Ishwar Chand Jain

Vs

High Court of Punjab and Haryana and Another

Civil Appeal No. 811 of 1988

(E. S. Venkataramiah, K. N. Singh JJ)

26.05.1988

JUDGMENT

SINGH, J. -

1. Special leave granted.

2. This appeal is directed against the judgment and order of the High Court of Punjab and Haryana dated December 9, 1986 dismissing the appellant's writ petition under Article 226 of the Constitution challenging the order dated December 30, 1986 dispensing with the appellant's services as Additional District and Sessions Judge in terms of Rule 10(3) of the Punjab Superior Judicial Service Rules, 1963.

3. Initially, the appellant was an advocate practising law in the High Court of Punjab and Haryana. He was selected for appointment to the Haryana Superior Judicial Service by the High Court. On the recommendation of the High Court the State Government by its order dated April 14, 1983 appointed the appellant as Additional District and Sessions Judge on probation for a period of two years in accordance with Rule 10(1) of the Punjab Superior Judicial Service Rules, 1963, as adopted by the State of Haryana (hereinafter referred to as 'the rules'). The High Court by its order dated April 27, 1983 posted the appellant to Hissar as Additional District and Sessions Judge where he joined his duties on May 2, 1983. While he was posted at Hissar certain incidents took place as a result of which the Bar Association of Hissar passed a resolution against the appellant and as a result of which he was transferred from Hissar to Narnaul as Additional District and Sessions Judge where he assumed charge of his office on May 5, 1984. While the appellant was posted at Narnaul inquiry into certain complaints against him was held by a judge of the High Court. After the inquiry the High Court at its meeting held on March 21, 1985 resolved that the appellant's work and conduct was not satisfactory during his probationary period and as such his services deserved to be dispensed with forthwith. The High Court forwarded its recommendation for terminating the appellant's services to the State Government by its letter dated March 28, 1985. Before the State Government could issue any orders, the appellant filed a writ petition under Article 32 of the Constitution before this Court challenging the High Court's decision. On April 14, 1986 this Court permitted the appellant to withdraw the petition with liberty to file the same before the High Court. The appellant thereafter filed a writ petition before the High Court challenging the resolution of the High Court as well as certain other consequential orders to which reference shall be made at a later stage. A Division Bench of High Court by its elaborate order dated December 9, 1986 dismissed the writ petition on the findings that the appellant's work and conduct was not satisfactory and as he was on probation his services were rightly terminated without giving any opportunity to the appellant. Thereafter, the State Government pursuant to the recommendation of the High Court issued orders

on December 30, 1986 terminating the appellant's services in accordance with Rule 10(3). Aggrieved, the appellant has challenged the order of the High Court under appeal as well as the order of the State Government terminating his services.

4. Before the High Court the appellant laid main stress on the question that the order of termination which had been passed without holding an enquiry giving reasonable opportunity to him to defend himself was violative of Article 311(2) of the Constitution as the same was based on a number of complaints and allegations as well as the report of a judge of the High Court who had made inquiries into the complaints against the appellant. The High Court considered the question in detail and recorded its finding that since the appellant was a probationer his services could be discharged without giving any opportunity to him in accordance with the Rules. The High Court further held that the inquiry which was held by a judge of the High Court was not for the purpose of taking any disciplinary proceedings or imposing any punishment on the appellant instead the inquiry was held to find out the appellant's suitability to the service. Shri P. P. Rao, learned counsel for the appellant, challenged the findings of the High Court and urged that since the High Court resolved to terminated the appellant's services on the basis of the inquiry report submitted by a learned judge of the High Court, the constitutional protection available to the appellant under Article 311(2) of the Constitution, and the principles of natural justice had been violated. On the other hand, Dr Y. S. Chitale appearing for the High Court submitted that the resolution of the High Court did not cause any stigma to the appellant and the inquiry held by the High Court was merely to judge his suitability for the service. The appellant was not entitled to the constitutional protection of Article 311(2) of the Constitution nor he was entitled to any opportunity of hearing before taking the decision for terminating the appellant's probationary period. We do not consider it necessary to deal with these rival submissions as in our opinion the High Court had no relevant material in coming to the conclusion that the appellant's work and conduct was not satisfactory during his probationary period. It appears to us as we shall presently show that the material which was taken into account was non-existent, while the other material was not relevant and further the allegations which were taken into consideration remained unsubstantiated. Having perused the entire material placed before us we are of the opinion that the High Court committed error in holding that the appellant's work and conduct was not satisfactory and that his services were liable to be terminated.

