

(2003) 05 PAT CK 0080

Patna High Court

Case No: C.W.J.C. No. 2688 of 2002

Chandra Deo Jha @ Chandra Deo
Jha Vikal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: May 14, 2003

Acts Referred:

- Constitution of India, 1950 - Article 14, 16(1), 226
- Essential Commodities Act, 1955 - Section 7
- Penal Code, 1860 (IPC) - Section 302

Citation: (2003) 3 PLJR 540

Hon'ble Judges: R.S. Garg, J; B.N.P. Singh, J

Bench: Division Bench

Advocate: Y.V. Giri and R.K. Giri, for the Appellant; R.K. Dutta and Raj Nandan Prasad, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.S. Garg, J.

By this petition under Article 226 of the Constitution of India the Petitioner seeks to challenge the remark made by the Inspecting Judge while the Petitioner was posted at Deoghar and for quashing the order of the High Court of Patna, which was communicated by the learned Registrar General of the High Court vide letter No. 47/XIX-28-01/Apptt. dated 3rd January, 2002 informing the Petitioner that the High Court was pleased not (sic) allow the benefit of extension of the retire-ment age from 58 years to 60 years.

2. The Petitioner seeks the further relief to command the Respondents for (sic) confirmation in service and promotion a(sic) benefit of extension in age of

superannuation in accordance with the judgment (sic) the Supreme Court.

3. The question of law raised in (sic) graphs 2 (a), (b), (c), (d), (e), (f), (g), (h) and (i) in fact all relate to the extension (sic) the superannuation age, not even a sing(sic) ground is in relation to the adverse entr(sic) or confirmation or promotion. Be that as may, we propose to consider the merits (sic) the matter.

4. The Petitioner joined the Bihar (sic) dicial Services and was appointed as S(sic) ond Class Judicial Magistrate in Ma(sic) 1975. He joined at Saraikela, Distri(sic) Singhbhum on 3.4.1975. Later on pow(sic) of First Class Judicial Magistrate w(sic) conferred upon him. Subsequently he (sic) transferred to Madhubani as Judicial M(sic) istrate First Class in December, 1977. (sic)ording to the Petitioner during that per(sic) he did not earn any adverse entry nor (sic) such entry was communicated to him. Dining at Madhubani Petitioner's wife's (sic)r was married on 18.6.1977 to one (sic)ocate practicing at Madhubani. The (sic)tioner brought this fact to the notice of High Court and the Petitioner thereaf-was transferred to Rajmahai, District-(sic)thal Pargana. The Petitioner after the (sic)d orders requested the High Court for a (sic)xt stay, which was allowed but, how-(sic), the Petitioner joined at Rajmahai in 1980. Up to this period according The Petitioner he did not earn any ad(sic) remark. In 1983 the Petitioner joined kishanganj as Munsif, thereafter he was (sic)sferred to Barh, District Patna in De-(sic) 1985. In 1983 while he was at (sic)anganj his work etc. were inspected the then Inspecting Judge and nothing (sic)ng was found. In the year 1985 his (sic)rt was again inspected and nothing (sic)erse was found against him. According The Petitioner vide Memo. No. 123/C (sic)ed 1.5.1984 for the year 1979-1980 (sic) he was posted at Madhubani he (sic)eived the adverse communication stat-that there was some adverse reports (sic)ding his integrity. The Petitioner sub-(sic)d his representation on 7.6.1984 to (sic)nge the remarks. Neither the docu-(sic)s were supplied to him nor the High (sic)t passed any orders on Petitioner's (sic)sentation.

