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Kumar Satish Chandra Sinha Vs The Hon'ble High Court of Jharkhand and Others

Writ Petition (S) No. 332 of 2009

Court: Jharkhand High Court

Date of Decision: Oct. 6, 2010

Acts Referred:

Constitution of India, 1950 â€" Article 136, 142, 226, 235, 32#Jharkhand Service Code, 2001

â€" Section 74

Hon'ble Judges: Bhagwati Prasad, C.J; J.C.S. Rawat, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

- 1. Heard the learned Counsel for the parties.
- 2. The present writ petition has been filed by the Petitioner challenging the order as contained it. Annexure 3 to the writ petition dated 17.7.2008 issued by the Respondent No. 4 whereby the Petitioner has been compulsorily retired from

Subordinate Judicial Service prematurely upon completion of 50 years of age u/s 74(b)(2) of the Jharkhand Service Code.

3. The Petitioner was appointed as a Probationer Munsif at Civil Court Hajipur (Vaishali). The Petitioner had been working at Latehar as ACJM at the time when he was: compulsorily retired from service. Learned Counsel has

contended that the powers under Rule 74(b)(ii) of the Jharkhand Service Code does not confer any unfettered or unbridled right upon the appointing authority to prematurely retire an. employee/officer on the ground that he has

completed 50 years of age. It was further contended that to conclude that the Petitioner is liable to be retired prematurely in public interest would mean that his continuance or retention in service is not in public interest. Learned Counsel

further contended that the character role of the Petitioner is unblemished and he has got adverse entries in his service record. So he is not liable to be singled out to suffer premature retirement.

4. Learned Counsel appearing on behalf of the Respondents, on the other hand, contended that several allegations of different nature were levelled against the Petitioner at different places and he was also transferred in mid term. He was

given chance to emend his conduct and improve his efficiency; in the entire service period, a series of allegations of different natures with regard to different cases of extraneous considerations forming caucus with certain lawyers as well as

allegations of moral turpitude had been received against the Petitioner in Patna High Court as well as this Court and upon evaluation of an overall performance of the Petitioner, after attaining the age of 50 years the Petitioner was retired

5. It is a settled position of law as has been held in die case of Union of India (UOI) Vs. Col. J.N. Sinha and Another, , that the appropriate authority has the absolute light to retire a Government servant if it is of the opinion that it is in the

public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion

that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed

or the decision is based on collateral grounds or that it is an arbitrary decision. Compulsory retirement involves no civil consequences. Various considerations would weigh with the appropriate authority while exercising powers vested in

the appropriate authority. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that an officer who is holding the

post is not inefficient, but the appropriate authority may prefer to have a more efficient officer. It may further be mat in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is

no denying the fact that in all organizations and more so in Government organizations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 74(b) hold the balance between the rights of the

individual government servant and the interests of the public. Government is given power to energize its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.

6. Counter affidavits have been filed on behalf of the Respondents stating therein that since Petitioner $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}_{\dot{c}}$ s induction into judicial service several allegations against him had been made at different places and he was transferred in mid term

also and steps were taken by giving him chance to amend his conduct and improve his efficiency. Several complaints were made to High Court of Patna and this Court of different nature against the Petitioner. A series of allegations or

different nature were made against the Petitioner with respect to disposal of the cases on extraneous consideration and forming caucus with certain lawyers. There was also a complaint by one Prayag Singh, ex Principal of Patna Law

College, Patna that he attempted to commit his murder. The enquiry ended due to the death of the allegation writer.

7. The confidential reports from 1987 to 2007 have been filed on behalf of the Petitioner along with the rejoinder to the counter affidavit wherein the remarks made are as under:

Year Name of Reporting Knowledge Prompt Quality of Supervision Efficl- Reputation Attitude Relationship Not Result

Judgment Officer/ ness in Judgment of Business ency towards with bar &

Hon"ble Disposal College bublic

compulsorily and prematurely.

use

1987- Hajipur Mr. Ram Oridnary Yes Yes Yes No ... Most Ordinary

88 Avtar Complain

Singh

1988- Hajipur Mr. C.S. Sastisfac- Yes Yes Satisfactor,

1989- Hajipur Mr. C.S. avarage agarage Yes avarage 90 Lal tory
1990- Dhanbad Mr. S.K.P. avarage Good Yes Yes An Officer of avarage 91 Verma Merit
1991- Dhanbad Mr. S.I.A.I No No Report See details* 92 Raza against
*Poor knowledge of law and procedure, not industires, does not fit for exercise of any enhanced power. His relaion with was not good. He is an officer with had reputation. His integrity is also not on board (Expunged vide file No. XXXV/95/92)
1992- Dhanbad Mr. G.S. Satisfactory Yes Yes No. complaint Well 93 Chobey behaved
1993 Dhanbad Mr. G.S. Satisfactory Yes Yes No. Complaint Good Good Well behaved officer 94 Chobey
1994- Dhanbad Mr. G.S. Satisfactory Yes Yes Well Satisfactory 95 Choubey behaved
1996- Jameshpur Mr. D.N. Good Yes. O.T. Yes Good Sober Well behaved Intellgent and 97 Chakraborty fair Good officer
1977 Jameshepur Mr. Chakraborty Yes OT Satisfactory 98 fair Yes Fair Smart Officer
1998- Jamshedpur Mr. D.N. Fair Yes Yes Fair Sober OT capable of 99 Chakraborty Improvment
1999- Doghar Mr. V. Fair Yes Good Yes Yes Cordial OT capable of 2k Narayan Improvement

