

BHARAT RAM MEENA

A

v.

RAJASTHAN HIGH COURT AT JODHPUR AND ORS.

JANUARY 29, 1997

[A.M. AHMADI, C.J., AND SUHAS C. SEN, J.]

B

Service Law:

Annual Confidential Report—Adverse remarks—Judicial review of—Held: Adverse remarks neither arbitrary nor without any factual basis—In the circumstances of the case, such adverse remarks could not be quashed in exercise of writ jurisdiction.

C

Annual Confidential Report—Adverse remarks—Judicial review of—Disputed questions of fact—Writ jurisdiction—Exercise of—Held: In the circumstances of the case, not warranted Constitution of India, 1950: Article 226.

D

Disputed questions of fact—Writ jurisdiction—Exercise of—Refusal of High Court to exercise writ jurisdiction upheld.

E

In the Annual Confidential Report of the appellant, a Munsiff/Judicial Magistrate, the District and Sessions Judge made adverse remarks that the appellant's integrity was suspicious, he was not impartial, he was short tempered, his official conduct was not upto the mark, he lacked proper control over the office work, he was an irresponsible officer and he did not enjoy a good reputation about honesty. The Inspecting Judge remarked, "I agree with the D.J. Members of Bar also have poor opinion about his conduct and work." The Chief Justice of the High Court agreed with the report and observed "..... There is nothing to differ from these observations, which I endorse and remark that he is a bad officer". The appellant's representation against the adverse remarks was rejected. The appellant was in the meantime promoted as Civil Judge/Chief Judicial Magistrate. The writ petition challenging the aforesaid adverse remarks was dismissed by the High Court. Hence this appeal.

F

Dismissing the appeal, this Court

HELD : 1. The appellant has raised several disputed questions of

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A fact. The Annual Confidential Report was written on the basis of allegations made against the appellant by the District Judge. The appellant had his opportunity to make representation against the report, which he did. The appellant is to be judged on the strength of his work and his conduct. The assessment of the merit of the appellant cannot be treated in any way as arbitrary or without any factual basis. Nothing has been brought on record to justify the Court in exercise of its writ jurisdiction to intervene and quash the adverse remarks in the Annual Confidential Reports of the appellant. [678-F-G]

2. The appellant's grievance is that the High Court should not have summarily dismissed the writ petition, but should have examined the facts in detail. There are allegations against the appellant, which have been denied by him. But it is a matter appreciation of evidence. The Writ Court rightly declined to enter into the controversy. [678-H, 679-A]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 456 of 1997.

From the Judgment and Order dated 11.1.95 of the Rajasthan High Court in D.B.C.W.P. No. 5712 of 1993.

E Pallav Shishodia and A.P. Medh for the Appellant.

Aruneshwar Gupta for the Respondents.

The Judgment of the Court was delivered by

F SEN, J. Leave granted.

G This appeal has been filed against an order passed by the Rajasthan High Court on a writ petition filed by the appellant for quashing some adverse remarks made in his Annual Confidential Report for the year 1990. The controversies raised by the appellant in this case are really questions of fact. The appellant Bharat Ram Meena was appointed as Munsiff/Judicial Magistrate on probation for two years on 19.7.1985. The appellant was duly confirmed and later on posted as Munsiff/Judicial Magistrate, Barmer, District Balotra. In the years 1987, 1988 and 1989 the appellant discharged the duties as Munsiff/Judicial Magistrate, Barmer Satisfactorily. It has been stated by the appellant that Shri Satya Prakash Pathak, the then District H and Sessions Judge, Balotra had found the appellant's work satisfactory

