I.A.S. Officer, was departmentally

proceeded against on certain charges. On conclusion of the disciplinary proceeding, the respondent was inflicted with penalty of removal from service. A memorial submitted by the respondent to the President under Rule 20 of the All India Service (Discipline and Appeal) Rules, 1955 against the imposition of the penalty was also rejected. However, the writ petition filed by him was allowed by the High Court of Assam and Nagaland declaring that the respondent was deemed to have retired from service and the punitive or disciplinary action taken against him after the date of retirement was completely without jurisdiction and wholly unjustified and the same was quashed. In the said case while dismissing the appeal preferred by the Union of India and the State of Assam, the Honble Supreme Court made the following observations:

œ17. It thus appears crystal clear that there was no case stricto sensu for a disciplinary proceeding against the respondent. In fact the inquiry was held to establish that the respondent was not fit to hold a responsible post. The respondent was actually retiring from service and there was no question of his any more holding a responsible position. Yet not only the inquiry was initiated but he was retained in service beyond the date of his normal retirement till the final order was made on October 11, 1963 when he was removed from the Indian Administrative Service. It appears that there were large scale disturbances in the State. There followed the usual search for a scapegoat and the respondent came handy. Some charges were framed none of which could constitute misconduct in law. Some charges were mere surmises. Substance of the allegations was that he was not a very efficient officer and lacked the quality of leadership and was deficient in the faculty of decision making. These deficiencies in capacity would not constitute misconduct. If the respondent were a young man and was to continue in the post for a long period, such an inquiry may be made whether he should be retained in the responsible post. He may or may not be retained but to retain him in service beyond the period of his normal retirement with a view to punishing him was wholly unjustified. The High Court was, therefore, right in coming to the conclusion that the respondent was no longer in service on the date on which an order removing him from service was made and, therefore, the order was illegal and void.?

39. In *Sher Bahadur Vs. Union of India and Ors* (supra), the Honble Apex Court was considering the case of a casual labourer employed in Northern Railway who had been dismissed from service after holding a disciplinary proceeding on a charge that he had fraudulently secured the appointment letter signed by the competent authority. The writ petition filed by the appellant against the order of dismissal before the High Court of Allahabad was dismissed. However, the Honble Supreme Court set aside the order of the High Court taking into consideration the fact that the finding of the Enquiry Officer was erroneous and there was no evidence to link the appellant with the alleged misconduct. The Honble Supreme Court held in the said case that the mere fact that the Enquiry Officer has noted in the report, œin view of oral, documentary and circumstantial evidence as adduced in the inquiry?, would not in principle satisfy the rule of sufficiency of evidence as the expression œsufficiency of evidence? postulates existence of some evidence which links the charged officer with the misconduct alleged against him.

40. Having gone through the judgments relied upon by the petitioner, we are of the view that the ratio laid down by the Honble Supreme Court in those cases is of no help to the petitioner of the present case. As noted above, we find that the charges levelled against the petitioner were quite serious in nature. The same were duly communicated to the petitioner. The acts of omission and commission on the part of the petitioner in discharge of official duty were beyond the expected code of conduct. Those acts were certainly indicative of gross Judicial impropriety, lack of integrity and an act unbecoming of a Judicial Officer. The charges were also duly proved by adducing oral and documentary evidence in the disciplinary proceeding held in accordance with law.

41. We have also considered the judgments relied upon by the learned counsel for the High Court. In the matter of *Registrar General, High Court of Patna Vs. Pandey Gajendra Prasad and Ors.* (supra), the Honble Supreme Court considered the scope of judicial review under Article 226 of the Constitution in case of an order of punishment passed in departmental proceeding. In the said case, a Judicial Officer had challenged the decision of the Full Court of Patna High Court recommending his removal from service as a Railway Judicial Magistrate and the Notification of the State Government in that regard before the Patna High Court. A

Division Bench of the Patna High Court set aside Notification of the State Government dismissing the petitioner from service with a consequential declaration that the petitioner shall be reinstated and paid 40% of his back wages as compensation. The petitioner was also granted liberty to make representation to the High Court regarding the balance 60% of his back wages. The High Court of Patna challenged the order passed by the Division Bench before the Honble Supreme Court. While allowing the appeal of the High Court of Patna and setting aside the judgment of the Division Bench and upholding the validity of Notification, dismissing the concerned Judicial Officer from judicial service, the Honble Supreme Court made the following observations:-

22. In the present case, the recommendation of the Standing Committee to dismiss the first respondent from service was based on the findings in the enquiry report submitted by the enquiry officer pursuant to the departmental enquiry; his reply to the show-cause notice; his ACR and other materials placed before it. The recommendation of the Standing Committee was approved and ratified by the Full Court.

