Bipin Kumar Prasad Vs The State of Bihar and Others

Court: Patna High Court

Date of Decision: Dec. 17, 1999

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: (2000) 1 PLJR 686

Hon'ble Judges: Shiva Kirti Singh, J; Aftab Alam, J

Bench: Division Bench

Advocate: S.S. Asgar Hussain and S.S. Nayer Hussain, for the Appellant; Dr. S.N. Jha and S.C. Mitra for the High Court and Dr. Mayanand Jha for the State, for the Respondent

Final Decision: Dismissed

Judgement

Shiva Kirti Singh, J.
The petitioner in this case was a Subordinate Judge in Bihar Judicial Service and he is aggrieved by impugned orders

contained in Annexure 1, 2, 3 and 4 which have the effect of removal of petitioner from service as a consequence of departmental enquiry in which

the enquiry officer exonerated the petitioner of all the four charges but the Standing Committee of the High Court, pursuant to a second show

cause notice found three of the four charges proved against him on the basis of materials available on the record. As per decision dated 28.9.1996

contained in Annexure-3, it was resolved by the Standing Committee that the enquiry report be rejected and the petitioner be awarded the penalty

of removal from service. On the basis of Annexure-3, the Registrar General of the High Court vide his letter dated 4.10.1996 as contained in

Annexure-4 recommended to the Government of Bihar in the department of Personnel and Administrative Reforms to issue necessary orders for

removal of petitioner from Bihar Judicial Service. In view of recommendation of the High Court, the order of removal from service was notified by

Annexure-1 dated 17.4.1998 issued under the orders of Governor, Bihar and this order was directed to be communicated to the petitioner by the

Registrar General of the High Court through a letter dated 24.4.1998 contained in Annexure-2. The facts necessary for deciding this case, in brief,

are as follows. The petitioner was selected and appointed to the Bihar Judicial Service on the basis of 15th Judicial Service Competitive

Examinations and he joined the service in the cadre of Munsif on 10.4.1975. After 10 years of service, he received a time bound promotion to the

Junior Selection Grade and in April 1989, he was promoted to the rank of Subordinate Judge and posted at Jehanabad. In May 1992, he was

transferred and posted as Subordinate Judge II at Danapur.

2. In the month of July 1993, the petitioner was allegedly involved in a road accident while driving a motorcycle in the night of 22.7.1993 in an

intoxicated state in which a pedestrian was knocked down and injured by him. It appears that some other charges were also available against the

petitioner and hence, in contemplation of a departmental enquiry he was placed under suspension by order dated 30.8.1993 (Annexure-9)

followed by a formal departmental enquiry pursuant to a decision of the High Court, Patna to that effect dated 17.6.1994 contained in Annexure-

11.

3. The memorandum contained in Annexure-11 contains articles of charges. A perusal of the articles of charges reveals that the petitioner faced

four charges in all. Charge I is to the effect that while posted as Sub Judge, Danapur, the petitioner had knocked down a pedestrian in the night of

22.7.1993 near Nasariganj outpost while driving motorcycle had caused injuries to the pedestrian as a result a large crowd of the local people

assembled at the place of accident, surrounded him and allegedly assaulted to petitioner. Charge II is connected to the first charge and reveals that

at the time of accident the petitioner was allegedly in a complete state of intoxication so much so that he did not even recollect his telephone

number, as a result of which the police of Nasariganj post had to take him to the residence of Shri R.N. Sharma, another Sub Judge at Danapur

for his identification and thereafter, he was carried to his residence in the car of a person who happened to be present on account of said

occurrence. Charge III relates to his alleged objectionable behaviour in court room and complaints to the effect that two employees of Danapur

civil court worked as touts of the petitioner. Charge IV alleges that the petitioner on several occasions delivered judgments without having dictated

them, for example in Title Suit No. 415/87 he had delivered judgment on 18.3.1993 but when the then District Judge, Patna in his surprise visit to

Danapur on 30.3.1993 asked for the said judgment the same was not made available to him on the ground that the judgment was not ready.

Similarly, in Title Suit No. 167/84 judgment had been shown to be delivered on 7.4.1993 but on 17.4.1993 the said was not made available to the

then District Judge, Patna during his surprise visit and Shri Ramjee Puri, stenographer attached with the petitioner, told the District Judge that the

judgment had not been dictated till then.

4. In course of departmental enquiry, the petitioner submitted his show cause contained in Annexure-12 before the District and Sessions Judge,

Patna-cum-Enquiry Officer and denied the charges. It is relevant to note that with regard to the charge no. IV the petitioner"s show cause was to

the effect that the judgment in Title Suit No. 415/87 was ready while it was delivered on 18.3.1993 and similarly, the judgment of Title Suit No.

167/84 was also ready on 17.4.1993.