5. We would now consider the facts and circumstances which persuaded the High Court on its administrative side in taking the decision to dispense with the appellant's services. On his selection the appellant was firstly posted at Hissar where he joined his duties on May 2, 1983. While at Hissar the appellant decided a criminal case under Sections 363/366 IPC (State v. Ram Niwas) on September 10, 1983. The appellant acquitted the accused for the offence under Section 366 IPC but convicted him under Section 363 IPC and released him on one year's probation. The accused preferred appeal against his conviction to the High Court. Justice A. S. Bains by his order dated April 5, 1984 allowed the appeal on the ground that the prosecution had failed to prove its case against the accused beyond reasonable doubt and therefore it was not safe to maintain his conviction. In the course of his judgment Justice Bains made the following observations against the appellant :

> I am constrained to remark that the judgment recorded by the trial court is extremely poor and is not based on the evidence on the record. The trial court seems to have wrongly convicted the appellant.
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> The appellant made representation against the aforesaid remarks but the High Court refused to grant any relief to the appellant on the ground that the remarks awarded to

him had been made in judicial proceedings. The appellant made a representation for placing his representation before the learned judge who had awarded remarks against him but that too was not accepted. The appellant, thereafter, approached the High Court in the judicial side by means of an application under Section 482 of the Code of Criminal Procedure for expunging the aforesaid remarks but he could not get any relief. Ultimately, the appellant approached this Court by means of Criminal Misc. Petition No. 1377 of 1987 for expunging the aforesaid remarks. This Court by its order dated September 7, 1987 held that from the facts and circumstances of the case it could not be said that the order and judgment of the Additional District and Sessions Judge was not based on the evidence on record and the remarks made by Justice Bains were unwarranted. This Court directed that the aforesaid remarks should be expunged from the judgment in appeal. These facts show that the remarks made by Justice Bains against the appellant were unjustified, unwarranted and they ceased to be in force.

6. On September 26, 1983 while the petitioner was recording the statement of an Assistant Sub-Inspector of Police in a sessions case, an advocate of Hissar Shri Nar Singh Bishnoi, came into the appellant's court and made a request to the appellant that Thakur Dass, the Assistant Sub-Inspector of Police whose statement was being recorded as a witness in a sessions case should be directed to appear in a complaint case against him (the Assistant Sub-Inspector of Police) pending in the court of Chief Judicial Magistrate, Hissar. The appellant told the Advocate Shri Nar Singh Bishnoi that the Chief Judicial Magistrate should direct Thakur Dass the witness to appear in his court and Shri Bishnoi might himself bring summons and serve the same on Thakur Dass, Shri Bishnoi went to the court of Chief Judicial Magistrate for bringing summons meanwhile the statement of Thakur Dass was recorded and on being discharged from the witness box he became free. The appellant waited for more than half an hour but Shri Bishnoi did not turn up with the summons. Thereupon he discharged Thakur Dass. It was not strictly his duty as judge to detain the witness after his evidence was recorded for the purpose of serving summons in a complaint case on him. Shortly, thereafter Shri Bishnoi, advocate, came to the appellant's court and finding that the witness had already left the court he expressed his anger towards the appellant who was still presiding over his court and threatened him saying that he would see that no judicial officer would dare to act in such a manner. Shri Nar Singh Bishnoi, advocate, thereupon addressed a letter to the President of Bar Association requesting that a meeting of the Bar Association should be held which read as follows :

To

The President,

District Bar Association Hissar,

Subject : To consider the behaviour of Shri I. C. Jain, Additional Sessions Judge.

Sir,

It is submitted that today i.e. on September 26, 1983, I had presented an application in the court of Shri I. C. Jain, Additional Sessions Judge, Hissar in the presence and on behalf of my client, Shri Punam Chand, for effecting the service of summons on accused Thakur Dass S. I. At that time Thakur Dass S. I. was appearing as witness in the witness box in the court of Shri I. C. Jain, and I. C. Jain refused to pass any order on my application and I was asked to bring the summons. When

after obtaining the dasti summons from the court of Shri L. N. Mittal, C. J. M., Hissar in whose court complaint was pending, I went to the court of Shri I. C. Jain, by that time Thakur Dass had already fled away and he was seen going on motor cycle by my client. Behaviour meted out to me by Shri I. C. Jain is in fact wrong and misbehaviour with the lawyers community at large. I pray to all the members of Bar Association, Hissar that matter may be considered by calling for urgent meeting.

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Sd/- Nar Singh Bishnoi,

Advocate Hissar

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On the aforesaid letter a meeting of the bar was convened on September 27, 1983 and the following resolution was passed :

> Resolved that the attitude and the behaviour of Shri I. C. Jain, Additional District and Sessions Judge, Hissar towards the members of the bar is most deplorable, verges (sic) and condemnable for being rude, uncooperative and insulting.