23. There is nothing on record to even remotely suggest that the evaluation made, firstly by the Standing Committee and then by the Full Court, was so arbitrary, capricious or so irrational so as to shock the conscience of the Division Bench to justify its interference with the unanimous opinion of the Full Court. As regards the observation of the Division Bench on the reputation of the first respondent based on his ACRs, it would suffice to note that apart from the fact that an ACR does not necessarily project the overall profile of a judicial officer, the entire personal file of the respondent was before the Full Court when a conscious unanimous decision was taken to award the punishment of his dismissal from service. It is also well settled that in cases of such assessment, evaluation and formulation of opinion, a vast range of multiple factors play a vital and important role and no single factor should be allowed to be blown out of proportion either to decry or deify issues to be resolved or claims sought to be considered or asserted. In the very nature of such things, it would be difficult, rather almost impossible to subject such an exercise undertaken by the Full Court, to judicial review, save and except in an extraordinary case when the Court is convinced that some exceptional thing which

ought not to have taken place has really happened and not merely because there could be another possible view or there is some grievance with the exercise undertaken by the Committee/Full Court.

24. Having regard to the material on record, it cannot be said that the evaluation of the conduct of the first respondent by the Standing Committee and the Full Court was so arbitrary, capricious or irrational that it warranted interference by the Division Bench. Thus, the inevitable conclusion is that the Division Bench clearly exceeded its jurisdiction by interfering with the decision of the Full Court.?

(Emphasis supplied by us)

42. In *Pyare Mohan Lal Vs. State of Jharkhand and Ors (supra)*, a three Judges Bench of the Honble Supreme Court while considering the case of compulsory retirement of a Judicial Officer made the following observations:

œ29...The case of a judicial officer is required to be examined, treating him to be different from other wings of the society, as he is serving the State in a different capacity. The case of a judicial officer is considered by a committee of Judges of the High Court duly constituted by the Honble the Chief Justice and then the report of the Committee is placed before the Full Court. A decision is taken by the Full Court after due deliberation on the matter. Therefore, there is hardly any chance to make the allegations of non-application of mind or mala fides.?

43. In *High Court of Judicature at Patna Vs. Shiveshwar Narayan and Anr (supra)* {Civil Appeal Nos. 6103 and 7372 of 2005 decided on 22nd September 2011}, a Judicial Officer was denied extension of service beyond the age of 58 years by the Patna High Court. He challenged the decision of the Patna High Court by filing a petition under Article 226 of the Constitution. A Division Bench of the Patna High Court allowed the writ petition filed by the Judicial Officer and quashed the Communication refusing extension of service to the petitioner and directed the High Court on its administrative side to re-evaluate the case of Judicial Officer of extension of service upto the age of 60 years. The High Court of Patna filed an appeal against the Division Bench judgment before the Honble Supreme Court. The Honble Supreme Court while allowing the appeal filed by the High Court made

the following observations:-

20. The present case is a case where the Division Bench embarked upon exercise of examining each complaint and material against the Judicial Officer to find out the correctness of the decision of the Full Court which was legally not permissible. The weight of the material is not capable of re-assessment while sitting in judicial review over such decision. Even if, some other view is possible on the material that was considered by the Evaluation Committee and the Full Court to evaluate Judicial Officers case for extension of superannuation age to 60 years, in our opinion, that did not justify interference in the decision of the Full Court which was founded on material and relevant considerations.

21. We may observe that there is not even an iota of allegation of bias or mala fides-nor it could have been against the decision making authority.

22. The Division Bench of the High Court was, thus, clearly in error in interfering with the decision of the High Court on administrative side in not extending the benefit of enhancement of retirement age of the Judicial Officer from 58 to 60 years.?

44. Having considered the rival contentions of the contesting parties, the materials on record and the scope of judicial review in the light of the above referred judgments of the Honble Supreme Court, we are of the view that the proceeding against the petitioner was held in accordance with law. The petitioner was given full opportunity at all stages to defend himself and the finding of guilt in respect of charges alleged against the petitioner by the Enquiry Officer and the disciplinary authority is based on cogent evidence brought on record in course of departmental proceeding.

45. It is indisputable that the impugned Notification in exercise of powers conferred under Rule 14(ix) of the Rules, 2005 was issued by the State Government on the recommendation of the High Court. The High Court had, before making such recommendation considered the materials on record. The matter had been scrutinized at several levels. First, by the Standing Committee and then by the Full Court.

46. It is well settled that when the charges are proved, as has happened in the instant case, in exercise of judicial review, the Court can interfere with punishment imposed only when it is found to be totally irrational or is outrageous in defiance of logic. The punishment of compulsory retirement of the petitioner in the facts of the present case on account of proved misconduct cannot be treated as arbitrary, capricious, irrational or disproportionate so as to shock the conscience of the Court.

47. In view of the above, we do not find any cogent reason to interfere with the impugned order. The Petition is devoid of any merit and is, accordingly, dismissed.

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