5. Vide letter No. 26/C dated 23.6.1984 District Judge, Purnea required the Petitioner to submit his explanation to the Court in respect of the adverse re-(sic) the year 1976-77, 1977-78 and (sic)-1980. For the year 1976-77 the re-rere-"Out turn of work is rather for 1977-78 the adverse entry was- out turn of work was found poor in all quarters". The extract from C.R. of 1980 was-"There were some adverse reports regarding his integrity". Acting to the Petitioner he submitted his destination on 9.8.1984 but orders on his explanation was not communicated to him and later on the Petitioner was confirmed as Munsif. The Petitioner submits that the, adverse entry should be communicated to the incumbent immediately so that he can make an effective representation. He also submits that no orders was passed on his representation. According to him he joined at Barh in 1986 where he was made S.D.J.M. and powers u/s 7 E.C. Act were conferred upon him. From there he was transferred to Motihari in June, 1987. No adverse remarks were communicated during this period. The Petitioner joined at Motihari as Sub Judge in 1987. His work

was inspected in the year 1988 and nothing adverse was found against him. The Petitioner thereafter joined as Registrar (Judicial), Purnea in 1989. He was appointed as Sub Judge-cum-Assistant Sessions Judge-cum-Additional Chief Judicial Magistrate, Purnea in January, 1991. His Court and office were inspected by the then Inspecting Judge in 1991-92 but no adverse remarks were communicated to him after the said inspection nor any other adverse remarks was communicated during his stay at Purnea. The Petitioner was thereafter transferred to Munger as Sub Judge in the month of May, 1992. The Petitioner joined at Munger in June, 1992. His Court and office were inspected and no adverse remarks were communicated. While the Petitioner was at Munger his confidential report ending 31st March, 1992 containing an adverse entry that- "He did not appear to have maintained a very good relation" was communicated to him. The Petitioner submitted his representation on 15.12.1992. The said representation was allowed by the High Court. Thereafter the Petitioner joined at Deoghar in June, 1994 as Chief Judicial Magistrate-cum-Assistant Sessions Judge-cum-Sub Judge. There again he was served with letter No. 155 dated 10.2.1995 of Registrar (Inspection) High Court of Judicature at Patna calling for an explanation as to under what circumstances the Petitioner granted bail to one Kailash Yadav in Munger Mufassil P.S. Case No. 198/93 u/s 302 I.P.C. as incharge Court of Chief Judicial Magistrate. The Petitioner submitted his explanation under letter No. 38 dated 24.02.1995 alongwith certain enclosures. He submitted that the material available on the record were showing non-involvement of said Kailash Yadav and he was justified in granting bail. He submits that orders on his representation were not communicated to him but the Petitioner's confirmation was kept under consideration. After availing the annual vacation when the Petitioner resumed his duties, he was served with a notification No. 352A dated 27th September, 1995 wherein he was divested of his powers of Chief Judicial Magistrate. On 10.11.1995 he was again served with another memo, inter alia directing that his powers of Assistant Sessions Judge were also withdrawn. The Petitioner filed representation dated 21.11.1995 against the said notification alongwith certain annexures. The said representation was rejected and the Petitioner was communicated the decision vide Memo. No. 20 dated 30.7.1996. The Petitioner thereafter filed a review against the said notification and rejection of his representation. According to the Petitioner the High Court after considering the review petition conferred criminal powers upon Petitioner. According to the Petitioner conferral of the powers tantamount to cancellation of notification No. 352A dated 27th September, 1995.

6. While at Deoghar the Petitioner was communicated with three adverse remarks made by the then District Judge for the year 1994-95, 1995-96 and 1996-97. Against the said remarks for the year 1994-95 the Petitioner made a representatic with copies of letters and explanation pointing out the unjust, bias and vindictive attitude of the District Judge. According to the Petitioner though there were advera remarks but that has nothing to do with his integrity. The Petitioner says that he prayer for

his transfer but the High Court rejected the application. The adverse entry of 1995-96 were not challenged by him in view of the earlier rejection of his representation. In paragraph 25 the Petitioner says that the Reporting Officer used to pass remarks dishonestly. Even when we are referring to the facts of the matter we are really aggrieved by the language used by the Petitioner in paragraphs 23 and 25 of this writ application. In paragraph 23 he has made allegations against the Reporting Officer that the said Reporting Officer was thriving to destroy the Petitioner (sic) career by selfish, bias, vindictive, insensitiveness and wrong recording. In paragraph 25 he has stated that the Reporting Officer was making dishonest remarks. It is not expected of a Judicial Officer to use such language while making a representation writing a judgment or raising a plea in a writ application. A Judicial Officer should know that where his pen should stop writing, one has to use the ink in his pen are not the venom. The poison sought to (sic) spitted by the Petitioner speaks writ (sic) of his conduct. It appears that" he is trying to throw entire burden on each and every such officer who reported against him.

