

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.5779/2002**

% **Date of Decision: 06.05.2010**

KASHI NATH ROY .... PETITIONER

Through Mr. Sunil Kumar, Sr. Adv. with Mr. Braj  
Mishra, Mr. Ujjwal Kr. Jha, Advocates

Versus

STATE OF BIHAR THR. JOINT SECRETARY & ORS. ....RESPONDENTS

Through Mr. Abik Kumar, Advocate for R-1.  
Mr. P.H. Parekh, Sr. Adv. with Mr. Ajay  
Kumar Jha, Ms. Pallavi Sharma, Advs.  
for respondents No.2 and 3.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KUMAR**

**HON'BLE MR. JUSTICE MOOL CHAND GARG**

- |    |   |     |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not?                                | Yes |
| 3. | Whether the judgment should be reported in the Digest?                | Yes |

**MOOL CHAND GARG, J.**

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1. This judgment shall dispose of the aforesaid writ petition filed under Article 226/227 of the Constitution of India before the High Court of judicature at Patna, which was transferred to this Court under the orders of Supreme Court dated 08.04. 2002.

2. The writ petition was filed against the order dated 28-29/06/1996 issued by the Standing Committee of the Patna High Court recommending r

3. Removal of the petitioner from the services of the Bihar State Superior Judicial Service with immediate effect and the notification No.11851 dated 02/11/1996 issued by the State of Bihar after accepting the recommendations of the Standing Committee issued under Rule 3(vii) of Patna High Court Rules 1916 (hereinafter referred to as the rules) in accordance with the provisions contained under Article 235 of the Constitution of India.

4. The petitioner entered into Bihar State Superior Judicial Service as Munsif on 22/10/1965 and was promoted to the post of District and Sessions Judge. On receipt of certain complaints it was decided by the High Court of Judicature at Patna through its Standing Committee to initiate disciplinary proceedings against the petitioner as per the communication issued on 17.5.1994. A memorandum of charge was served upon the petitioner dated 22/09/1994. The said memorandum was supplemented, as amendments were made in charge No.VI. Statement of allegations was also accordingly modified.

5. The charges read as under:-

(Article of Charge)

Charge – I

Shri K.N. Roy while posted as incharge Sessions Judge, Munger, granted bail to accused Lakshman Ram on 17.8.1991 in Barbigha P.S. Case No.48/91 regd. u/s 395 IPC, vide Bail applications NO.1146/1991 and to other two FIR named accused persons, namely, Naru Ram @ Narmad Ram and Sato @ Satyendra Ram vide B.A. No.1144/1991, although these accused persons had been named by the informant and 10-12 witnesses, and had also been identified by 9(nine)

witnesses in T.I. Parade. Further, the prayer for bail of the said accused Lakshman Ram had been rejected by the High Court on 8.5.1991 in Cr.Misc. No.4880/1991. Subsequently, the bail granted by him to the aforesaid accused persons were also cancelled by the High Court by order dated 28.1.1993 by Hon'ble Mr. Justice Choudhary S.N. Mishra in Cr.Misc.No.12034/1991 observing as follows:-

“While parting with the order, I must opine that by the aforesaid act, it remain not at all doubtful that this officer has intentionally exceeded and/or transgressed his limits by avoiding and in not maintaining the established decorous norms of the Institution.....”

Charge – II

Shri. K.N. Roy while posted as District and Sessions Judge, Saran appointed 31 Class IV employees in Saran Judgeship vide his order No.30N/94/2/94 dated 6.1.1994 although there were no vacancies in class IV establishment of the said judgeship. Further in making such appointment, he also violated the instructions contained in Court's letter No.511-45 dated 8.2.1991, where in the direction of the court was that appointments could be made only after adjustment of the staff of the vacant courts. As reported, as on 6.1.1994, the following class IV staff were recruited in the Judgeship of Saran

- (a) Class IV staff other than Orderlies  
(Process servers, Malis, Sweepers, etc.) -61 posts
  - (b) Staff of 31 Courts functioning on 6.1.1994 -67 posts
  - (c) Staff Car Driver - 1 post
  - (d) Staff of 12 vacant courts - 26 posts
  - (e) Class IV staff required in office according to Khalilur Rahman's Report - -8 posts
- .....  
- 163 posts

As against the total requirement of the said 123 posts, 156 Class IV staff were already working and there were only 7 vacancies which could be adjusted by Class IV staff of 12 vacant courts as

shown above, but he has made appointment of the aforesaid 31 class IV employees allegedly for some illegal gains.

#### Charge-III

While posted as District & Sessions Judge at Khagaria, Shri K.N. Roy had granted bail to the main assailant, accused Sangahi in Parbatta P.S. case No.125/93, regd. U/s 147/148/149/302 IPC and 27 of the Arms Act on 25.2.1994, vide B.A. NO.865/93, although the direct allegations against the said accused was that he fired from a country-made pistol upon the deceased Sudhir Choudhary hitting on his chest as a result of which he died and despite the fact that the statements of witnesses recorded u/s 164 Cr.P.C. and also noted in the case diary had supported that it was accused Sangahi who had fired upon the deceased.

#### Charge-IV

Shri. K.N. Roy while posted as District & Sessions Judge, Saran, Chhapra had granted bail to accused persons in the following cases on extraneous considerations allegedly for some illegal gains even when in some of the cases the prayer of the accused concerned for grant of anticipatory bail had been rejected by the High Court;

(a) He granted provision bail to accused Kamal Singh on 9.6.1992, in Sessions Trial No.59/92, although his prayer for bail had been rejected by the High Court on 18.2.1992, in Cr.Misc. No.12876/91. Subsequently, he also extended the period of the said provisional bail of the said accused from time to time and ultimately transferred the case to the court of VIth Addl. Sessions Judge, Chhapra, who also extended the said provisional bail of the said accused till 19.9.1992 in two spells but it appears his prayer for bail was rejected and he was taken into custody on 18.9.1992.