and the Annual confidential Reports had been written accordingly. A

General Elections to the Legislative Assembly of State of Rajasthan were held on 27.2.1990. The appellant was deputed as Zonal Magistrate for the purpose of election to the State Assembly. On 20.2.1990, a wireless message had been issued by the Registrar, Rajasthan High Court to the Election Officer, Rajasthan, all Collectors of the State and District and Sessions Judges permitting deployment of Judicial Magistrates and subordinate staff of Judicial Courts for election duty. The directions were given by the High Court to the District Collectors to contact the District and Sessions Judges for this purpose. The Collectors were not authorised to issue any instructions to Judicial Officers directly. The District and Sessions Judges had to be contacted for giving instructions to the Judicial Officers. The Collector, Barmer by order dated 17.2.1990 deployed the appellant as Zonal Officer/Zonal Magistrate for the election period commencing from 23.2.1990 to 27.2.1990. In the said order of the Collector, it was stated that a meeting of the Zonal Officers/Zonal Magistrates was to be held at 3. P.M. on 22.2.1990. The District and Sessions Judge, Balotra by his order had directed that Zonal Offices stationed at Barmer (including the appellant) to work upto 2.45 P.M. on 22.2.1990 in their respective courts and they were asked to attend the election duty from 23.2.1990 till 27.2.1990. B C D E

On 19.2.1990, the District Collector without contacting the District Sessions Judge, directly got in touch with the appellant and sent him to deliver a D.O. letter to the Deputy Secretary, Judicial Department at Jaipur. On the same date, the appellant without any reference to or permission from the District and Sessions Judge went to Jaipur and came back on 22.2.1990. He was also absent from Court on 28.2.1990 without prior permission alleging that he was on election duty for which a certificate from the District Election Officer was produced. In view of the unauthorised absence of the appellant from 19.2.1990 to 22.2.1990 and also on 28.2.1990 without prior permission of the District and Sessions Judge, an adverse entry was made in his Annual Confidential Report by the District Judge and a report was submitted to the Registrar of the High Court for initiating disciplinary proceeding against the appellant. The disciplinary authority, passed order to the following effect: F G H

"I deem it proper the delinquent officer to be given a warning to

A be careful in future to maintain absolute devotion to duty and dignity of the office held by him."

B The second controversy involving the appellant started when the appellant was working as Munsiff and Judicial Magistrate from 21.8.87 to 28.4.1990. The appellant had been invested with jurisdiction to hear all cases arising and registered after 30.1.1990 under the Schedule Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. On 26.3.1990, Constable Man Singh submitted a challan in the case of State versus Nathu Singh & Ors. under Section 430, IPC and Section 3(13) of the 1989 Act.

C The allegation against the appellant is that instead of entertaining the case, he threatened that the Constable would be sent to jail on account of wrong presentation of challan. Thereafter, the Constable approached Hari Prasad Vyas, Assistant Public Prosecutor who appeared before the appellant on that very date (26.3.1990) and submitted that under the order of the District Judge and in accordance with the provisions of Section 54(2) read with Section 193 of the Code of Criminal Procedure, the challan had to be presented in the Court of the appellant. The appellant did not pass any order for registering the case, but threatened to register a case against Shri Vyas. He however, announced that he will pass an order on 27.3.1990.

E On 27.3.1990, the Assistant Public Prosecutor submitted a written complaint against the appellant to the District and Sessions Judge D.J. Pathak narrating substantially the allegations set out herein above. The District and Sessions Judge on the basis of the complaint called for the file concerning the said challan case. It was found from the file that an order had been passed on 26.3.1990 by the appellant in the case, C.P. No. 30/90

F (*State v. Nathu Singh*). The allegations against the appellant is that this order was actually dictated on 27.3.1990 and thereafter was backdated to show that it had actually been passed on 26.3.1990.

G The next allegation is that the appellant had on 26.3.1990 passed an order in a criminal case, *State v. Hari Singh*. In that case, no bail application was moved by or on behalf of the accused on that date. The Assistant Public prosecutor had not been given a copy of any such application on 26.3.1990. But it could be seen from the order that the records of the Court had been manipulated. On 30.3.1990, the appellant forced the advocate for the accused to present a bail application which was actually entered in the H Court Fees Register on 30.3.1990 but it was shown as to have been entered

on 26.3.1990.

