

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL JURISDICTION
CIVIL APPEAL NO.10759 OF 2017

NARESH SINGH

APPELLANT(S)

VERSUS

STATE OF U.P. & ORS.

RESPONDENT(S)

WITH

WRIT PETITION (CIVIL) NO.670 OF 2017

O R D E R

The Writ Petition and the Civil Appeal, being heard together, are being disposed of by this common order.

The petitioner/appellant has joined higher judicial service in the year 1997 and was posted in Muazaffarnagar. Two complaints were made against him during that period. The one was pertaining to grant of bail, on a suspicion that the said bail was granted by the petitioner/appellant, when he was posted as Additional District & Sessions Judge, Muzaffarnagar on 18.5.2006 for extraneous consideration. The said allegation against the petitioner/appellant was made by one Jai Pal Singh Mittal to the Hon'ble Chief Justice of Allahabad High Court that the petitioner/appellant has

granted bail to one Arvind on extraneous consideration.

The second being, that though vide notification dated 29.4.2006, the petitioner/appellant was transferred as O.S.D. (Enquiry) of the High Court, he did not join his new posting in the prescribed time, which amounted as insubordination.

An enquiry was conducted by the Sitting Judge of the High Court. At the conclusion of the said enquiry, he submitted his report on 7.8.2008, wherein he found, that all the charges levelled against the petitioner/appellant were proved. After the receipt of the enquiry report, the same was served upon the petitioner/appellant and he was called upon to give his reply thereto, to which he submitted his reply on 29.9.2008.

It is pertinent to note, that, in the intervening period, the complainant, who had filed the complaint with regard to grant of bail on extraneous consideration, filed an application along with an affidavit to the Hon'ble Chief Justice of the High Court, stating therein, that he does not wish to press the complaint.

The Full Court of the High Court, in its meeting dated 16.5.2009, resolved to accept the enquiry report and recommended the petitioner's/appellant's removal from

service. The petitioner/appellant filed Writ Petition being Writ Petition No.834 of 2009 before the Division Bench of the High Court initially challenging the resolution of the Full Court. In the intervening period, the State Government passed an order dated 10.7.2009 thereby removing the petitioner/appellant from service. The petitioner/appellant challenged the said order also in the pending writ petition before the High Court by way of an amendment.

The High Court by the impugned judgment and order quashed the resolution of the Full Court dated 16.5.2009 as well as the consequential order passed by the State Government dated 10.7.2009 vide which the petitioner/appellant had been removed from service. The High Court, however, remitted the matter on the administrative side for reconsideration and awarding proportionate punishment for the charge which was found to be proved against the appellant.

The High Court on the administrative side, being aggrieved by the order of the High Court on the judicial side passed in the writ petition, approached this Court by way of a Special Leave Petition being Special Leave Petition (Civil) No.12162 of 2013. This Court dismissed the said Special

Leave Petition filed by the High Court on 8.4.2013. The Full Court thereafter, vide its decision dated 4.8.2013, revoked the order of dismissal and directed to reinstate the petitioner/appellant in service and directed that the petitioner/appellant shall not be paid anything for the period of suspension/removal over and above subsistence allowance which has already been paid to him. However, the period of suspension was directed to be treated as the period spent on duty for retiral benefits only. The petitioner/appellant was also ordered to be placed in the initial pay-scale of Additional District and Sessions Judge.

The petitioner/appellant, being aggrieved by that part of the order in Writ Petition No.834 of 2009, whereby the High Court upheld the finding with regard to second charge, approached this Court by way of Special Leave Petition being Special Leave Petition (Civil) No.39373 of 2013. This Court vide order dated 17.12.2013 issued notice and vide order dated 18.8.2017 granted leave in the said Special Leave Petition and, as such, the present appeal came to be numbered as Civil Appeal No.10759 of 2017.

In the meantime, when the petitioner/appellant was likely to complete 55 years of age, the case came up for his

continuation in service beyond 55 years before the committee of the learned judges of the High Court on the administrative side. The committee in its recommendation dated 01.04.2016 decided not to continue the petitioner beyond the age of 55 years. The Full Court, vide its meeting held on 14.4.2016, resolved to accept the recommendation of the said Committee and, accordingly, the petitioner/appellant was compulsorily retired on 03.05.2016. Being aggrieved thereby, the petitioner has approached this Court by invoking Article 32 of the Constitution.

Mr. P.S. Patwalia, learned Senior Counsel appearing on behalf of the petitioner/appellant, submits, that the High Court ought to have allowed the petition of the petitioner/appellant in entirety and findings in the enquiry in respect of all charges ought to have been set aside.

Insofar as the Writ Petition is concerned, Mr. Patwalia submits, that the High Court has erred in not taking relevant facts into consideration while deciding not to continue the petitioner/appellant in service beyond the age of 55 years. He submits, that High Court has taken into consideration the Annual Confidential Reports, which were not communicated to him. He further submits, that another enquiry which has been

taken into consideration by the High Court, on the administrative side, as a matter of fact, resulted in exoneration of the petitioner/appellant. It was therefore submitted, that the High Court, on the administrative side, while taking a decision not to continue the petitioner/appellant beyond 55 years of age, has taken into consideration irrelevant and extraneous factors.