7. The Bar Association forwarded a copy of the resolution to the High Court and also to the District and Sessions Judge, Hissar. The appellant on getting information about the resolution addressed a letter to the Registrar of the High Court on October 8, 1983 giving his version about the incident and he further sought advice of the High Court as to whether in the circumstances the witness (Thakur Dass) should have been detained on the request of the counsel for a party to enable him to bring summons for effecting service on him and further whether it was the day of the appellant as an Additional District and Sessions Judge to get the service effected without there being any requisition from the court of the Chief Judicial Magistrate. It appears that the High Court did not give any reply to the appellant and the guidance sought for by the appellant remained unattended. These facts clearly show how the members of the Bar Association passed the resolution condemning a judicial officer on a trifling matter without applying their mind to the question. The appellant being an Additional Sessions Judge was not bound by law to detain the witness to enable counsel of a private party to bring dasti summons for effecting service on the said witness. The members of the bar practising before the court should be aware of the legal position and they should not have indulged in passing a resolution condemning the appellant without there being any justifiable cause for the same. If the members of the Bar Association pass resolution against the presiding officers working in subordinate courts without there being any justifiable cause it would be difficult for judicial officers to perform their judicial functions and discharge their responsibilities in an objective and unbiased manner. We are distressed to find that the High Court instead of protecting the appellant took this incident into consideration in assessing the appellant's work and conduct.

8. In May 1984 the appellant was transferred to Narnaul and it appears that some incidents took place there also and complaints were made to the High Court against the appellant. On September 14, 1984 Ram Nath Mehlawat, an advocate-cum-journalist publishing a local weekly newspaper named 'Jan Hirdey' and who was also connected with a social organisation 'Janata Kalyan Samiti' was assaulted by certain persons. On a complaint made by Shri Mehlawat, a criminal case was registered and it was committed to sessions for trial. The appellant convicted the accused persons

except one under Sections 325/324 read with Section 34 of the Indian Penal Code. The appellant rejected the plea of the complainant Shri Ram Nath Mehlawat that he was a public servant that the injuries were caused to him while performing public duty. The appellant held that no offence under Sections 332/353 IPC was made out. Shri Ram Nath Mehlawat made a complaint to the High Court against the appellant alleging that the appellant had adjourned the case on several dates and he had acquitted the accused of offence punishable under Sections 332/353 IPC on extraneous consideration. He further alleged that the appellant had accepted illegal gratification in acquitting the accused and further releasing the convicted accused persons on probation. The allegations contained in the complaint of Shri Ram Nath Mehlawat were enquired into by Justice Surinder Singh. As regards correctness of the judgment is concerned it is relevant to note that Shri Ram Nath Mehlawat filed appeal before the High Court against the appellant's order releasing accused persons on probation and also a criminal revision against the order of acquittal on the charges under Sections 332/353/149 and 148 of Indian Penal Code and also against the order of releasing the convicted accused persons on probation. The appeal was dismissed on merits by Justice Tiwana, who observed that he found no infirmity in the conclusion recorded by the trial judge. The learned judge held that Ram Nath Mehlawat, advocate, was not a public servant though he may have been a Project Director of Adult Education Project run by a social organisation. The learned judge further held that the conclusion of the trial judge (appellant) was correct and there was no merit in the appeal. In this view both appeal and revision filed by Shri Ram Mehlawat were dismissed and the order passed by the appellant was upheld.

9. These facts show that Ram Nath Mehlawat failed in his attempt to get the appellant's order set aside by the High Court. Having failed to do so on the judicial side he made several complaints against the appellant making wild allegations against him about the aforesaid cases. It appears he was instrumental in getting complaints made about other matters also. These complaints were referred to the vigilance judge, who enquired into those matters and the report of the vigilance judge, was placed before the full court of the High Court on July 27, 1985. After considering the appellant's confidential roll the High Court resolved to dispense with the appellant's services.

