

CASE NO.:
Appeal (civil) 2234 of 2006

PETITIONER:
PURUSHOTTAM KUMAR JHA

RESPONDENT:
STATE OF JHARKHAND & ORS

DATE OF JUDGMENT: 24/04/2006

BENCH:
RUMA PAL & C.K. THAKKER

JUDGMENT:
JUDGMENT

ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 4800 OF 2004

C.K. THAKKER, J.

Leave granted.

The present appeal arises out of judgment and order dated July 14, 2003 passed by a Single Judge of High Court of Patna, in Civil Writ Jurisdiction Case No. 711 of 2003 dismissing the petition filed by the petitioner-appellant and confirmed by the Division Bench of the said High Court on December 2, 2003 in Letters Patent Appeal No. 488 of 2003.

To appreciate the controversy raised in the present appeal, few relevant facts may be stated: The appellant was appointed as Field Clerk in the pay scale of Rs.1200-1800 on June 10, 1996 on compassionate ground following the death of his father on February 19, 1990 while working in the Co-operative Department as Co-operative Extension Officer at Lakhaun, Madhubani. The appellant joined on the same day in the office of the Assistant Registrar, Co-operative Societies, Benipatti, Madhubani, Bihar. By an order dated December 30, 1996, the appellant was transferred in the Office of the Registrar, Co-operative Societies, Patna, Bihar and deputed for monitoring legal work. By another order dated April 4, 1997, the appellant was posted in the office of the Registrar, Co-operative Societies, Patna, Bihar for legal work.

It was, however, the case of the appellant that he was treated as Legal Assistant and was allowed to work in the capacity of Legal Assistant. In an Identity Card issued by the Bihar Government, the appellant was described as 'Legal Assistant' since the appellant was practising Advocate in the High Court of Patna before joining the service. An order was issued on September 14, 1998 by the Secretary to Government, Department of Co-operation by which the appellant, Legal Assistant, Office of the Registrar, Co-operative Societies was authorized by the Government to obtain information from the Office of the Advocate General, High Court of Patna relating to Co-operative Department about pending cases in the High Court. A Committee headed by the Additional Secretary, Department of Co-operation recommended the name of the appellant as departmental lawyer/Law Officer to get information as to pending cases in the High Court of Patna and to suggest to the Government to curb misuse of public fund.

By the Bihar Reorganization Act, 2000 (hereinafter referred to as 'the Act'), the erstwhile State of Bihar was bifurcated into two States; (1) State of Bihar; and (2) State of Jharkhand. By an order dated November 14, 2000, the appellant was provisionally transferred to the State of Jharkhand in the Office of the Registrar, Co-operative Societies, Ranchi, Jharkhand with effect from November 15, 2000.

It was the case of the appellant that he was illegally described as Clerk, though all throughout he had worked as Law Officer and Legal Assistant from the date of joining. The appellant, in the circumstances, sent several letters and representations to the respondents, requesting him to designate him as Law Assistant. He also stated that after the Home Department of the Government of Bihar had issued identity card describing him as Legal Assistant, it was not open to the respondents to treat the appellant as Clerk. The appellant, therefore, made an application to reconsider his case and to re-transfer him to the State of Bihar, but no action was taken by the respondents on that application. The appellant, in the circumstances, was constrained to approach the High Court by filing a Writ Petition. The learned Single Judge issued certain directions which were also not complied with. When the appellant went to report in Jharkhand on February 15, 2001, he was not allowed to join. Again, he approached the Court by filing a Writ Petition and only on June 7, 2001, his joining report was accepted and he was asked to work. Since the appellant was given clerical work, he represented that all throughout he had worked as Law Officer and he should not be compelled to do clerical work but nobody paid any heed to the prayer. Even clerical work was withdrawn from him on October 13, 2001. The appellant was suspended by an order dated June 10, 2002. Departmental inquiry was instituted against him. No opportunity was afforded to the appellant to defend himself in the departmental proceedings and finally he was informed on January 6, 2003 that he was guilty and an order of compulsory retirement from service was passed. In the order, it was stated that except suspension allowance, the appellant would not be entitled to anything.

Being aggrieved by the order of compulsory retirement, the appellant approached the High Court by filing a writ petition. The learned Single Judge, after perusing the affidavits and hearing the parties, held that departmental proceedings were conducted in accordance with law, inquiry report was submitted by the Inquiry Officer recording that the charges leveled against the appellant were established. The learned Single Judge, therefore, dismissed the petition holding that the impugned action deserved no interference. According to the learned Single Judge, the conduct of the appellant, right from the date of his appointment was not proper. It was also observed that the appellant was practising in the High Court of Patna and he wanted to continue in the said State in the capacity of Legal Assistant although his appointment was as Clerk on compassionate ground. It was on that count that he refused to discharge his duties as Clerk and hence the action was taken against him and there was no justification to interfere with the order of compulsory retirement. Accordingly, the petition was dismissed.