7. In paragraph 26 the Petitioner says that his work was inspected in October 1997 and the adverse entry "below age" and "does not carry good reputation about honesty and integrity besides judicious approach" were communicated to him. According to the Petitioner be (sic) a representation vide letter No. 19 (sic) 17.3.1998 stating that during (sic) inspection he was not interrogation was not given an opportunity to the complaints. In paragraph 27 he says that that time no adverse remarks were (sic) directed against him and without any cogent reason the Petitioner was hanged ex-parte the time when awards were likely to be given to him by the High Court. We fail to understand the import of this language, whether the Petitioner wants to condemn the Inspecting Judge in making his assessment or he is trying to tarnish the stage of the High Court. The language passed by the Petitioner is not palatable.

8. The Petitioner submitted that no body dared to make any allegations against his honesty and integrity. The remarks made by the Inspecting Judge were because of some misunderstanding prevailed in the mind of the Inspecting Judge or the Inspecting Judge might have been prejudiced by the fact that Petitioner was deprived (sic) of his criminal powers. According to the said adverse remarks deserve to be expunged.

9. In our opinion this question should be closed here itself. The said entries were made against the present Petitioner in 1997, five long years he did not challenge adverse entries but by making a representation. It is also to be noted that said representation was rejected and notice was communicated under Memo. 127(C) dated 27.7.1998. For three and a half years the Petitioner did not challenge the said rejection order and when High Court has refused to grant him respite he came out of his slumber and wants to challenge the said adverse communications. At this distance of time should not permit him to challenge the entries and the rejection of the representation, that relief we refuse to the Petitioner.

10. On 6.10.1997 the Petitioner was (sic) served with the preliminary notice by (sic) memo No. 394-403. He was informed that the Hon"ble Inspecting Judge has observed that, "at the time of my inspection of his Court cross examination of P.W. 2 in T.S. No. 55/1 was going on. His behaviour was found to be unlike a Court while talking to the lawyers and repeating the questions to the witnesses, he did not impress me. Good reputation. According to the Petitioner he again filed a representation on 20.5.1998 stating that there was no expression for his judgment in other trial suits and the same contradicted the remarks in head No. 6 of confidential remarks recorded on 11.12.1996. The said representation was rejected and order was communicated under memo. No. 177 dated 10.10.1998.

11. For the year 1997-98, on 21.4.1998 the Petitioner was again communicated the adverse remarks made in his annual confidential report. The remarks were, "He does not carry good reputation. However, there is no positive materials". Under head No. 8 it was observed, "he needs to improve disposal of suits and cases". The Petitioner filed a representation under letter No. 44 dated 25.5.1998 stating that there was no positive evidence against the honesty and impartiality. He made allegations against the District Judge that he had no courage to go beyond the remarks passed by the Inspecting Judge. According to the Petitioner the annual confidential remarks recorded on 21.4.1998 was expunged. When the Petitioner was at Deoghar some letter was written against the then District Judge, Mr. Ghanshyam Prasad. According to the Petitioner the District Judge presumed that the said letter was written as a result of conspiracy between B.K.R Kashyap (C.J.M.), B.N. Saran (Sub Judge) and J.L. Choudhary (ADJ). He further said that said Ghanshyam Prasad, who was close to the Inspecting Judge from before created situation against the Petitioner and made the Inspecting Judge write against all four including the Petitioner. According to him the Inspecting Judge misusing the administrative power made remarks against all the four officers relating to their integrity. We fail to understand that how low a Judge after his retirement should go. The language used by this Petitioner puzzles us, it disturbs us and in fact creates an apprehension in our mind that the Petitioner has come to point that come what may none can do anything against me and I can speak anything bad against anyone, the manner in which he is talking bad against the District Judge and a sitting Judge of this Court would show his understanding. We should only refer to the Biblical words saying-O my father in Heaven, excuse them because they know not what they are doing". Should a Judge after the retirement feel so aggrieved that forgetting all the decencies and mannerism he must make such filthy and unpalatable allegations.