(b) He granted provisional bail to accused Brahmadayal Singh on 15.6.92 in Masrakh P.S.

case No.119/92, Regd. U/s 447/324/307/302/34 IPC and 27(A) of the Arms Act, till 21.6.1992 on the ground of Shradh of his father with a direction to surrender on 22.6.1992, although his prayer for bail had been rejected by the High Court on 13.12.1991 in Cr.Misc. No.13272/91. Further instead of ensuring his surrender, he again granted provisional bail to the said accused on 22.6.1992 till 29.6.1992 on the ground of his illness. On 30.6.1992, the said accused Brahmdayal Singh did not appear before Judicial Magistrate as a result of which his bail bond was cancelled and warrant of arrest was issued for his appearance on 13.10.1993 but it appears that he remained absconding till 13.1.1994. It further appears that the said accused had filed Cr.Misc. No.6427/1992 for bail before the High Court and during the pendency of the said bail application before the High Court, Shri K.N. Roy had granted bail to the said accused. Consequently, the bail application in this Court was dismissed as withdrawn.

(c) He granted anticipatory bail to accused Shalini Mishra on 30.05.1992 in Chhapra Town P.S. Case No.165/90 regd. U/s 363/365 and 366(A) of the IPC, vide A.B.P.No.317/1992 after taking into consideration the statements of the victim girl of the case u/s 164 Cr.P.C., although her prayer for anticipatory was rejected by the High Court.

(d) He granted bail to accused Anil Kumar Ojha on 1.5.1992 in Isuapur P.S. Case No.13/1991 regd. U/s 147/148/149/307/324/323/302 IPC, although his prayer for anticipatory bail had been rejected by the High Court on 19.12.1991 in Crl.Misc. No.11331/1991 and he had been directed to surrender before the Court concerned within four weeks from the date of the order of the High Court and apply for regular bail but he had not complied with the said order of the High Court.

(e) He granted anticipatory bail to accused Jhulan Singh in Isuapur P.S. Case No.94/91, regd. u/s 302/201/304(B)/34 IPC and u/s 3 and

4 of the Dowry Prohibition Act. He also granted anticipatory bail to accused Renu Devi, wife of the said accused Jhulan Singh on 16.7.1992 vide A.B.P. No.391/92 after taking into account the statements of husband of the victim girl, the younger brother of accused Jhulan Singh, which were recorded u/s 164 Cr.P.C. wherein he had stated that his wife had been ailing since long and she died of disease, although the allegations against the accused persons were that they were demanding T.V., VCP, etc. from the informant of the case and were torturing Gyanwati Kumari the victim girl.

(f) He granted bail to accused Sunayana Devi and Priyanka on 25.7.1992 vide A.B.P. NO.381/1992 in Deoriganj P.S. Case No.38/91, regd. u/s 304(B) of the IPC, although the allegations against the accused Sunayana Devi was that she demanded Motorcycle and a T.V. as dowry from Protosh Kumar, Son of the informant, and that these two accused persons alongwith Ajay Kumar Singh, Asheshwar Singh and Lallu Kumar Singh s/o Asheshwar Singh were alleged to have poured Kerosene Oil on the body of the victim girl Kiran Kumar, set fir, committed her murder and caused her dead body to disappear.

(g) He stayed the arrest of Shibrati Devi by order dated 8.7.1992 which was extended till 11.8.1992 from time to time vide ABP NO.369/1992 in Taria P.S. Case No.51/92, regd. u/s 304(B) 201/34 IPC, although the allegation against her was that she alongwith her son, Krishna Thakur, were demanding dowry from the victim girl Usha Devi and they alongwith their associates, had committed murder of Usha Devi by burning her in fire and caused the dead body of Usha Devi to disappear.

(h) He stayed the arrest of accused Indarshan Singh on 18.5.1992 and subsequently granted him anticipatory bail on 26.5.1992 vide ABP NO.274/92, in Jalalpur P.S. Case No.97/92, regd. U/s 147/148/149/323/324/307/379 IPC and Section 27 of the Arms act on the ground that injury report had not been produced before him,

although the allegation against the accused was that he caused injury on the hand of the informant of the said case by means of Bhala.

(i) He granted regular bail to five accused persons of Janta Bazar P.S. Case No.17/92, regd. U/s 147/148/149/323/324/307/379 IPC although the allegations against them were that they alongwith accused Nathuni Prasad varibusly armed with Bhala, Garasa and Lathi etc. assaulted the informant Chuni Lal Prasad and his nephew and snatched away a wrist watch of the informant.

(j) He granted anticipatory bail to accused Chandeshwar Singh and Ramayan Singh on 10.4.1992, vide ABP No.206/92 in Dighwara P.S. Case No.22/92, regd. U/s 147/148/149/323/324/341 of the IPC and 27 of the Arms Act, holding that the allegations against them were for assaulting the informant with lathis, although the allegations in the said case was that accused Bodha Singh along with five other accused persons including the aforesaid two accused persons variously armed with pistol, farsa etc. assaulted the informant and caused injury with Farsa on the head of the informant and on the right hand of the brother of the informant, Ram Swaroop Singh. Further, accused Pasupati Singh caused Farsa injury on the leg of Siya Ram Singh, another brother of the informant and accused Lala Singh fired three rounds from his pistol aiming at the informant though the informant managed to escape injury from these firearms.

(k) He granted provisional bail to accused Ramanuj Singh and Krishna Singh on 8.9.1992, vide A.B.P. No.839/1992 and to accused Ramashanker Singh on 14.9.1992 vide A.B.P. No.846/92, in Amnaur P.S. Case No.120/1992 regd. u/s 302/201/376/34 IPC holding them to be responsible only for disposal of the dead body of the victim girl Bibha Kumari, although the allegations in the case were that accused Umesh Singh, who had an illicit connection with the said victim girl Bibha Kumari, the daughter of informant of the case, aged 14 years, committed

rape on her on 24.8.1992 in absence of the informant. Subsequently, when this news spread in the village, the said accused persons administered poison to Bibha Kumari and killed her. Thereafter they kept the dead body concealed in their house and in the night took the dead body to the burning ghat and destroyed it by pouring kerosene oil and burning it.

