

Jagdish Narain Maltiar

Vs

The State of Bihar and Others

Civil Appeal No. 1804 of 1967

(J.M. Shelat, Y.V. Chandrachud JJ)

15.03.1973

JUDGMENT

CHANDRACHUD, J. -

1. This appeal is founded on a certificate granted by the Patna High Court under Article 133(1)(a) of the Constitution.
2. The appellant was appointed as a Supply Inspector in 1948. In 1957, while he was in charge of the Wazerganj Godown a complaint of bribery was made against him. An inquiry was held into that complaint but eventually the appellant was removed from service by an order, dated September 16, 1958.
3. On September 28, 1958 the appellant filed Writ Petition No. 87 of 1960 in the Patna High Court but that Petition was dismissed on January 21, 1960, presumably because a statement was made on behalf of the State Government that the appellant was not removed for misconduct but his services being temporary were terminated by a simple order of discharge.
4. The appellant thereafter made a representation to the Government asking that his case be reviewed and that he be paid gratuity. In reply it was stated by the Government that the claim for gratuity could not be entertained in view of the fact that the appellant's services were terminated for gross misconduct.
5. The appellant thereafter submitted further memorials to the Government and on September 23, 1966 he filed the present writ petition in the High Court. By an order, dated September 27, 1966, the High Court dismissed the Petition summarily on the ground that it was filed after an abnormal delay.
6. There is no substance in the preliminary objection raised by the respondent that the certificate granted by the High Court under Article 133(1)(a) is invalid on the ground that the amount or value of the subject-matter of the dispute is not of the description mentioned in clause (a). Reliance is placed in support of this argument on the decision in Satyanarain Prasad v. State of Bihar ((1970) 2 SCC 275) but that case, in our opinion, is clearly distinguishable. Proceedings were started therein against a Government servant who was asked to show cause why he should not be removed from service. The notice to show cause was challenged by him under Article 226 of the Constitution but the petition was summarily dismissed by the High Court. The High Court then granted a certificate under Article 133(1) but it was held by this Court that the certificate was invalid as the claim in the petition by which the validity of the notice to show cause was challenged could not be regarded as

of a value not less than Rs. 20,000/-. Such a claim was said to be not capable of valuation. In the instant case the writ petition was filed against an order of removal from service and it is plain that if the petition were to succeed and the appellant reinstated in service he shall have been entitled to arrears of salary amounting to Rs. 20,000/- or upwards. The High Court was therefore right in granting the certificate under Article 133(1)(a) of the Constitution.

7. But equally, there is no substance in the appellant's contention that the High Court was in error in dismissing the petition on the ground that it was filed after an abnormal delay. It is only necessary to mention a few dates in order to show how the High Court was justified in the view it took. The first Writ Petition filed by the appellant was dismissed on January 21, 1960. The appellant made a representation to the Government more than 3 years thereafter, i.e. on June 4, 1963. He received a reply to his representation on August 17, 1963, in which it was stated that his services were terminated for gross misconduct. On December 2, 1963, he submitted a fresh memorandum to the Government. On February 6, 1964 he submitted yet another memorandum. He waited to receive a reply till September 2, 1965, on which date he filed a further representation. He received an order rejecting his representation on May 15, 1966.

8. Thus it was in August, 1963 that the appellant discovered that his services were really determined for gross misconduct. For nearly 3 years thereafter he kept on submitting one memorandum after another to the Government and it was not until late in 1966 that he filed a Writ Petition in High Court to challenge the order of removal. The memorials presented by him to the Government were in the nature of mercy petitions and he should have realised that in pursuing a remedy which was not duly appointed under the law he was putting in peril a right of high value and significance. By his conduct he disabled the High Court from exercising its extraordinary powers in his favour. We are therefore of the opinion that the High Court was justified in refusing to entertain the petition.

9. The appeal is accordingly dismissed, but in the circumstances there will be no order as to costs.

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