Against the said order passed by the learned Single

Judge, the appellant preferred an intra-court appeal. The Division Bench also considered the contentions raised by the appellant and observed that the appellant was appointed as Clerk on compassionate ground by the Divisional Joint Registrar, Co-operative Societies, Darbhanga, Bihar. Due to bifurcation of States, he was provisionally allotted to Jharkhand State and was transferred in the office of the Registrar, Co-operative Societies, Ranchi. The Bench held that the action taken by the State of Jharkhand was in consonance with law and the said State was competent to take such action. It was also observed by the Bench that the impugned order of compulsory retirement was in consonance with the Bihar Service Code and the appellant could not make grievance against the said action. The contention that the disciplinary proceedings had been initiated against the appellant with mala fide intention and oblique motive and were, therefore, malicious and biased was also negated by the Division Bench. It was observed by the Division Bench that the appellant was appointed as a Clerk and he was asked to perform clerical work. But it was the appellant who refused to do clerical work and that is how the said work was entrusted to one Smt. Hiramati Kumari and it was not true that the respondents had withdrawn the work though he was ready and willing to perform clerical work. Regarding mala fide, the Court stated that no specific allegations had been leveled by the appellant in the writ petition against named officers nor it was stated as to how they were against the appellant. They were also not made parties and no opportunity to the other side was afforded to controvert those allegations. Accordingly, the Letters Patent Appeal was dismissed confirming the order passed by the learned Single Judge. Against the order passed by the Division Bench of the High Court, the appellant approached this Court by filing Special Leave Petition on February 20, 2004. Notice was issued on March 20, 2004 by this Court. On September 20, 2004, the following order was passed by this Court:

"The petitioner and the counsel appearing on behalf of the respondent will consider whether the petitioner may be allowed to rejoin the service with the respondent No.1 as a Clerk subject to the petitioner's (i) withdrawing all allegations made by him in correspondence, pleadings or otherwise against the officers of the respondent No.1, (ii) undertaking to the respondent No.1 to discharge functions as a Clerk without insisting on being given work of looking after legal matters and (iii) without the petitioner being entitled to any pay for the period between the date of compulsory retirement and the date of his rejoining and treating such period as leave without pay.

The matter is adjourned to 25th October, 2004. The decision of the respondent No.1 will be communicated to this Court four weeks hence when the matter will be placed on record. It is being made clear that if the proposals are not acceptable, the matter will be heard and disposed of on merits."

A similar order was passed again on October 25, 2004. In an order dated February 4, 2005, this Court noted; "The petitioner has failed to file any undertaking as required by this Court. Therefore, the earlier order passed by this Court is recalled." The matter was thereafter placed for final hearing.

We have heard Mr. Purushottam Kumar Jha, appellant - party in person and learned counsel appearing for the respondents. The appellant contended that the High Court had committed an error of law as well as jurisdiction in holding that he was appointed as Clerk. The appellant, from the first day, had worked as Law Officer/Legal Assistant and it was, therefore, not open to the respondents to treat him as Clerk directing him to do clerical work. The said action was clearly illegal and the High Court ought to have directed the authorities to treat the appellant as Legal Assistant. He also submitted that the appellant ought not to have been transferred to the State of Jharkhand. Since no final decision, as required by Section 72 of the Act had been taken, the action was bad as respondent No. 5 had no administrative control over the appellant. His application for re-transfer to the State of Bihar had not been considered. The omission on the part of the respondents was illegal and unlawful. According to the appellant, since he was appointed by the State of Bihar, the State of Jharkhand was not competent to take action against him and all orders passed including the order of compulsory retirement, were without any authority, power and jurisdiction and were liable to be set aside. According to the appellant, he was not allowed to join though he was ready. He was illegally deprived of even clerical work which action was not at all justified. He was placed under suspension. All these actions had been taken mala-fide and with oblique motive to punish the appellant. The High Court ought to have appreciated all these facts and granted relief in his favour. According to the appellant, no order of compulsory retirement could have passed against him as no opportunity had been given to him. He had not received notice nor he could defend himself and the action was violative of principles of natural justice and fair play and the same deserves to be set aside.