(l) He had granted bail to accused Manoj Singh, vide B.P. No.1035/92, in Masrakh P.S. Case NO.20/92, regd. U/s 307/323/325 of the IPC, subsequently converted into a case u/s 302/IPC although the informant in her protest petition named Manoj Singh and Dilkishore Singh as the persons who committed murder of her husband. Further, from the statements of the informant Sunita Devi and Mathura Sah, the father of the deceased, recorded u/s 164 Cr.P.C. It appeared that the aforesaid two accused persons took away the deceased with them, assaulted him with lathi and pistol as a result of which he died in the way while taking him to the Hospital. He is further alleged to have granted anticipatory bail to the said accused Dilkishore Singh.

(m) He granted stay of arrests of accused Lallan Singh, Saheb Singh and Moghul Miyan without any authority of law on 28.4.92, vide A.B.P. No.225/92, in Chhapra Muffasil (Jalalpur) P.S. Case No.34/92, regd. u/s 409/420/ of the IPC which was extended on 18.4.92, 27.5.92, 15.6.92, 4.7.92, 22.7.92, 14.8.92, 4.9.92, 1.10.92, 6.11.92, 20.11.92, 11.12.92, 11.1.93, 11.2.93, 15.3.93 and again on 30.4.93 and lastly on 15.5.93, although the allegation in the case against the accused persons was that they misappropriated a sum of Rs.82,106/- of Jawahar Rojgar Yojna. Further the said A.B.P. No.225/92 was dismissed as withdrawn on 31.5.93.

(n) He had stayed the arrest of accused Binda roay, Sanyogi Devi and Sunayna Devi on 26.6.94, vide A.B.P. No.368/92, in Masrakh P.S. Case No.69/92, regd. u/s 323/498 of the IPC and the said stay of arrest was extended by him on 7.7.92, 16.7.92, 27.7.92 and 10.8.92 on the ground of

non-receipt of case diary and finally the anticipatory bail was granted to Chandeshwar Roy and four others all FIR named accused persons of the case by order dated 15.9.92 passed by the 2<sup>nd</sup> Addl. Sessions Judge, Saran

(o) He had granted regular bail to accused Mukhtar Miyan and Aas Md. Miayan on 5.9.92, in Garakha P.S. Case No.125/92 regd. U/s 498(A) IPC and Section 3 and 4 of the Dowry Prohibition Act. He is further alleged to have granted provisional bail, to accused Rahman Ansari on 27.1.93 which was extended on 6.2.93 and 16.2.1993 and lastly he had confirmed the said provisional bail of the said accused Rahman Ansari on 17.2.1993,

#### CHARGE V

Shri. K.N. Roy by his order passed in Cr.Revision No.201/92 had set aside the order dated 18.9.1992, passed by Shri M.M. Singh, Judicial Magistrate, Chhapra, taking cognizance of case No.C1066/92 and thereby allowed the said Cr. Revision and remanded the case back to the court of C.J.M., Saran, with a direction to pass fresh order after examining the complainant and giving his finding on the point whether petitioner No.7 was a juvenile or not as she had described her age to be 14 years and if it was so, then she came under the category of juvenile as defined u/s 2(h) of the Juvenile Justice Act triable by the Court of CJM only. Such order was passed by Sri K.N. Roy ignoring the principle of law that in complaint petitions generally age of the accused is not mentioned and cognizance of the offence is taken and not of the accused and that such matters should be considered only after appearance of the accused.

#### CHARGE VI

Shri. K.N.Roy while posted as District and Sessions Judge Chapra is also alleged to have earned Rs.25 Lakh by corrupt practices and used to give preference to a set of lawyers in cases of serious nature and passed different orders in some other cases of similar nature. He is further alleged

to have taken a sum of Rs.60,000/- for granting bail in one murder case through 'Mahanth' of Sonepur, a sum of Rs.35,000/- per candidate through Sri Ramsewak Singh, Marketing Officer in making appointment in Civil Courts, Chhapra and a sum of Rs.1,00,000/- for allowing permanent construction on the land of civil court, Chapra. It is further alleged that a sum of Rs.25,000/- was realized for settlement of a pond but a sum of Rs.2,000/- only was shown on paper in connivance with Sri Thakur Prasad Singh, an Officer of the Fishery Department.

Amendment in Charge No.VI (though mentioned as Charge no. vii) of Annexure-I (Article of Charges).

(ii) Sri K.N. Roy while you were posted as District and Sessions Judge, Chapra, settled several shops as shown in Column (A) of the Inspection Report of the then Registrar (E), dealing in different articles which were not in accordance with the guidelines given under Rule 28 (ii) and 29 of the Bihar Government Estate (Khas Mahal Manual). You also settled several shops as shown under Clause (B) of the report and the settlees made pucca construction with your connivance without seeking any permission from the Government. You allowed pucca construction of 12 shops as shown in Column 'C' of the report which was constructed by demolishing the southern boundary wall of the Civil Court Building. You as District & Sessions Judge, Chapra, settled the shops as shown in Clause 'D' of the report for particular purposes but the settlees were carrying out business violating the terms and some of them were found to have sublet the same. There were few shops as show in clause 'E' of the report whose licences were not renewed for 1993-94 and even then they were being run unauthorisedly. Most of the shops as mentioned in different clauses of

the report, as stated above, were for the purposes other than to cater the needs of litigant public.