5. From the enquiry report contained in Annexure-14 it is apparent that as many as six witnesses were examined on behalf of the administration

which included the then Subordinate Judge, Danapur Shri Rama Nand Sharma (AW 1), the then Subordinate Judge-cum-Additional Chief Judicial

Magistrate, Danapur, Shri Suresh Prasad (AW 3), the then Subordinate Judge, Danapur, Shri Syed Zafar Hussain (AW 4) and the then District

and Sessions Judge, Patna, Shri A.P. Choudhary (AW 2). Some documents were also placed in evidence on behalf of administration which are

exhibits 1 to 4. The petitioner did not examine any witness but filed a written argument. The enquiry report further shows that there was evidence

on record with regard to Charge Nos. I, II and IV but the enquiry officer looked for strict proof as in a criminal trial and held the charges as not

proved on the ground that the witnesses were not the eye witnesses of the alleged accident and no record was produced to show that there had

been such an accident. Charge IV was found as not established inspite of supporting evidence by the then District and Sessions Judge, Patna and

his duly proved report sent to the High Court on 5/7.5.1993, only on the ground that in this matter the then District and Sessions Judge had not

asked for any explanation from the petitioner earlier.

6. As noticed earlier the High Court gave another show cause notice to the petitioner dated 22.7.1996 (Annexure-15) with which a copy of the

enquiry report was enclosed and it was pointed out that there was sufficient evidence on record to prove Charge Nos. I, II and IV and, therefore,

petitioner was called upon to show cause as to why the enquiry report be not rejected and in disagreement with the conclusion of the enquiry

report, he be not awarded the penalty of dismissal from service. The petitioner submitted his show cause vide Annexure-16 and thereafter, the

Standing Committee of the High Court consisting of seven Judges including the Chief Justice, took the decision contained in Annexure-3 whereby

the enquiry report was rejected and after considering the materials on record, the Charge Nos. I, II and IV were found to be proved and it was

resolved that the petitioner be awarded the penalty of removal from service. As noticed earlier, the aforesaid decision was followed by

recommendation contained in Annexure-4 and the impugned orders contained in Annexures 1 and 2 which led to removal of petitioner from

service.

7. On behalf of the petitioner, the first point urged to assail the impugned orders was that there was no material on record on the basis of which the

disciplinary authority could have taken a view different than that of the enquiry officer.

8. After going through the enquiry report, I am satisfied that the same is not at all satisfactory either in dealing with the materials on record or in

adopting the approach of looking for proof of charges by direct and best evidence beyond reasonable doubt as required in a criminal trial. It is well

established in law that in a departmental action the findings should be based upon preponderance of probabilities and there should be some

evidence of probative value, even if hearsay, on the basis of which a reasonable mind may find the charges to be established on the yardstick of

preponderance of probabilities.

9. From the records of the case I am satisfied that the present case is not one in which it can be said that there is no material on record on the basis

of which the disciplinary authority could have taken a different view than that of the enquiry officer.

10. In fact, the substance of the argument on the aforesaid point appears to be that there could have been better and direct evidence available for

proving the charges against the petitioner and since such evidence was not adduced in course of enquiry hence the view taken by the enquiry

officer should not have been rejected by the disciplinary authority. In my view, the aforesaid argument suffers from conceptual infirmity. In matters

of disciplinary action, as pointed earlier the yardstick for appreciating evidence is not that of proof beyond reasonable doubt and once the

disciplinary authority has come to its own conclusion on the basis of materials on records, it is not for this Court in exercise of its writ jurisdiction to

act as a court of appeal and the role of this Court is only to see the correctness of decision making process and that the findings of the disciplinary

authority are based upon some evidence as against no evidence. As indicated earlier, I do not find this to be a case of no evidence.

11. The next point urged on behalf of the petitioner was with regard to Charge No. IV. It was submitted on behalf of the petitioner that on the

basis of statements in paragraph 7 of supplementary affidavit that so far as Title Suit No. 167/84 is concerned, the same was never before the

petitioner for trial and the same was disposed of much earlier by Sub Judge I, Patna on 18.10.1985. It has further been submitted that this

submission in the supplementary affidavit stood admitted as per paragraph 24 of counter affidavit filed on behalf of respondent no. 2 and hence, it

was argued that a part of Charge No. IV was misconceived and based upon un verified and wrong facts and, therefore, the impugned decision

which was based upon Charge No. IV as well should be held to be vitiated in law.

12. The aforesaid submission created sufficient confusion at the time of hearing of this writ application and, therefore, on the direction of this Court,

the respondents produced before us the original court diary of the court of Subordinate Judge II, Danapur dated 7.4.1993 as well as the original

records of Title Suit No. 167/84. The original records were perused by us and it transpired that Title Suit No. 167/84 was running in the cause list

of the petitioner at the relevant time as appears from the original diary but as the order sheet of this suit discloses it was not ready for disposal in

April 1993 and it was, in fact, disposed of finally on 16.11.1994 on the ground of non-prosecution and default.