12. According to the Petitioner he was transferred from Deoghar to Khagaria as Sub Judge in May, 1998. He joined there on 1st June, 1998 and took charge of the Court of Chief Judicial Magistrate and Assistant Sessions Judge, Khagaria. His grievance is that he was neither confirmed, nor promoted while officers junior to him were confirmed and promoted. He filed review of his representations vide letter No. 131/99 on 7.6.1999 referring to his earlier representations. Thereafter the Petitioner

was served with letter No. 554 dated 5.4.1999 by the Registrar (Vigilance) calling explanation as to how the Petitioner passed the order dated 19.8.1998 in favour of accused Ram Sangahi on the submission by prosecution without verifying the contentions from the records in Parbatta Rs. Case No. 39/88. The Petitioner submitted his explanation under letter No. 135/ 99 dated 16.6.1999. According to the Petitioner despite all plausible explanation no orders on his representation were communicated. The Petitioner on basis of this presumes that his representation/explanation was accepted.

13. The Petitioner again filed his representation for his promotion vide letter No. 292 dated 16.11.1999 but the same was rejected as per communication by memo No. 173 dated 24.2.2002.

14. The Petitioner while posted at Khagaria was served with adverse remarks made by the learned District Judge for 1999-2000. The remarks under Head No. 5 was "No. His general reputation has been bad". A detailed report was also given that in what manner the Petitioner had worked. Under Head No. 9 the re-marks were, "Usually passes cryptic orders without supporting them by sound reason. Lacks administrative control over his office". The comments under Head No. 9 were, "Average, except in the matters stated at columns 5 and 8". The Petitioner filed a representation dated 7.8.2002 against the said remarks. He also made a request to the High Court for supply of the complaints, if any, but nothing was supplied to him up to the date of his representation. He submits that the Reporting Officer made a negative report in column No. 5 by giving misconceived illustration and after concealing related facts, which wa(sic) within the knowledge of the Reporting Officer. In the writ application the Petitioner says that the Reporting Officer was with malice due to his mind was blurred irrational thinking, hence his action became faulty and irrational. He further Says that his (Reporting Officer) remarks faulty, misconceived, unfair, rather maland(sic) irrational and liable to be wholly expurged. The Petitioner says that nobody doub(sic) his integrity. In paragraph 38, the Petitioner further says that the faulty remarks of Reporting Officer exposes him that he (sic) bias, vindictive and has some persons (sic)nces against the Petitioner. According to him the service record of the Re(sid)ound Officer would show that he himself (sic) of questionable integrity and was im(sic)ely transferred from Khagaria to (sic)in having no good reputation at (sic)ria. Ilio Petitioner .says that his representation was not timely decided, but his sentation dated 7.8.2000 was later.

15. The Petitioner thereafter filed rep-nlation vide letter No. 66 dated (sic)5.2001 for promotion. The Petitioner says (sic)his representation still remains unde(sic) It is submitted by him that the District Judge, Deoghar was vindictive, cre(sic) situations against him and prejudiced (sic) Inspecting Judge and created misun(sic)-landing to destroy the Petitioner"s ca(sic) but could not dare to touch him, his (sic) (sic) rity. In the self-assessment the Petitioner says that he had been and was an(sic)t bold and fearless Judicial Officer (sic) anding good reputation wherever he (sic) posted. The