5. Reply was sought to the Memo of Charges from the petitioner. After response of the petitioner was received, it was decided to hold an inquiry into the charges. Justice P.K. Deb of the Patna High Court was appointed as the enquiry officer. The petitioner participated in the enquiry. A report was given by the enquiry officer holding the petitioner guilty of charge No.I, II, IV (a)(b)(g)(h)(m)(n) and VI. As per the enquiry report the petitioner was held guilty of gross negligence of duty amounting to misconduct. The findings of the enquiry officer can be summarized as follows: -

(a)Charge No.1 related to grant of bail to accused in a case registered under section 395 of I.P.C., even though the accused had been named by the informant and 10-12 witnesses and had also been identified by 9 witnesses in identification parade. Enquiry Officer held that the order granting bail mentioned rejection of bail by the predecessor Sessions Judge some days earlier but there was no mention that bail prayer was rejected by High Court on 8.5.1991 in Criminal Misc. No. 4880/1991. Petitioner admitted in his petition that due to inadvertence he missed out the fact that bail application of accused persons had been rejected by the learned Sessions Judge and had committed mistake in granting bail. However, the allegation that bail order was procured from the petitioner on extraneous consideration could not be proved, as it was very difficult to get any direct evidence. However, the petitioner was held liable for judicial indiscretion.

(b)Charge No.II related to appointment of 31 Class IV employees in violation of High court's instructions and inspite of there being no vacancies. This charge was held proved against the petitioner. It was found that petitioner had

not taken any report regarding the vacancies either from the Registrar of the Civil Court or from the Establishment Assistant. Two other officers who were part of the committee formed for making appointments apart from the petitioner were never involved in the process of calculation of vacant posts. The advertisement was made by pasting a notice on the Notice Board of the District Judge and Employment Exchange did not send any name. Only 3 applicants out of 5000 applicants from the advertisement of 1990 had been appointed and the rest 28 appointments were made from the fresh candidates who made applications on the basis of pasted notice board advertisement. The petitioner was under order of transfer when these appointments were made on 6.1.1994. There was no vacancy of Grade IV employees in the judgeship of Saran either in 1990 or in 1991-92 and it was already over-staffed. The Standing Committee of Patna High Court vide its Resolution dated 23.8.1994 resolved that 31 appointments were made without there being any vacancy should be terminated. Writ Petition challenging order of termination was dismissed. The Petitioner violated the instructions of the High Court dated 8.2.1991 whereby the District Judges were asked to strictly follow the instructions to decide fresh vacancies of Class III or Class IV employees after making adjustment of the staff in the vacant courts against the existing vacancies. The appointments were made after receiving the transfer order from that station. Prior consultation and approval was never taken regarding the vacancy position. All these revealed inefficiency of the petitioner and serious lapse in administrative performance. Non-following of strict instructions of High Court and making appointments in hot haste when being under order of transfer made the officer liable of dereliction of duty which amounted to misconduct.

(c) Charge No. III was held to be not proved.

(d) Charge No. IV related to grant of bail to accused persons in various cases on extraneous considerations allegedly for some illegal gains even when in some of the cases the prayer of the accused persons for grant of anticipatory bail

had been rejected by the High Court.

As far as Charge No.IV (a) was concerned it was held that petitioner should have referred the accused to move the High Court for the provisional bail without taking the burden on himself once the bail had been rejected by the High Court.

(e)As far as Charge No.IV (b) is concerned it was found that admittedly on the date when the provisional bail was granted by the petitioner, another bail petition was pending before the High Court. This was specifically mentioned in the petition filed by the accused. Worst part of it was that after such provisional bail was granted, it was extended. When the High Court was in session of the matter it was definitely beyond his jurisdiction to interfere, even for grant of provisional bail whatever be the circumstances. He ought to have referred the accused to move for provisional bail to High Court where his prayer for bail was pending. There was no evidence regarding the allegations that these orders had been procured by the accused on extraneous considerations but the way the matters were dealt with in both cases, judicial discretion in grant of bail was not exercised by the petitioner properly.

(f)Charges IV (c), (d), (e), (f) & V were held not proved.

(g)Charges IV (g),(h),(m) and (n) related to grant of bail to accused persons for cases registered under 304B/201/34 IPC and Section 147/148/149/323/324/307/379 IPC and staying the arrest of the accused. The Petitioner had passed an interim order staying the arrest in all these cases while considering the pre-arrest bail under Section 438 of Criminal Procedure Code. There was no scope of any such interim order within the scope of Sec 438 of Cr.P.C. as held by Patna High Court in the case reported in 1987 PLJR 365. It was held that a Senior Sessions Judge cannot take shelter of ignorance of judgment of Patna High Court when he is to deal with these matters on day to day basis.

(h)Regarding charges IV (i), (j), (k), (l) and (o) it

was held that the orders granting bail might be bad considering the gravity of offence but nothing could be imputed towards misconduct or lack of integrity or granting bail on extraneous considerations. The Petitioner was liberal in granting bail.

(i) Charge No.VI and amended charge related to settlement of various shops within the compound of Civil Courts at Chapra in violation of Rules 28-II and 29 of Khas Mahal Manual which were not at all required to cater to the needs of litigant Public. It was held that petitioner had settled various shops within the compound of Civil Courts, Chapra which were not at all required to cater to the needs of litigant public violating and norms. The administrative actions of the petitioner were not only irregular but also illegal and had intentionally violated Rule 28 and 29 of Khas Mahal Manual and had failed to show his bonafide in making such settlements. Petitioner was held liable to gross ignorance of duty amounting to misconduct. Certificates given by some criminal lawyers of Chapra in favour of the petitioner would not absolve him of the liability and responsibility when the records were against him.

6. The findings of Enquiry Report were accepted by the Standing Committee of Patna High Court in its meeting held on 20.04.96, **when it was also resolved that a copy of the enquiry report be supplied to the petitioner with a direction to show cause within one month from the date of receipt of notice as to why the punishment of dismissal from service should not be imposed on him.** It was also resolved to put the petitioner under suspension with immediate effect. The resolution passed by the Standing Committee, in this regard reads as under:

PROCEEDINGS OF THE MEETING OF THE STANDING  
COMMITTEE HOLD ON SATURDAY, THE 20<sup>TH</sup> APRIL, 1996.