The learned counsel for the respondents, on the other hand, supported the order passed by the respondents and submitted that the action was in consonance with law. After following proper procedure, the appellant was compulsorily retired by way of punishment. He challenged the said order and the learned Single Judge as well as Division Bench of the High Court held the action legal and valid and no relief was granted to him. No interference is called for and the appeal may be dismissed.

Having heard the appellant-party in person and the learned counsel for the respondents, in our opinion, it cannot be said that by dismissing the Writ Petition as also Letters Patent Appeal, the High Court has committed any error or law or of jurisdiction which requires interference by this Court. On the basis of documentary evidence, the High Court recorded a finding that the appellant was appointed as a Clerk on compassionate ground. The appellant was never appointed as Legal Assistant/Law Officer. Since the appellant was a Clerk, he was required to do clerical work. In our opinion, the High Court was right in holding

that when the appointment of the appellant was as Clerk, he could be asked to discharge duties in clerical capacity.

So far as the allocation to the State of Jharkhand is concerned, the Division Bench, in our opinion, rightly referred to. Sections 72 and 74 of the Act, which are relevant and material. They read thus:

72. Provisions relating to services in Bihar and Jharkhand:

(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Bihar shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Bihar unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Jharkhand:

Provided that no direction shall be issued under this section after the expiry of a period of one year from the appointed day.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of sub-section (2) to a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.

74. Provisions as to continuance of officers in same post:

Every person who, immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Bihar in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that successor State, and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or any other appropriate authority in, that successor State: Provided that nothing in this section shall be deemed to prevent a competent authority, on and from the appointed day, from passing in relation to such person any order affecting the continuance in such post or office.

On the basis of the above two provisions, the Division Bench held that the action of the respondents in transferring the appellant to the State of Jharkhand as Clerk (Lipik) could not be held illegal, unlawful or otherwise improper. The appellant was serving in and posted within the territory forming part of State of Jharkhand as per the order passed by the Central Government provisionally. The State of Jharkhand, therefore, was competent to initiate proceedings against the appellant which was done and no fault can be found in the said action of the State of Jharkhand.

We have also gone through the affidavits in reply filed by the contesting respondents. In the counter affidavit on behalf of respondent Nos. 2, 7 and 8, it was stated by the Joint Registrar (Co-operative), Government of Bihar, Patna that the appellant was initially appointed as the Field Clerk in the unrevised scale of Rs.1200-1800 on compassionate ground and he joined as a Clerk on June 10, 1996 at Benipatti. It was stated that on his representation, the appellant was transferred in the Office of Joint Registrar, Co-operative Societies, Patna and deputed in the office of Registrar, Co-operative Societies, Patna for discharging ministerial legal work. According to the deponent, there was no post, either created or sanctioned, of Law Officer or Legal Assistant in the Co-operative Department. In the light of the order of the Chief Secretary, Government of Bihar, a Legal Cell was constituted in every Department of the Secretariat and accordingly Co-operative Department had also constituted a legal cell and time to time employees were deputed for the purpose of obtaining information regarding cases of the Department pending in the High Court. Those employees to whom legal work was allotted used to do the said work since there was no sanctioned post of Law Officer/Legal Assistant. It was also stated that other persons had similarly worked in the said capacity but none of them ever claimed to be Law Officer/Legal Assistant.

It was then stated that as a result of bifurcation of State of Bihar, the appellant was provisionally transferred to the Office of the Registrar, Co-operative Societies, Ranchi in Jharkhand. The said action was in accordance with law and in consonance with the provisions of the Act.

A counter affidavit was also filed by the Deputy Secretary, Co-operative Department, Government of Jharkhand, Ranchi on behalf of respondent Nos. 4 and 5 contending that the actions taken against the appellant were legal and lawful. It was asserted that neither in the State of Bihar nor in the State of Jharkhand there was sanctioned post of Legal Assistant/Law Officer and the appellant was appointed as a Clerk and continued to remain as such. His placement with the State of Jharkhand was in accordance with law as per the recommendations of the State Advisory Committee and he could not have raised any objection against the said action. Regarding withdrawal of work from the appellant, deponent stated that the appellant was assigned clerical work but he replied that he was not interested to do clerical work. In view of the said fact, the work assigned to the appellant was entrusted to Smt. Hiramati Kumari. It was, therefore, not a case of withdrawal of work from the appellant as contended by him. It was then stated by the deponent that the appellant made allegations against