Mr. Sunny Chaudhary, learned counsel appearing on behalf of the High Court submits, that no fundamental right of the petitioner/appellant has been infringed, which would enable him to approach this Court directly under Article 32. He submits, that the petition is liable to be dismissed on this ground alone.

Insofar as the Civil Appeal by special leave is concerned, he submits, that the High Court has rightly found that the second charge was proved against the appellant. He submits, that when there was specific notification by the High Court to join the posting, the appellant ought to have joined the said posting within the time prescribed. He submits, that refusal to do so would amount to insubordination and, as such, the penalty which has been imposed by the High Court for the said charge is just and proper.

Ms. Aishwarya Bhati, learned Senior Counsel appearing on behalf of the State, supports the stand taken by the High Court and concurs, that the appeal as well as the writ petition deserve to be dismissed.

Having heard the learned counsel for the parties and upon perusal of the record, we are not inclined to interfere with the order impugned in the Writ Petition. The parameters of consideration while considering the case of a Judicial Officer for not continuing him/her beyond the age of 55 years and the ones for examining the case for dismissal of an employee are totally different. After examining the material placed on record and taking overall view of the matter, we are of the view that the writ petition filed by the petitioner under Article 32 of the Constitution ought to be dismissed and is ordered accordingly.

Insofar as the Appeal is concerned, we have perused the records as well as the judgment of the High Court impugned before us. The High Court has rightly found, that the charge of grant of bail for extraneous consideration as recorded by the Enquiry Officer is not proved. As far as the charge of insubordination is concerned, we find, that the High Court has taken into consideration various factors which resulted in delay in joining the transferred posting at the High Court. The

material placed on record would reveal, that after the order of transfer was passed, the appellant was the senior-most judicial officer next to the District Judge and officer-in-charge of Nazarat, Muzaffarnagar. The record would reveal, that in the inspection carried out by the Administrative Judge, he noticed, that certain repairs of the building were required to be carried out, generators were not functioning and the issues with regard to cleaning of the court's compound, parking of vehicles, cleanliness of drainage system, etc. needed to be looked into. It would further reveal, that the District Judge had directed the petitioner/appellant to execute the said works. It is quite possible that the appellant might be in dilemma as to whether to join the posting at the High Court or to carry out instructions of the District Judge as directed by the Administrative Judge. It is not in dispute, that immediately after the works were carried out, the appellant has joined his transferred posting on 23.05.2006.

We find, that it cannot be said, that the appellant has either deliberately or intentionally disobeyed the transfer orders. In the given circumstances, the appellant was required to complete the work assigned to him and has joined immediately thereafter the posting. We find, that the penalty of

placing the appellant in the initial pay scale of Additional District & Sessions Judge is highly disproportionate to the charges found to be proved against him. We find, that warning i.e. 'to be more careful in future' would have been sufficient. In the facts and circumstances of the case, we are inclined to interfere with the penalty imposed by the High Court on the appellant of placing him in initial pay scale of Additional District & Sessions Judge. We are of the considered view, that the same is highly disproportionate inasmuch as by the said punishment the appellant has been put back by 14 years in service.

We, therefore, set aside the penalty imposed on the appellant of placing him in initial pay scale of Additional District and Sessions Judge. Needless to state, that the appellant would be entitled to regular pay-scale ignoring the penalty imposed on the appellant by the High Court. The appellant would also be entitled to get the difference between salary and suspension allowance for the period when he was under suspension. The appellant would be entitled to all the benefits during the period when he was under suspension and also for the period during which he was out of employment.

The respondent shall start paying the pension to the

appellant from the month of April, 2020 and all arrears payable to the appellant on account of aforesaid directions shall be paid within a period of six months from today.

The appeal shall stand disposed of. There shall be no order as to costs.

.....,J.
(B.R. GAVAI)

.....,J.
(SURYA KANT)

NEW DELHI
MARCH 04, 2020

ITEM NO.110

COURT NO.10

SECTION III-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 10759/2017

NARESH SINGH

Appellant(s)

VERSUS

STATE OF U.P. & ORS.

Respondent(s)

IA No. 2/2016 - PERMISSION TO FILE ADDITIONAL DOCUMENTS)

WITH

W.P.(C) No. 670/2017 (X)

Date : 04-03-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE SURYA KANT

For Appellant(s) Mr. P.S. Patwalia, (Sr. Adv)
Mr. Tushar Bakshi, AOR
Mr. Shovit Singh, Adv
Mr. Akshay Chaddha, Adv

For Respondent(s) Ms. Aishwarya Bhati, Sr. Adv, AAG
Mr. Adarsh Upadhyay, AOR
Mr. A. Chitravanshi, Adv
Mr. Sunny Choudhary, AOR
Mr. Akash Kamra, Adv

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UPON hearing the counsel the Court made the following
O R D E R

The Writ Petition is dismissed and the Civil Appeal is
disposed of in terms of signed order.

Pending application,if any, is also disposed of.

(MANASWINI DEVI SHARMA)
SENIOR PERSONAL ASSISTANT

(VIRENDER SINGH)
BRANCH OFFICER

(The signed order is placed on the file)

