

(2016) 09 PAT CK 0069

PATNA HIGH COURT

Case No: Civil Writ Jurisdiction Case No.18793 of 2015

Prem Kumar Sharma

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Sept. 21, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2016) 4 PLJR 515

Hon'ble Judges: I.A. Ansari, CJ. and Mr. Hemant Gupta, J.

Bench: Division Bench

Advocate: Mr. Satyabir Bharti, Ms. Aparna Arun and Mr. Alok Chandra, Advocates, for the Respondents No.3 and 4; Mr. Anujit Sinha, A.C. to P.A.A.G.-2, for the Respondents No.1 and 2; Mr. Dinu Singh, Mr. Rajesh Kumar Singh and Mr. Lal Babu Singh, Advocates, for the P

Final Decision: Dismissed

Judgement

Mr. Hemant Gupta, J. - The challenge in the present petition is to an order passed by the State Government on 9th of July, 2014, whereby punishment of dismissal from service has been passed against the petitioner after conducting regular departmental enquiry and on the recommendation of this Court.

2. The petitioner was initially appointed as Probationer Munsif, Sasaram on 08th of January, 1990. In due course, he was posted as 4th Additional District & Sessions Judge at Sub-Division Kishanganj where he worked from 31st of August, 2009 till June, 2013. He was transferred to Buxar Judgeship in June, 2013.

3. The petitioner was charge-sheeted for the reason that he visited Kishanganj from 09.08.2013 to 11.08.2013 and maintained illicit relationship with some unknown women. Such conduct brought disgrace to State Judiciary. He then applied for leave to visit Varanasi, his home town, from 07.11.2013 to 18.11.2013 but went to Kishanganj and maintained illicit relationship with women. Kishanganj is almost 500

km away from Varanasi. The allegation against the petitioner is that when he visited Kishanganj in the month of August and November, 2013, he stayed at Circuit House, Kishanganj, to indulge in misconduct of staying with unknown ladies at the Circuit house and, thus, brought the judiciary to disrepute. The other allegation against him is that though he applied for leave to Varanasi, but he went to Kishanganj in totally different direction and, thus, misled this Court, while applying for leave.

4. The stand of the petitioner in the writ petition is that when he was posted at Kishanganj, he and his family members used to have bad dreams in nights. Therefore, to get rid of unnatural happenings with the petitioner and his family members, he met a Saint namely, Mr. Saket Kumar Sinha @ Mahakal Baba and on his advice, he performed religious rites to overcome the unnatural happenings. Thus, he started visiting Mahakal Baba, in the district of Kishanganj, to perform religious rites. The petitioner alleges that since he scolded the staffs of the Circuit House for not maintaining hygienic condition of the room and toilets, the complaints have been made against him. It is also alleged that prior to the issuance of memo of charges on 10.12.2013, two preliminary enquiries were conducted on 16.11.2013 and 22.11.2013. It is alleged that a perusal of such reports shows that the staff of the Circuit House alleged to have seen females with the petitioner are contradicting themselves; whereas other witnesses are deposing on the basis of hearsay evidence.

5. To enquire into the charges on the basis of charge-sheet served upon the petitioner, Sri B.N. Pandey, Registrar Vigilance, Patna High Court, was appointed as an Enquiry Officer, who gave his report on 31st of March, 2014. On receipt of such report, show cause notice, dated 26th of April, 2014, was served upon the petitioner and after examining the reply, the High Court recommended that he be dismissed from service on 16th of June, 2014, and, on the basis of such recommendation, the impugned order has been passed by the State Government.

6. Before the enquiry officer, as many 17 witnesses were examined including A.W.1 Ashok Kumar Gupta, A.W.2 Sri Saroj Kumar Yadav, A.W.3 Sri Prakash Das and A.W.4 Sri Lal Chand, are the Care Takers at Circuit House, Kishanganj; A.W.5 Sri Biru Kumar Bhangsi, is Sweeper at the Circuit House; A.W.7 Sri Surendra Pd. Singh, A.W.8 Sri Dineshwar Pd. Singh, A.W.9 Sri Ram Prasad Singh and P.W.10 Sri Laxman Kr. Singh, are the Home Guards posted at the Circuit House. Sri Samim Ahamad, the Nazir Civil Court, Kishanganj has been examined as A.W.6. Most of the witnesses are the witnesses, who are posted at Circuit House, Kishanganj. The person, who has given permission to the petitioner to stay, at Circuit House, is Aditya Kumar Das, District Magistrate, A.W.11. Manoj Kumar Singh, the Chief Judicial Magistrate, appeared as A.W.16.