Petitioner has also given (sic) the examples of his work and says that (sic) was served with adverse remarks (sic) by Shri S.K. Sinha, the learned (sic) and Sessions Judge, Khagaria in (sic) confidential report for 2000-2001, (sic) remarks were, "His past reputation has (sic) bad. He should improve his reputa-(sic) and integrity. In Gogri Maheshkhunt (sic) Case No. 181/98, G.R. Case No. 923/ (sic) spite materials available in C/D, cog(sic) e was not taken against some of the (sic) accused". In paragraph 8 the remarks were, "He sits in the Court in half (sic) bush shirt with black coat and gown (sic) band. A.P.P. does not appear in Court (sic) ess(sic) Under head No. 9 the adverse (sic) was, "He is a courteous officer of ige merit. But he lacks control "over (sic) staff". According to the Petitioner he (sic) itted his representation under letter (sic) 106 dated 19.7.2001 stating that the remarks were perverse. It was also submitted that the Reporting officer lacks knowledge of Law. He states in the petition that the remark in Head No. 9 was false due to the poor vision, as recently his (Reporting Officer"s) eyes were operated and was suffering from serious eye infection and wearing coloured spectacles. The Petitioner further says that it is evident from his letter No. 15(c) dated 20.4.2001 that a man of defective vision can only dictate apparently against the facts on record. According to the Petitioner the remarks negates fairness and leads to arbitrariness and malafides and are liable to be expunged. He says that the Reporting Officer himself was an officer of doubtful integrity as he was denied extension due to which he became sad and wrote adverse remarks against all the officers.

16. According to the Petitioner his Court was inspected on 16.10.2001 and no adverse entry was communicated to the Petitioner. The Petitioner says that Petitioner has been wrongly ignored althrough, promotion has been wrongly denied to him and extension is being refused to him for no good grounds.

17. According to the Petitioner the assessment and evaluation of the service of the Petitioner has not legally and fairly been done rather the evaluation and assessment has been done arbitrarily, malafide and without cogent maintainable evidences after, ignoring the observations of the Supreme Court. According to the Petitioner the adverse entries of long distance have lost their efficacy because thereafter the Petitioner was granted promotion. According to the Petitioner the adverse entries of few years might have been the basis for communication and he had been refused promotion and extension. According to the Petitioner the arbitrary fixation of date of confirmation and delay, is against the service rules and violative of Articles 14 and 16(1) of the Constitution. The Petitioner says that while rejecting the representation of an employee reasons are not required to be recorded but it is expected of the authority that it would fairly consider the representation. The Petitioner says that his non-extension is patently illegal and the report of the Evaluation Committee, resolution of the Full Court and communication of the matter to the Petitioner deserve to be quashed and the matter needs reconsideration.

18. The Respondent High Court in its counter has controverted all these allegations they have said that through out the career the Petitioner earned adverse entries. Even when he was a Munsif he earned bad entries. When he was at Deoghar and other places he acted contrary to law. The report submitted by the District Judge and Inspecting Judge would simply show that the Petitioner was not acting in accordance with law, was earning fight with all, was using in-temperate language in the Court and was making absurd allegations against all concerned. In the counter it is also stated that the sum total record of the Petitioner's career would show that the Petitioner is not entitled to any extension. We have heard the parties.

19. During the course of the arguments after referring to the complete service record of the Petitioner and counter filed by the High Court, learned Counsel for the Petitioner submitted that the facts have been given in details and the effect of the facts be considered in accordance with law laid down by the Supreme Court in different judgments. While adopting the arguments raised by the Petitioner's Counsel in C.W.J.C. No. 985/2002 (Satya Narayan Singh v. The State of Bihar and Ors.) he illustrated the case law and submitted that the petition must be allowed.

20. Contending contrary to the submissions learned Counsel for the High Court submitted that the Petitioner's track record would show that he was an officer not fit to be retained in the judicial service. The, High Court was kind enough to allow him to work up to age of 58 years. It was also contended that at no place of posting the Petitioner could earn good reports Although his work was condemned, His judicial approach was criticised and his integrity was suspected. Every time he was required to improve his disposal, to be courteous and show that he was a man above board. It was submitted on behalf of Respondents that the very language used by the Petitioner would show that he is trying to be vindictive and thinking that none can do any wrong to him, now he has started spitting venom. It is also submitted that the loose remarks made by the Petitioner against the District Judges and the Inspecting Judge would speak for them selves. It is contended that the petition was never utile to the system. He was (sic) man of low integrity and was passing orders contrary to law and beyond his ju(sic)diction. It is also contended that the lap(sic) guage in which the writ application has been couched would show that the Petitioner has no respect for any body and simply making serious allegations again every body including an allegation against one of the District Judge that because his operation, his vision was blurred and as he was wearing coloured glasses, he could not differentiate into white and placed He submits that the Petitioner's case has been objectively considered and the tension was rightly refused to him.