IN THE CHAMBERS OF HON'BLE THE CHIEF JUSTICE

<b>AGENDA</b>	<b>DECISION</b>
<p>To Consider the Enquiry Report of Hon'ble Mr. Justice P.K. Deb in the matter of Departmental Proceeding against Shri Kashi Nath Roy, District and Sessions Judge, Gumla</p>	<p>Having consider as the entire Enquiry Report as also the evidence and other documents on record,</p> <p>IT IS RESOLVED</p> <p>That the Enquiry Report including the findings of the Inquiry Officer relating to the charges No.I, II, IV(a), (b), (g), (h), (m),(n) and VI, which have been proved against the delinquent officer, be and are hereby accepted</p> <p>FURTHER RESOLVED</p> <p>That the punishment of dismissal from service be proposed against the delinquent officer.</p> <p>IT IS ALSO RESOLVED</p> <p>That a copy of the Enquiry Report be supplied to the delinquent officer and he be directed to show casue within one month from the date of the receipt of the notice as to why the proposal punishment or dismissal from service should not be imposed on him</p> <p>FURTHER RESOLVED</p> <p>That the delinquent officer be and is hereby placed under suspension, with immediate effect.</p> <p style="text-align: right;">Sd/- D.P. Wadhwa, C.J. Sd/- Dr. J.N. Dubey, J. Sd/- Nagendra Rai, J Sd/- S.N. Jha,J. Sd/- T.P. Singh, J Sd/- N.K. Sinha,J</p>

7. Copy of Enquiry Report was sent to the petitioner who was asked to show cause as to why the punishment of dismissal from service should not be imposed upon him. Petitioner submitted his reply to memo No. 7064 dated 22.04.96 which was supplemented by another

reply. The reply was considered by the Standing Committee when a resolution was passed to remove the petitioner with immediate effect and in this regard it was decided to make the recommendations to the State Government for issuing appropriate orders.

8. It would also be appropriate to take note of Resolution of the Standing Committee of the Patna High Court removing the petitioner from his services. The said Resolution removing the petitioner from his services with immediate effect is reproduced for the sake of reference:-

Proceedings of the meeting of the Standing Committee held on the 28<sup>th</sup> & 29<sup>th</sup> of June, 1996 in the Chamber's of the Hon'ble the Chief Justice

AGENDA	DECISION
<p>2. To consider the show cause and supplementary show cause submitted by Shri Kashi Nath Roy, District &amp; Sessions Judge (Under Suspension)</p>	<p>Having considered the show cause and supplementary show cause submitted by Shri Kashi Nath Roy, Distt. &amp; Sessions Judge in response to the earlier decision of the Standing Committee,</p> <p>It is resolved that Sri Kashi Nath Roy, District and Sessions Judge, is hereby removed from service with immediate effect</p> <p>Necessary recommendation in this connection be sent to the State Government forthwith.</p> <p style="text-align: right;">Sd/- D.P. Wadhwa, C.J. Sd/- Dr. J.N. Dubey, J. Sd/- B.N. Agrawal, J. Sd/- Nagendra Rai, J Sd/- S.N. Jha, J. Sd/- I.P. Singh, J Sd/- A.N. Chaturvedi, J</p>

9. The recommendations were accepted by the Governor, State of Bihar and accordingly, notification dated 02/11/1996 was issued by the state in exercise of powers vested in the Governor under Article 235 of the Constitution of India. The said notification reads as under:-

“GOVERNMENT OF BIHAR  
DEPARTMENT OF PERSONNEL &  
ADMINISTRATIVE REFORMS

No.7/A1-6013/96-Pers.11851 Patna 15, Dated: 2<sup>nd</sup>  
November, 1996

In the light of the recommendation of the Hon'ble High Court of Patna, Shri Kashi Nath Roy, the then District & Sessions Judge, Gumla (presently suspended) is removed from service from Bihar Higher Judicial Service with immediate effect.

By order of the Governor of Bihar  
Sd/-(A.B. Prasad)  
Joint Secretary to the Government.”

10. A perusal of the Resolution goes to show that what has been done by the Standing Committee is it to recommend removal of the petitioner to the State Government in accordance with the requirements of Article 235 of the Constitution of India which was accepted by the state.

11. In the written submissions filed on behalf of the petitioner, it has been submitted that the word “removal” has not been used either in Rule 3 (dealing with powers of the Standing Committee) or in Rule 15 (dealing with power of the Full Court) though removal can be said to be the most major penalty after dismissal.

12. The petitioner has also assailed the impugned order and notification on other grounds; i.e

A) That the report of the disciplinary authority does not make out a case to hold that the petitioner was incorrigible or unfit to continue with the judicial service & that the report dated 18/04/1996 given by the enquiry officer suffers from material infirmity.

B) That the notification dated 02/11/2006 has been issued by the State of Bihar after the superannuation of the petitioner i.e. after the petitioner attained the age of 58 years and thus, at the time when the notification was issued there was no relationship of master and servant. Thus, the notification issued by the State was non est and illegal.

C) That Patna High Court moved in a pre-determined manner and in violation of Principles of Natural Justice inasmuch as vide notice dated 13.04.1994, it was already decided to dismiss the petitioner from service.

D) That no second notice was served upon the petitioner i.e. giving him a separate opportunity to represent his case against the proposed punishment. It is submitted that the said procedure adopted by the respondent is contrary to the judgment delivered by the Apex Court in the case of *MD, ECIL Vs. B. Karunakar, 1993 (4) SCC 727*.

(E) That In the case reported as *U.P. Government Vs. Sabir Hussain 1975 (4) SCC 703*, the Hon'ble Supreme Court has held that "removal" and "dismissal" are synonymous and "removal" should be read into dismissal wherever it is not separately specified.

