

State of Bihar and Others

Vs

Suresh Chandra Mukherjee

Civil Appeal No. 7781 of 1996

(J. S. Verma, K. Venkataswami JJ)

02.05.1996

ORDER

1. Leave granted.

2. Shri Amarendra Sharan, the learned counsel for the respondent has filed a memorandum on behalf of the respondent seeking leave to withdraw the writ petition filed by the respondent in the High Court, even though that writ petition has been allowed by the High Court, stating in this memo as under :

"1. The instant special leave petition is directed against the order of the Patna High Court dated 28-1-1994 in CWJC No. 6878 of 1993. The respondent filed a writ petition seeking enforcement of certain benefits which were consistent with the notification by which he was appointed as a Presiding Officer of the Industrial Tribunal. The notification dated 18-3-1993 states that he would be appointed as a Presiding Officer of the Industrial Tribunal on conditions of re-employment.

2. In view of the State of Bihar not offering the conditions of re-employment as stated in the notification, the respondent filed the writ petition in which the order under appeal has come to be passed.

3. The respondent upon a reflection of the matter, consistent with the high traditions and dignity of the office which he held as Judge of the Patna High Court, is of the considered view that he need not have approached the High Court as a petitioner even to seek enforcement of what he believed to be his legitimate right. Upon a reconsideration of the matter, the respondent craves leave of Your Lordships to withdraw his petition. Consistent with the traditions of the high office that the respondent has held, the respondent prays that Your Lordships may be pleased to give this opportunity."

3. On the facts and in the circumstances of this case, we are satisfied that the stand taken by the respondent, who is a retired Judge of the Patna High Court, is indeed to be commended and that it is consistent with the high traditions and dignity of the high office which he has held.

4. The facts of this case do indicate that the Government of Bihar is responsible for the creation of a situation which led the respondent to file a writ petition in the High Court in the belief that it was necessary to do so to uphold the dignity of the office which he had held. It is true that such a step taken by him escalated to an unseemly controversy because of the insensitive approach of the

Government of Bihar to the problem and the manner in which it has chosen to contest the claim. However, even after obtaining a favourable order from the High Court in that writ petition, the respondent has chosen to close this chapter and withdrawn the writ petition itself, which is sufficient indication of the fact that he resorted to the step only in an attempt to vindicate the honour of the high office of a High Court Judge. It is unfortunate that the Government of Bihar failed to appreciate that it was, to say the least, inappropriate on its part to invite the respondent to accept an appointment after his retirement under the impression that the conditions thereof would be commensurate with the dignity of the office of the High Court Judge which he had held, and then to have resiled therefrom causing needless embarrassment to the respondent as well as the Patna High Court itself. In comparison with the unabated huge wastage of public money even in litigation which is a common spectacle, the tenacity with which the Government of Bihar contested this matter, unmindful of the damage it was causing to the image of the superior judiciary of the State, is indeed a matter of deep regret.

5. We make these observations with the hope that the Government of Bihar will at least now appreciate the correct approach which is expected from the executive in such matters. It is also expected that the higher judiciary will take note of this incident to ensure that no one else is exposed to a similar embarrassment in future on account of the insensitivity of any Government in making such an offer to a retired superior Judge. This incident has thrown up for reflection this aspect which is intimately connected with the independence of the judiciary. It is for this reason, we are constrained to make these observations while granting the prayer made by the respondent to permit the withdrawal of his writ petition.

6. In view of the respondent's prayer for withdrawal of the writ petition, the High Court's order made thereon is set aside without expressing any opinion on the merits, and the writ petition filed in the High Court is permitted to be withdrawn.

7. This appeal and the respondent's writ petition filed in the High Court are disposed of in this manner. No costs.