21. So far as the legal questions (sic) concerned we have considered all these questions in the matter of Satya Narayan Singh (supra), we need not repeat (sic) sons and reasonings. For the purpose this writ application we rely upon the discussions made by us in the matter(sic) Satya Narayan Singh (supra).

22. So far as the facts are concerned track record of the Petitioner would (sic) that the Petitioner was never of any(sic) to this system. Wherever he was (sic)ed he earned bad remarks. He was (sic) er courteous. He fought with his supe(sic)-He wrote against them. He used bad language against his seniors and went to extent of making dirty and filthy allega- (sic) against the District Judges. Against (sic) of the District Judge he wrote that the district Judge was close to the Inspecting (sic)ge and has illegally influenced him to (sic) an adverse report. Against another district Judge he writes that he had blurred (sic)on Against the third District Judge he says that the said District Judge was a (sic) of low integrity. He makes an allega-(sic) against the District Judge that if exten(sic)was not granted to him the District Judge be presumed to be a man of low (sic) ghity. We fail to understand, by writing this what the Petitioner wants to convey, (sic) present petition even if is drafted by Petitioner himself, it is expected of a (sic)nsel who files a petition before the (sic) Court that he would go through the (sic)ents of the writ application and see temperate language is used in a writ application before the High Court, there is character assassination and the Petitioner being enraged by non-extension does rnalign the character and conduct of (sic) It is expected of an Advocate that (sic)ould not allow the Petitioners to use (sic) language in petitions. After all, law-(sic) are also officers of the Court. If Petitioner-has been settled by Counsel of this (sic) then we must say that the Counsel has been most uncharitable to the Judicial (sic)ars including the Inspecting Judges of Court. A Counsel practising in the High (sic)st any other Court is not an agent of (sic) Client, he is a bridge between the client and the Court. He has to bear the burden of the passersby. He can not simply say that if the other man standing on the other bank of the gap attempts contempt, those attempts he cannot stop. In a case like that the duty of the Counsel is to require such Petitioner to furnish particulars to found such allegations. In the Court of law, one is not allowed to speak bad, one is allowed to tell the truthful version of the things. One can not say bad against all those who are not joined as parties to the writ application. Should we grant permission to all such persons, whose character and conduct have been maligned by the Petitioner to prosecute the Petitioner as the Petitioner is defaming them. However, such a step is not required to be taken in the present matter but we would simply caution the Petitioner to be within his limits and not to forget that he had been a Judicial Officer and a part of this system. Non-extension was on his total assessment, if the assessment was against him then he could challenge the decision making process or the report of the Evaluation Committee or the resolution passed by the High Court but tie can not be allowed to assassinate the character of all others, who wrote against him. In the judicial system the District Judge is obliged to write the reports for and against the judicial officers. The Inspecting Judges are authorised by the Chief Justice to inspect the officer and their courts and give their reports. Such reports are assessment according to the appreciation by the Inspecting Judge. They are not personally biased and prejudiced. They simply report the facts to the High Court. In fact the Inspecting Judges of this Court are discharging their Constitutional duty while making the inspections. The Petitioner if

was aggrieved by the reports then he was obliged to file representation against the adverse entries/ reports and if he was aggrieved by the rejection of the representations then he could challenge the said rejections before an appropriate forum. But after he stands retired he can not be allowed to speak bad against all.

23. So far as the merits of the matter are concerned we have detailed the total track record of the Petitioner. At this stage we must appreciate the audacity and tenacity of Petitioner. On face of number of adverse reports touching his Integrity, working, disposal, behaviour, mannerism and so he will still say that none could touch his integrity or could issue an adverse remark against him or his work Issue an adverse remark against him or his work was very good or his out turn was above average.

24. Taking into consideration the totality of the circumstances, the records of the Petitioner and the reports, we are of the opinion that this petition must be dismissed with exemplary cost of Rs. 10,000/-(Ten thousand) to be paid by the Petitioner within three months .from today.

B.N.P. Singh, J.

I agree.