13. The petitioner has also relied upon the following judgments:-

- (i) *Shyamlal Vs. The State of Uttar Pradesh & Anr. 1955 (1) SCR 26;*
- (ii) *Dr. Dattatraya Mahadev Nadkarni Vs. Municipal Corporation of Greater Bombay 1992 (2) SCC 547*
- (iii) *The Registrar (Administration), High Court of Orissa, Cuttack Vs. Sisir Kanta Satapathy (Dead) by Lrs. and Anr. (1999)7 SCC 725*

14. It may be observed here that as per the statement made by the petitioner before this Court on 16/07/2009 ground (B) has not been pressed in service. Similarly, no challenge has been made by the petitioner to the constitutional validity of Patna High Court Rules which contained Rule 3 giving powers to the standing committee of Patna High Court to pass orders regarding the disciplinary proceedings against a subordinate judicial officer except to recommend dismissal which recommendation is subject to a decision to be taken by the Full court as per Rule 15(1)(ii) of the Rules.

15. On behalf of the respondents, it has been submitted that the order of removal is perfectly valid and sustainable in law in view of the fact that the said order is based upon the recommendation of the Standing Committee of the Patna High Court which has been vested with the powers to deal with non-judicial business of Patna High Court which also includes initiation of disciplinary proceedings against subordinate judicial officers including the members of Superior Judicial Service and also includes the power of suspension as well as passing of appropriate punishments except the punishment of dismissal. It has been further submitted that the recommendations were duly accepted

by the State of Bihar and therefore, there is no infirmity in the said order.

16. The respondents dealing with the allegations of mala fide in initiating the proceedings in a pre-determined manner had submitted that the notice dated 13/04/1994 was not given effect to and in fact the proceedings were initiated based upon the memorandum of charge dated 22.9.94 duly served upon the petitioner. The decision to remove the petitioner from service was taken after the report of the enquiry officer was submitted and accepted by the Standing Committee and after considering the replies given by the petitioner after he was supplied with a copy of the enquiry report. The said order has been passed in accordance with the power conferred on the Standing Committee under Rule 3(vii) of the Rules.

17. Regarding the plea of the petitioner that he was entitled to a second opportunity separately regarding the proposed punishment after his reply to the enquiry report, it has been submitted that in terms of the amendment to Article 311, no such requirement was left. The said Article of Constitution is reproduced hereunder:

**Article 311 - Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State**

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in

which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply:

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause

(4), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

18. It is a matter of record that the petitioner in this case has been served with a copy of the enquiry report as well as the proposal to punish him with the punishment of dismissal. Thus the judgment in the case of *MD, ECIL's case (supra)* is not applicable to the facts of this case.

19. It is also the case of the respondents that the impugned order passed by the Standing Committee of the Patna High Court is in accordance with the Rules framed by the Patna High Court. It is submitted that under the Rules, it is the Standing Committee of the

Patna High Court which is authorized to initiate disciplinary proceedings against a subordinate judicial officer and also against member of Superior Judicial Officer. The said Committee is also empowered to suspend the official and also to pass orders while concluding the disciplinary proceedings except the order of dismissal. We feel it appropriate to take note of the Patna High Court Rules, 1916.

20. Rule 1 forming part of Chapter 1 provides for constitution of Standing Committee of the Patna High Court for disposing of non judicial business. Rule 3 of the Rules defines the powers without reference to the judges generally in relation to the control and direction of the subordinate courts for the purpose of keeping such control and direction. The said Rule for the sake of reference is reproduced hereunder:-

3. The Standing Committee shall have power, without reference to the Judges generally-

(i) to dispose of all correspondence within its own Department urgent in its nature and not of general importance;

(ii) to make recommendations for promotion of Subordinate Judges to the rank of Additional District and Sessions Judge and of the Additional District and Sessions Judge to the rank of District and Sessions Judge, and their initial posting on promotion or appointment;

(iii) (a) to exercise the power exercisable by the Court under the Code of Criminal Procedure, 1973;

(b) to make recommendations to the Government for the testing of special powers under any special Act;

(iv) (a) [\*\*\*\*] to pass orders of transfer of District and Sessions Judges and Additional District and Sessions Judges;

(b) to pass orders of the transfer and posting of Subordinate Judge, with or without the powers of an Assistant Sessions Judges and Munsifs.

(v) To make recommendations for the deputation of officers of Bihar Judicial Service or Superior Judicial Service to posts under the Government of India, Government of Bihar or other State Government or to Foreign Service;

(vi) to issue orders regarding the promotion of Munsifs;

(vii) to pass orders of suspension, initiation of departmental proceedings against member of the Superior Judicial Service and Subordinate Judicial Service, and consequential orders in the said proceedings other than that of dismissal from service;

(viii) to issue Circular Orders and General Letters to the Subordinate Courts;

(ix) to dispose of any matter which might have been dealt with by the Judge-in-charge of the Administrative Department, but which he has referred to the Committee for their opinion;

(x) to make recommendation to the State Government for compulsory retirement of any Judicial Officer of any rank :

Provided that notice of the decision of the Standing Committee shall be circulated to the Full Court within ten days from the date of the decision and if any member of Full Court desires, within three weeks of the decision, the matter to be discussed at a meeting of the Full Court then no action will be taken till the decision at such a meeting; and

(xi) to dispose of any matter referred to it by the Full Court which might have been dealt with by the Full Court.

21. It would also be appropriate to take note of the Rule 15(1) (ii) on which much reliance has been placed upon by the petitioner and which requires dismissal to be approved by the Full Court :-

15.(1) On the following matter decision shall be taken by the Judges at a meeting of the Full Court :-

- (i) xxx xxx xxx
- (ii) All recommendations for the dismissal from office of Judicial officers.

22. A perusal of the aforesaid Rules goes to show that the Standing Committee of the Patna High Court is competent to initiate departmental proceedings against any member of the Superior Judicial Service and Subordinate Judicial Service as well as competent to pass orders of suspension and consequential orders in the said proceedings other than that of dismissal from service. However, in the case of compulsory retirement even though such power is also vested in the aforesaid Standing Committee but that power is with a rider that only recommendation was to be made to the State Government provided further that the notice of the decision shall be circulated to the Full Court within 10 days from the date of decision and if any member of the Full Court desires within three days of the decision that the matter is to be discussed in a meeting of the Full Court, then no action shall be taken till the decision in the meeting is taken.