The next allegation is that on 1.4.1990, the appellant lodged an FIR against the Assistant Public Prosecutor Vyas alleging that he had lodged a false complaint against the appellant to the District and Sessions Judge, Balotra. It was further alleged that evidence had been collected against the appellant by force threatening the witnesses to harm him. In the FIR lodged by the appellant, it was stated after referring to the irregularities committed by the Assistant Public Prosecutor Vyas :

"..... By reason of suppressing the irregularities committed in the above Challan, gave false and fabricated informations to the District and Sessions Judge, Barmer against me. As a result of which the District and Sessions Judge, Balotra who is my executive officer was bound to come in the official capacity in the police van and made the inquiry in connection with my above file."

It was further alleged by the appellant that as a result of the inquiry caused by the District Judge, he had suffered great mental agony and the evidence was collected against him after giving threats to the witnesses to cause loss to the appellant.

On 2.4.1990, the District and Sessions Judge, Balotra, after taking evidence of Shri Vyas, the Assistant Public Prosecutor, Shri Lekhraj, Stenographer, Tarachand Parmer, Reader Swaroop Singh, Advocate and Man Singh, Constable, sent a report to the Rajasthan High Court for initiating disciplinary proceedings against the appellant. Thereafter, a departmental inquiry was initiated against him under Rule 16 of Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 for acts amounting to gross misconduct, indiscipline, insubordination and dereliction of duty. There were further charges of committing acts of manipulation, substitution, addition and alteration in the judicial records amounting to misconduct. There was also charge of being instrumental for manipulation and creation of false and incorrect judicial record, misusing his power and position by pressurising the advocate to move ante-dated application. Further charges were about the conduct of the appellant in lodging an FIR in which the District Judge was implicated.

In the Annual Confidential Report of the appellant which was initially written by the District and Sessions Judge, it was alleged that the

A appellant's integrity was suspicious, he was not impartial, he was short tempered, his official conduct was not upto the mark, he lacked proper control over the office work, he was an irresponsible officer and he did not enjoy good reputation about honesty. When the Annual Confidential Report was submitted to the Inspecting Judge, he remarked that "I agree with the D.J. Members of Bar also have poor opinion about his conduct and work". The report was then submitted to the Chief Justice of Rajasthan High Court who agreed with the report and observed "..... There is nothing to differ from these observations, which I endorse and remark that he is a bad officer".

C The adverse remarks in the Annual Confidential Report of the appellant were communicated to him by the Registrar. The appellant was informed that he could make representation, if any, against the above observations within fifteen days of the receipt of the communication. The appellant's representation, however, was rejected. The appellant was in the meantime promoted as Civil Judge/Chief Judicial Magistrate on 24.5.1994.

D On 11.1.1995, the appellant filed a writ petition in the Rajasthan High Court for quashing the adverse remarks made against him in the Annual Confidential Report. The High Court, however, dismissed the writ petition observing :

E "We have seen the original A.C.Rs. of the Officer and gone through the case and find no ground to interfere with the recording of the A.C.Rs. for the year 1990 in the extra ordinary writ jurisdiction"

F The appellant has challenged this decision of the Rajasthan High Court. The appellant has raised several disputed questions of fact. The Annual Confidential Report was written on the basis of allegations made against the appellant by the District Judge. The appellant had his opportunity to make representation against the report which he did. The appellant is to be judged on the strength of his work and his conduct. We do not find that the assessment of the merit of the appellant can be treated in any way as arbitrary or without any factual basis. Nothing has been brought on record to justify the Court in exercise of its writ jurisdiction to intervene and quash the adverse remarks in the Annual Confidential Reports of the appellant.

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H The appellant's grievance is that the High Court should not have summarily dismissed the writ petition, but should have examined the facts

in detail. We have set out the allegations against the appellant in extenso. A
He has, of course, denied the allegations, but it is a matter of appreciation
of evidence. The Writ Court rightly declined to enter into the controversy.

We are, therefore, of the view that there is no merit in this appeal
and it must be dismissed. There will be no order as to costs.

V.S.S.

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Appeal dismissed.