2k-2k Doghar Mr. V Sound Yes Good Yes Yes Cordial OT capable of
1 Narayan Improvement
08/03/ Dhanbad Hon"ble Satisfacory Satidfac Satisfactory N.A. Satisf Yes Good Good B Satisfactory
1991 N.S. Rao, tory
30/08/ Jamshedpur Hon"b;e Good Yes B+ Does not Yes Nothing Well No complain A Good Officer
97 P.K. Deo J. arise Heard behaved shapling
2001- Dhanand Mr. A.B. See details
Stekher Against
This Officer has joined in the Judgeship on 27.05.2002, hence remark is given
Hon"ble Zonal Judge Remark Good Officer
2002- Dhanbad Mr. A.B. Good Yes Satisfactory N.A. Yes Yes Good Good Officer
2003 Shekhar
2003- Saraikella Mr. B.K. Under submission
2004 before Hon"ble
Zonal Judge
2004- Saraikella Mr. B.K. Good Yes A (Very Yes Yes Needs Needs B+
2005 Pandey Good) improve improvement
ment
2004- Saraikella Mr. Tarkeshawr Good Yes Yes B+ Yes Yes See detalis See See Detailes B+
2005 Prasad details
Reputation: One ? plication in this regard was received from Vigaliance Cell. Hon"ble High Court and I have submitted vide latter No. 907, dated 12/04/2005
Allegatin regarding his integrity not proved.
Attitude: In General Good (SOme improvemnet required towards subordinate adn collesgues)
2005- Saraikella Mr. Tarkeshwar Under submission

Judge

2006- Latchar Mr. S.K. Good Yes Good Yes Yes Yes Good Good B+

2007 Murari

2006- Latechar Mr. Bijay Good Yes B+ Yes Yes Yes Sober Cordial B+

2007 Kumar humble

Pandit

8. The Honï¿Â½ble Apex Court in the case of Chandra Singh Vs. State of Rajasthan and Another, , held that Article 235 of the Constitution of India enables the High Court to assess the performance of any judicial officer at any time with

a view to discipline the black sheep or weed out the dead wood. This Constitutional power of the High Court cannot be circumscribed by any rule or order. The observations made by the HonïÂ;½ble Apex Court in Paragraph 43 and 44

of the judgment in this case are as under:

43. Issuance of a writ of certiorari is a discretionary remedy See Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others, . The High Court and consequently this Court while exercising their extraordinary

jurisdiction under Article 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so. In a given case, the High Court or this Court may refuse to extend the benefit of a discretionary

relief to the applicant. Furthermore, this Court exercised its discretionary jurisdiction under Article 136 of the Constitution of India which need not be exercised in a case where the impugned judgment is found to be erroneous if by reason

(hereof substantial justice is, being done. See SDS Shipping (P) Ltd v. Jay Container Services Co. (P) Ltd. (2003) 4 Supreme 44. Such a relief can be denied, inter alia, when it would be opposed to public policy or in a case where

quashing of an illegal order would revive another illegal one. This Court also in exercise of its jurisdiction under Article 142 of the Constitution of India is entitled to pass such order which will be complete justice to the parties.

44. We have been taken through the annual confidential reports as against the Appellants. Having gone through the same; we are of the opinion that it is not a fit case where this Court should exercise its discretionary jurisdiction in favour

of the Appellants: This Court in High Court of Judicature at Bombay and Another Vs. Brij Mohan Gupta (Dead) through Lrs. and Another, has also refused to exercise its discretionary jurisdiction in favour of the Appellants although the

order of the High Court was found liable to be set aside being not in accordance with law.

9. In the case in hand, it is evident from the foregoing confidential reports of the Petitioner that at one occasion, his integrity was withheld in the year 1991-92. One adverse remark was given which was expunged from the record. Thus,

the above chart of his performance coupled with the other factors enumerated in the counter affidavit as stated above, reveals that the Petitioner had not improved himself during his service and his performance was not upto the mark. The

Hon"ble Apex Court in a number of decisions has held that there is difference between judicial service and other services. The public at large has high expectation from the judiciary. If any deadwood remains in the judicial service, the

entire Judiciary is blamed for the misconduct of the said deadwood. Keeping in view the rigours and the difficulties faced by the Judiciary in discharge of their duties, in the case of All India Judges" Association Vs. Union of India and

others, , the Apex Court issued a direction to all the States and the Union Territories to enhance the age of superannuation of the Judicial Officers from 58 to 60 years. The Judiciary has been kept as a distinguishable Service by the State

Government in view of the judgment of the Apex Court. Thus, it is also expected from he judicial officers that they should also rise to the occasion to come out to the expectation of the public at large. Hence the order passed by the

Respondents retiring the Petitioner compulsorily does not require any interference by that Court. The decision to retire the Petitioner compulsorily was taken bona fidely in public interest after evaluation of the overall performance of the

Petitioner.

10. In view of the aforesaid facts and circumstances of the case, and the law laid down by the Hon"ble Apex Court, the order impugned in this writ petition does, not call for any interference and no relief can be granted to the Petitioner.

This writ petition is devoid of any merit and is fit to be dismissed.

This Writ pwtition is accordingly dismissed.