23. Before this Court, the main submission which has been made on behalf of the petitioner is that the Standing Committee is not the High Court and as such the order passed by the Standing Committee is not within the purview of Article 235 of the Constitution of India.

24. This submission of the petitioner is based upon a wrong notion in as much as the power to award punishment upon a subordinate officer under Article 235 does not mean that it is to be exercised by the Full body of Judges of the High Court. The committee appointed by the High Court assigned with a specific task also acts as the High Court. In this regard it would be appropriate to take note of the constitutional bench judgment of the Apex Court delivered in the case of *State of U.P. Vs. Batuk Deo Pati Tripathi and Anr.*, (1978) 2 SCC 102. In the aforesaid case, it has been held that it is a misconception that control over the subordinate judiciary, which is vested by Article 235 in the High Court, must be exercised by the whole body of the Judges. In this case, the Apex Court has specifically held that the exercise of disciplinary power by a committee of judges of the High Court to whom the power is entrusted by the Full Court for a convenient transaction of the business is not an impermissible delegation of power. The relevant portion of the judgment is reproduced hereunder:-

15. Yet another misconception may now be cleared. It is urged on behalf of the respondent by his learned Counsel Shri Misra that under Article 216, 'High Court' means the entire body of Judges appointed to the Court and therefore, the control over the subordinate judiciary which is vested by Article 235 in the High Court must be exercised by the whole body of Judges. The thrust of the argument is that the High Court cannot delegate its functions or power to a Judge or a smaller body of Judges of the court. This argument requires consideration of the question whether any delegation as such is involved in the process whereby a Judge or a Committee of Judges of the court, like the Administrative Committee in the

instant case, is authorised by the whole court to act on behalf of the court.

16. For answering this question it is necessary in the first place to bear in mind that the power of control over the subordinate courts which is vested in the High Courts comprises such numerous matters, often involving consideration of details of the minutest nature, that if the whole High Court is required to consider every one of those matters, the exercise of control instead of becoming effective will tend to cause delay and confusion in the administration of justice in the State. A construction which will frustrate the very object of the salient provisions contained in Article 235 ought, as far as possible, to be avoided. The control vested in the High Courts by that article comprehends, according to our decisions, a large variety of matters like transfers, subsequent postings, leave, promotions other than initial promotions, imposition of minor penalties which do not fall within Article 311, decisions regarding compulsory retirements, recommendations for imposition of major penalties which fall within Article 311, entries in character rolls and so forth. If every Judge is to be associated personally and directly with the decision on every one of these matters, several important matters pertaining to the High Court's administrative affairs will pile into arrears like court arrears. In fact, it is no exaggeration to say that the control will be better and more effectively exercised if a smaller committee of Judges has the authority of the court to consider the manifold matters falling within the purview of Article 235. Bearing in mind therefore the nature of the power which that article confers on the High Courts, we are of the opinion that it is wrong to characterise as 'delegation' the process whereby the entire High Court authorises a Judge or some of the Judges of the Court to act on behalf of the whole Court. Such an authorisation effectuates the purpose of Article 235 and indeed without it the control vested in the High Court over the subordinate courts will tend gradually to become lax and ineffective. Administrative functions are only a part, though an important part, of the High Courts' constitutional functions. Judicial functions ought to occupy and do in fact consume the best part of a Judge's time. For balancing these two-fold functions it is inevitable that the administrative duties should be left to be discharged by some on

behalf of all the Judges. Judicial functions brooke no such sharing of responsibilities by any instrumentality.

17. The High Court has not by its Rules authorised any extraneous authority, as in *Shamsher Singh* (supra) to do what the Constitution enables and empowers to do. The Administrative Judge or the Administrative Committee is a mere instrumentality through which the entire Courts acts for the more convenient transaction of its business, the assumed basis of the arrangement being that such instrumentalities will only act in furtherance of the broad policies evolved from time to time by the High Court as a whole. Each Judge of the High Court is an integral limb of the Court. He is its alter ego. It is therefore inappropriate to say that a Judge or a Committee of Judges of the High Court authorised by the Court to act on its behalf is a delegate of the Court.

18. Since a Judge of the High Court or an Administrative Committee consisting of High Court Judges is, for the purposes of matters falling within Article 235, not a delegate of the High Court, the principle enunciated by S.A. de Smith in his famous work on *Judicial Review of Administrative Action* (3rd edn, 1973, P. 263) that a discretionary power must, in general, be exercised only by the authority to which it has been committed has no application. The various cases discussed by the learned author have arisen, as stated by him at p. 265, in diverse contexts and many of them turn upon unique points of statutory interpretation. The true position as stated by the author is :

The maxim *delegatus non-potest delegere* does not enunciate a rule knows no exception; it is a rule of construction to the effect that "a discretion conferred by statute is prima facie intended to be exercised by the authority on which the statute has conferred it and by no other authority, but this intention may be negated by any contrary indications found in the language, scope or object of the statute.

We have pointed out above that the amplitude of the power conferred by Article 235, the imperative need that the High Courts must be enabled to transact their administrative business more conveniently and on awareness of the realities of

the situation, particularly of the practical difficulties involved in a consideration by the whole court, even by circulation, of every day-to-day matter pertaining to control over the District and subordinate Courts, lead to the conclusion that by rules framed under Article 235 of the Constitution the High Court ought to be conceded the power to authorise on Administrative Judge or an Administrative Committee of Judges to act on behalf of the Court. Accordingly, we uphold the minority judgment of the Full Bench that Rule 1 of Chapter III of the 1952 Rules framed by the Allahabad High Court is within the framework of Article [235](#). The recommendation made by the Administrative Committee that the respondent should be compulsorily retired cannot therefore be said to suffer from any legal or constitutional infirmity.