10. It is asserted on behalf of the High Court that since the appellant's work and conduct were not found satisfactory during the period of probation of two years the court decided to dispense with his services forthwith. Consequently it made recommendation to the State Government for issuing necessary orders. The decision to dispense with the appellant's services was taken at the full court meeting of the High Court held on March 21, 1980. Along with agenda a note was circulated to the Hon'ble Judges, referring to five complaints out of which four complaints had been inquired into by Justice Surinder Singh and the fifth complaint remained without any inquiry. The report of Justice Surinder Singh was considered by the High Court along with appellant's service record. The High Court formed opinion that the appellant's work and conduct was not satisfactory. Since the report of Justice Surinder Singh vigilance judge formed foundation for taking action against the appellant, we consider it necessary to refer to the same in detail. A copy of the report is on file. On perusal of the same we find that in all four complaints were referred to Justice Surinder Singh who was vigilance judge for inquiry. The first complaint was by R. N. Mehlawat, Project Director, Adult Education. He raised a grievance that on July 25, 1984 the appellant convicted the four accused but he went out of the way to institute an inquiry against Ranjit Singh accused and also against the defence witness for forging a document. He further released all the convicted accused persons on probation. Shri Mehlawat was aggrieved that though he was a public servant the accused were not convicted under Section 332 of the Indian Penal Code. He alleged that he had received information that the appellant had received illegal gratification to the tune of Rs. 25,000 from the accused for taking lenient view in the matter. The vigilance judge recorded the statement of the appellant and other relevant persons.

In his report he stated that it was difficult for him to come to a definite finding although the allegations contained in the complaint filed by Shri Mehlawat could not be said to be without any basis but he recommended that the complaint required further investigation. We have earlier noted that Mehlawat had filed appeal and revision against the appellant's order but he failed. Justice Tiwana found no merit in the appeal and revision and he upheld the order of the appellant. Justice Tiwana expressly held that Mehlawat was not a public servant even though he was a Project Director of the Adult Education Project, and the conclusion of the trial court was correct and there was no merit in the appeal and revision. We are distressed to notice that even though the High Court had upheld the appellant's order on the judicial side it took exception to the appellant's conduct in passing the orders against Shri Mehlawat. Shri Mehlawat had also made allegations that the appellant had accepted illegal gratification in instalments in giving judgment in his case but during the enquiry by the vigilance judge he could not produce any evidence to that effect. It is a matter of common knowledge that many a time when a litigant is unsuccessful he makes allegations against the presiding officer stating that he had received illegal gratification. Shri Mehlawat was an unsuccessful litigant and he was highly prejudiced and biased against the appellant. Any complaint made by him against the appellant could not be taken at its face value specially so when the appellant's order had been upheld by the High Court. The vigilance judge did not record any finding against the appellant. He observed that the complaint required further investigation.

11. The second matter in respect of which the vigilance judge held inquiry was on the basis of an anonymous complaint pertaining to a civil appeal entitled Sher Singh v. Mahender Singh in which it was alleged that the appellant had during the course of arguments tried to persuade the respondent to compromise the matter. It was alleged that after the arguments were concluded the case was adjourned for several dates for judgment. There was no allegation of any corruption or dishonest motive. The vigilance judge came to the conclusion that the adjournment of the case was unnecessary as the case was a very old one. However the vigilance judge, further held that the complaint being anonymous it required further probe. The third complaint was made by Mukut Behari Sanghi, an advocate, practising at Narnaul. He alleged that the appellant heard civil appeal entitled Mohan Lal v. Honda Ram on September 20, 1984 and fixed the same orders for September 22, 1984 but the judgment was pronounced on October 10, 1984. We have perused the copy of the complaint made by Shri Sanghi but there is no allegation that the appellant committed any misconduct or that he acted on any extraneous reasons in granting adjournment. The appellant stated before the vigilance judge that after arguments were completed he had fixed a date for order but as the parties wanted to compromise, he postponed the delivery of judgment for few days in order to enable the parties to settle the dispute but since no settlement was communicated to the court he pronounced the judgment on October 10, 1984. The vigilance judge, however, made an observation that the case was glaring example of the manner of working of the appellant in judicial cases. In the absence of any extraneous circumstances, we do not find any impropriety in a judicial officer postponing the pronouncement of the order to enable the parties to settle the dispute. It is interesting to note that Shri Mukut Bihar Sanghi, advocate, was twice held guilty for contempt of court. He was convicted for contempt of court by the High Court. He wanted to browbeat the appellant. His complaint, however, did not contain any allegation of corruption. The High Court failed to appreciate that no appeal was preferred against the appellant's judgment in the case of Mohan Lal v. Honda Ram as the parties were satisfied with the judgment. In our opinion the compliant deserved no consideration and it should have been rejected outright. The fourth complaint had been made by one Khem Chand, his grievance had been that his Rent Control appeal had been dismissed by the appellant on November 24, 1984 and he had allowed him two months time to vacate the premises. He applied for obtaining a certified copy of the judgment but he could not get the same. Instead he

got the same, after inordinate delay. The appellant's explanation was that the copying section was not under his control or supervision therefore he could not be blamed for the delay caused in supplying certified copy of the judgment to Khem Chand. The vigilance judge did not express any opinion on this matter.