7. From the statements of the witnesses produced including that of staff posted at the Circuit House, Kishanganj, the enquiry officer submitted that during stay, the delinquent officer stayed with unknown women in the Circuit House. The petitioner

used to come and go out with women from the Circuit House, which was seen by all the staffs working at the Circuit House. A.W.11, the District Magistrate, deposed that he had received information that women and girls were coming with delinquent judicial officer and going in the morning from the Circuit House. He informed the Chief Judicial Magistrate, Kishanganj, who, in turn, informed the District and Sessions Judge, Purnea, as well as Joint Registrar (Judicial) of this Court. It is also found that the stand of the petitioner as D.W.1 that he had bad dreams has not been substantiated from the materials available on record as such that plea was totally imaginary and fabricated.

8. In reply to the show cause, his categorical stand is that his object of applying for leave was two folds, firstly, to visit Kishanganj so as to visit Mahakal Baba and, secondly, to visit Varanasi, his home town to fetch his family.

9. Learned counsel for the petitioner submits that the witnesses produced by the department are the daily wage employees of the Circuit House and, therefore, they are bound to support the stand of the department. There is no reason for him to indulge in the activities alleged, when he is happily married and his family is staying at Varanasi.

10. On the other hand, learned counsel for the respondents submitted that the allegations against the petitioner stand proved on the basis of testimony of a large number of witnesses, who were posted at the Circuit House on the relevant dates. The petitioner had gone to Kishanganj, though he applied leave for visiting Varanasi, which is at a distance of 500 km, and, therefore, he falsely represented to the High Court, while taking leave that he was to visit Varanasi. Still further, indulging in sexual activities with other women, while staying in the Circuit House, brought disrepute to the judicial system and that there is no error in the procedure prescribed, which may warrant interference in the writ jurisdiction of this Court. It is contended that in writ jurisdiction, the Court examines the decision-making process and does not act as Court of Appeal.

11. We have heard learned counsel for the parties and find no merit in the writ petition. Four Caretakers of the Circuit House have deposed in respect of unbecoming conduct of the petitioner. Even four Home Guards have supported the allegations levelled against the petitioner. The District Magistrate was informed of unbecoming conduct of the petitioner, which was shared by him with the Chief Judicial Magistrate, who, in turn, shared the information with the District Judge and with the Joint Registrar (Judicial) of this Court. Therefore, there is no reason to doubt the testimony of a large number of witnesses, who have deposed against the petitioner in respect of his conduct unbecoming of a Judicial officer. The petitioner was charge-sheeted and after having response, an enquiry officer was appointed, who has conducted the enquiry after giving opportunity to the defence to cross-examine the witnesses of the Department and to produce his defence evidence.

12. The stand of the petitioner is that he visited Kishanganj to have religious rites under Mahakal Baba. But petitioner has not examined any person, who could depose that there is such Baba or that the petitioner had visited such Baba and that how much time, he had spent with him. So called Mahakal Baba has not been examined as well. Therefore, the finding of the enquiry officer that the defence of the petitioner remained unsubstantiated cannot be said to be suffering from any patent illegality or irregularity. The petitioner has been given show cause notice along with copy of the enquiry report and after considering the reply, the recommendations were made for his punishment of dismissal, which the State Government accepted.

13. Keeping in view the false representation made to seek leave to visit Varanasi, but instead, the petitioner visited Kishanganj, almost 500 km away in totally different direction, coupled with his conduct unbecoming of a Judicial Officer, we do not find any error in the order of punishment imposed upon him. Consequently, the writ petition is dismissed.

I.A. Ansari, C.J. - I agree.