13. Thus, clearly a part of charge No. IV relating to non-delivery of judgment in Title Suit No. 167/84 appears to have been levelled against the

petitioner against the actual facts on record. On this question, on behalf of the respondents it was argued firstly that this question should not be

gone into by this Court in view of the fact that the petitioner had not raised such a plea of fact in either of his show cause filed before the enquiry

officer and before the disciplinary authority. It is a fact that the petitioner''s stand in his earlier show cause before the authorities was that he had, in

fact, delivered the judgments in both the suits on the relevant dates. Such stand of the petitioner before the authorities precluded further enquiry into

factual aspect of the matter and hence, there appears to be substance in the contention of the respondents that no such issue based on new facts

should be permitted to be raised in this writ application. However, the second contention of the respondents on this aspect of the matter appears to

have greater force that even if a part of 4th Charge is acceptable as misconceived and, therefore, not proved, it shall not have any effect upon the

outcome of this writ application because it is an established proposition of law that in a departmental enquiry if the delinquent employee is

exonerated on some charges and at the same time, if some of the charges are established, the order of dismissal/removal cannot be quashed if the

order may be supported on any finding as to substantial misdemeanour for which the punishment can be lawfully imposed.

14. In support of the aforesaid proposition, reliance was placed on behalf of the respondents on a Division Bench decision of this Court in Girija

Nandan Singh vs. the State of Bihar and others, reported in 1987 PLJR 95. This submission appears to be well founded as will appear from

following extract from paragraph 16 of the said judgment:

It is well known that even if some of the charges are established the order of dismissal/removal cannot be quashed in exercise of powers under

Article 226 of the Constitution. In the case of State of Orissa Vs. Bidyabhushan Mohapatra, it was pointed out as follows :

If the order may be supported on any finding as to substantial mis-demeanour for which the punishment can lawfully be imposed, it is not for the

Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if

the findings of the enquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order

because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice.

Again in the case of Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh, the same view was reiterated.

15. The aforesaid view has further been reiterated in the judgment of the Supreme Court in the case of Union of India (UOI) Vs. Parma Nanda, .

16. In the facts of the present case, I am satisfied that the order of removal can be supported even on findings with regard to the Charge Nos. I, II

and defect, if any, in part of charge No. IV relating to Title Suit No. 167/84 is of no consequence and does not help the case of the petitioner.

17. The last submission on behalf of the petitioner was that even if the findings with regard to the proved charges be accepted as valid, the

punishment of removal from service should be held as disproportionate to the gravity of such charges. In reply to this submission, it was contended

on behalf of the respondents that petitioner was a Judicial Officer and hence, in his case the selection of punishment has to be dependent upon

many other considerations which may not be relevant in the case of other employees of the Government. This argument was further elaborated by

placing reliance upon several judgments of the Apex Court relating to disciplinary cases against Judicial Officers. In the case of Daya Shankar Vs.

High Court of Allahabad and Others through Registrar and Others, , the order of removal from service on the charge of use of unfair means in an

examination was maintained by the Supreme Court on the ground that the conduct of that petitioner was undoubtedly unworthy of Judicial Officer

and that Judicial Officers cannot have two standards, one in the court and another outside the court; they must have only one standard of rectitude;

honesty and integrity; they cannot act even remotely unworthy of the office they occupy.

In the case of C. Ravichandran Iyer Vs. Justice A.M. Bhattacharjee and Others, , the Apex Court in paragraph 21 of the judgment expressed itself

thus:

Judicial Office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required

to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in

judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the

efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ

large for judicial officers to emulate an imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of

conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court

itself. It is, therefore, a basic requirement that a Judge''s official and personal conduct be free from impropriety; the same must be in tune with the

highest standard of propriety and probity. The standard of conduct is higher than that expected of a lay man and also higher than that expected of

an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others.

Therefore, the Judge can ill afford to seek shelter from the fallen standard in the society.

Similar view and sentiments have been expressed with regard to punishment in the case of a Judicial Officer in the case of High Court of Judicature

at High Court of Judicature at Bombay through ite Registrar Vs. Udaysingh Nimbalkar and Others, .

18. Hence, in my view, the third and the last submission on behalf of the petitioner also cannot be accepted and in the facts of the case I am not

persuaded to hold that the judgment of removal from service is disproportionate to the charges found proved against the petitioner. Thus, I find no

merit in this writ application and it is accordingly dismissed. However, in the facts of the case, there shall be no order as to costs.

Aftab Alam, J.

I agree.