almost all higher officers of the Department. He was also habitual in giving illegal threats as being a practising advocate in the High Court of Patna before joining the clerical job on compassionate ground. He was always non co-operative. It was, therefore, submitted that the action taken against the appellant was legal and lawful. A counter was also filed on behalf of respondent No.9 by the District Co-operative Officer-cum-Conducting Officer, Ranchi, Jharkhand. He stated that he was appointed as Conducting Officer in the departmental proceedings initiated against the appellant. According to him, in the departmental proceedings, the appellant was given all possible opportunities but the appellant did not cooperate with the proceedings. He refused to accept the notice served through Peon of the Department. The notice was also published in the daily newspaper (Prabhat Khabar). The appellant intentionally and purposely got himself away from participating in departmental proceedings. On the basis of relevant documents and examination of record, the proceedings had been concluded and an order of punishment of compulsory retirement was passed which could not be termed illegal or unlawful.

On the basis of evidence, we are of the view that it cannot be said that by taking the action of compulsorily retiring the appellant from services, the respondents had committed any illegality. If, considering the material on record, it was held that the charges leveled against the appellant as to (i) indiscipline and non-compliance and disobedience of the orders of higher officials; and (ii) levelling baseless and uncalled for allegations against superior officers were proved and an order of compulsory retirement had been passed against him, to us, the said action cannot be declared illegal, arbitrary or objectionable.

The learned Single Judge as well as the Division Bench had held that the appellant was appointed as Clerk on compassionate ground and not Law Officer/Legal Assistant. From the affidavits filed on behalf of respondents, it is clear that there is no sanctioned post of Law Officer/Legal Assistant and Clerks use to get information relating to pending cases of the Department in the High Court and other persons had also worked in that capacity. The High Court was, therefore, in our opinion, justified in holding that the appellant could not have claimed designation as Law Officer/Legal Assistant. So far as the State of Jharkhand is concerned, in our view, the Division Bench was right in holding that under the Act, his services could be allotted to the State of Jharkhand and that action was taken at the instance of Advisory Committee. The said action was not in contravention of any provision of the Act and proceedings initiated by the State of Jharkhand could not, therefore, be objected.

As to mala-fide exercise of power, the High Court held that neither sufficient particulars were placed on record nor the officers were joined as party respondents so as to enable them to make the position clear by filing a counter affidavit. In the absence of specific materials and in absence of officers, the Court was right in not upholding the contention that the action was mala-fide. It is well settled that whenever allegations as to mala fides have been leveled, sufficient particulars and cogent materials making out prima facie case must be set out in the pleadings. Vague allegation or bald

assertion that the action taken was mala fide and malicious is not enough. In absence of material particulars, the court is not expected to make 'fishing' inquiry into the matter. It is equally well-established and needs no authority that the burden of proving mala fides is on the person making the allegations and such burden is 'very heavy'. Malice cannot be inferred or assumed. It has to be remembered that such a charge can easily be 'made than made out' and hence it is necessary for courts to examine it with extreme care, caution and circumspection. It has been rightly described as 'the last refuge of a losing litigant'. [Vide Gulam Mustafa v. State of Maharashtra, (1976) 1 SCC 800; Ajit Kumar Jog v. Indian Oil Corporation, (2005) 7 SCC 764).

In the instant case, the allegations are vague, general and casual. No particulars, much less sufficient particulars have been placed on record. The High Court considered the contention in the light of settled legal position and rejected the argument put forward by the appellant. We see no infirmity in the reasoning of the High Court. The conclusion arrived at by the High Court deserves no interference.

For the foregoing reasons, in our opinion, the order dated 6th January, 2003 compulsorily retiring the appellant cannot be held illegal, unlawful or contrary to law and neither the Single Judge nor the Division Bench had committed any error of law in dismissing the petition and the Letters Patent Appeal of the appellant. The appeal, therefore, deserves to be dismissed and it is accordingly dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.

Before parting with this matter, we may state that this Court, taking into account the position of the appellant, particularly when he was appearing as party in person, passed orders as to whether he could be reinstated or taken back in service on his withdrawing allegations against respondents and on filing an undertaking that he would work as Clerk without insisting on being given work of looking after legal matters and without insisting for salary during the intervening period. Unfortunately, the matter could not be settled. We are, therefore, constrained to decide the case on merits. We may, however, observe that in view of the earlier order passed by this Court, it is still open to the respondents to consider the case of the appellant favourably keeping in view the family circumstances which the appellant has narrated before this Court. Dismissal of this appeal would not come in the way of respondents in taking such sympathetic view by showing magnanimity in favour of the appellant if possible. With the pronouncement of this judgment, the interlocutory application No.2 filed by the appellant does not survive.