12. The above analysis of the report of the vigilance judge would show that out of four complaints the vigilance judge expressed opinion that matter relating to items No. 1 and 2 needed further investigation and enquiry as he was not in a position to record any definite finding on the allegations made in those complaints. As regards the third complaint of Mukut Behari Sanghi there was nothing wrong in postponing the pronouncement of the order with a view to give time to the parties to compromise the matter. Finally, as regards Khem Chand's complaint the vigilance judge did not express any opinion on the matter. The report of the vigilance judge does not show that the appellant's work and conduct were not satisfactory or that he was not fit to act as a Judicial Officer. While considering his question it must be kept in mind that complaints, in respect of which the learned judge observed that the same needed further inquiry into the matter, could not at all be considered against the appellant. If the inquiry had been held and the appellant had been given opportunity to place his version before the inquiry officer, correct facts would have emerged. But in the absence of any further inquiry as suggested by the vigilance judge, the High Court was not justified in considering those matters in concluding that the appellant's work and conduct was not satisfactory.

13. As regards the confidential roll of the appellant is concerned it is noteworthy that when the High Court considered the matter on March 21, 1985 the appellant's annual report was available only for the first year of his service namely 1983-84. The report for that year was satisfactory. Entry for the year 1984-85 was awarded by Justice S. P. Goyal who was Inspecting Judge on April 15, 1985. He awarded Grade 'B' plus to the appellant which means that appellant's work was good. But this entry could not be taken into consideration by the High Court as it had already taken the decision on March 21, 1985 to dispense with the appellant's services. We are distressed to find that when the aforesaid entry for 1984-85 came up for consideration before the full court of the High Court it modified the same and downgraded the entry from 'B' plus to 'C' which means appellant's work was unsatisfactory. During the hearing we asked the learned counsel appearing for the High Court to produce material on the basis of which the High Court modified the entry given by Justice S. P. Goyal for the year 1984-85 but he was unable to place any material before us to support the decision of the High Court in modifying the entry. The modification of the entry is therefore without any material and is not sustainable in law. It is thus clear that so far as annual entry on the appellant's confidential roll is concerned there was no material against him which could show that the appellant's work and conduct was unsatisfactory. The facts and circumstance discussed earlier clearly show that the appellant's services were terminated merely on the basis of the report made by the vigilance judge which we have discussed in detail earlier. The note appended to the agenda of the meeting referred only to the inquiry report and it did not refer to any other matter. The vigilance judge failed to express any positive opinion against the appellant instead he observed that the complaints required further investigation. If the High Court wanted to take action against the appellant on the basis of the complaints which were the subject of enquiry by the vigilance judge, it should have initiated disciplinary proceedings against the appellant, then the appellant could get opportunity to prove his innocence. We have already discussed in detail that the facts stated in the complaints and the report submitted by the vigilance judge did not show any defect in appellant's work as a judicial officer. While considering complaints of irregularities against a judicial officer on probation the High Court should have kept in mind that the incidents which were subject matter of enquiry related to the very first year of appellant's service. Every judicial officer is likely to commit

mistake of some kind or the other in passing orders in the initial stage of his service which a mature judicial officer would not do. However, if the orders are passed without there being any corrupt motive, the same should be overlooked by the High Court and proper guidance should be provided to him. If after warning and guidance the officer on probation is not able to improve, his services should be terminated.

14. Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control it is under a constitutional obligation to guide and protect judicial officers. An honest strict judicial officer is likely to have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial orders which may have been upheld by the High Court on the judicial side no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a sine qua non for rule of law. If judicial officers are under constant threat of complaint and enquiry on trifling matters and if High Court encourages anonymous complaints to hold the field the subordinate judiciary will not be able to administer justice in an independent and honest manner. It is therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants. Having regard to facts and circumstances of the instant case we have no doubt in our mind that the resolution passed by the Bar Association against the appellant was wholly unjustified and the complaints made by Shri Mehlawat and others were motivated which did not deserve any credit. Even the vigilance judge after holding enquiry did not record any finding that the appellant was guilty of any corrupt motive or that he had not acted judicially. All that was said against him was that he had acted improperly in granting adjournments.

15. In view of our discussion we allow the appeal, set aside the order dated December 9, 1986 and order of the State Government dated December 30, 1986. We direct that appellant shall be reinstated in service, with continuity of service and arrears of salary and allowances and other benefits. The appellant is entitled to the costs which we quantify at Rs. 5000.

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