25. Another judgment on the subject given by the Apex Court is the judgment delivered in the case of *High Court of Judicature at Bombay Vs. Shirish Kumar Rangarao Patil 1997 (6) SCC 339*. The relevant portion of the observation made in this judgment are reproduced hereunder:

10. It would thus be settled law that the control of the subordinate judiciary under Article 235 is vested in the High Court. After the appointment of the judicial officers by the Governor, the power to transfer, maintain discipline and keep control over them vests in the High Court. The Chief Justice of the High Court is first among the Judges of the High Court. The action taken is by the High Court and not by the Chief Justice in his individual capacity, nor by the Committee of Judges. For the convenient transaction of administrative business in the Court, the Full Court of the Judges of the High Court generally passes a resolution authorizing the Chief Justice to constitute various committees including the committee to deal with disciplinary matters pertaining to the subordinate judiciary or the ministerial staff working therein. Article 235, therefore, relates to the power of taking a decision by the High Court against a member of the subordinate judiciary. Such a decision either to

hold an enquiry into the conduct of a judicial officer, subordinate or higher judiciary, or to have the enquiry conducted through a District or Additional District Judge etc. and to consider the report of the enquiry officer for taking further action is of the High Court. Equally, the decision to consider the report of the enquiry officer and to take follow-up action and to make appropriate recommendation to the Disciplinary Committee or to the Governor, is entirely of the High Court which acts through the Committee of the Judges authorised by the Full Court. Once a resolution is passed by the Full Court of the High Court, there is no further necessity to refer the matter again to the Full Court while taking such procedural steps relating to control of the subordinate judiciary.

26. The aforesaid judgments thus clearly holds that the decision of the Standing Committee of the High Court constituted under the Rules is legal and binding. It does not suffer from any infirmity. We have already discussed the two resolutions passed by the Standing Committee which goes to show that the resolutions have been passed in accordance with the rules by the Standing Committee on behalf of the High Court. Later on, the recommendations have also been accepted by the State of Bihar.

27. At this juncture we may also dispose off another objection raised by the petitioner that one of the members of the Standing Committee was not present when the decision to suspend him was taken. It will be appropriate to take note of other observation made in the case of High Court of Judicature at Bombay Vs. Shirish Kumar Rangarao Patil (Supra) which is as under:

It is true that there is no further resolution passed to constitute a quorum for taking a decision. . It is common experience that in

some of the High Courts, there is no express resolution constituting quorum. Ex abundant cautela some High Courts pass such resolution as to the quorum. However, the practice has grown that generally majority of the Committee, when assembled, would transact the administrative business and take decisions. In the light of the settled legal position that the decision taken is that of the High Court and the Committee acted for and on behalf of the High Court, the majority of four Judges of the Committee, even in the absence of such express resolution, does constitute the quorum and is competent to transact the administrative business of the Court. Out of five, three members always constitute a quorum so as to be competent to take decision since even if it is assumed that all the five members were present and they decided against the respondent, the opinion of four Judges would constitute majority decision. It may be expedient that all the judges sit or the record is circulated to all of them and they take decision. Unless any of the members expressed his dissent from the decision taken per majority, the fifth member also must be deemed to have agreed to the decision of the majority, though no formal concurrence in that behalf was recorded. All the four Judges unanimously recommended imposition of penalty of dismissal on the respondent.

28. Thus, it is apparent that even if one of the member of the Committee is absent it will still remain the decision of the Committee and for the reasons stated above that of the High Court.

29. We may also refer to the procedure adopted by the Standing Committee in having passed an order recommending removal of the petitioner. It is a matter of record that the recommendation was made by the Standing Committee after a copy of the enquiry report along with proposed punishment was served upon the respondent who gave replies

thereto in the form of a show cause notice as well as supplementary show cause notice which have been considered by the Standing Committee before passing the impugned order as is apparent from the reading of the Resolution dated 20.04.1996.

30. From a reading of the Rule 3(vii) (*supra*), It is apparently clear that the power vested in the Standing Committee includes imposition of all punishments except the punishment of dismissal, for which the Full Court of the High Court has to take a decision. It is interesting to note that as per Rule 3(x) the power to compulsory retire a delinquent is also vested in the Standing Committee. However, in that case what is required is that the decision of the Standing Committee has to be circulated to the Full Court within 10 days from the date of the decision and it is only if any member of the Full Court desires within three weeks of a decision, the matter can be discussed in a meeting of the Full court and till then no action is required to be taken.

31. Thus, the scheme of the Rules enables the Committee to pass any punishment except the punishment of dismissal. Such punishment would naturally include punishment of removal also. However, in the case of dismissal, the punishment is to be imposed by the Full Court whereas in the case of compulsory retirement punishment can be imposed by the Standing Committee but subject to the proviso to rule 3(x). Thus, the intention of the legislature in having approved the Rules framed by the Patna High Court which were framed long ago is writ large and there is no confusion in this regard.

32. As regards the submission of the petitioner that removal is also a most severe punishment after dismissal and not dealt with specifically in the rules, the full High Court and not the standing committee has power to remove a judicial officer; it is, however, well settled that though “removal” is also a species of “dismissal”, yet it is distinct from dismissal. Wherever removal has not been specifically used, it cannot be read as dismissal as the connotation and ramification of both are different and they cannot be used interchangeably.

33. We have also gone through the judgments cited by the petitioner. We find that the judgments while propounding that removal and dismissal are species of dismissal nowhere says that the scheme under the Rules of Patna High Court is illegal or unjustified. It may be observed here that the petitioner has not challenged the vires of the Rule 3(vii) of the Patna High Court Rules 1916. Thus, these judgments are of no help to the petitioner.

34. Now coming to the judgment delivered in the case of *Uttar Pradesh Government Vs. Sabir Hussain (1975) 4 SCC 703* where, in the context of not supplying a copy of the report of the inquiry officer, the Supreme Court also observed that the case of removal stands on the same footing as a case of dismissal. It would be relevant to take note of para 11 of the judgment which reads as under:

**11.** A comparative study of Section 240(3) and Article 311(2) would show that the protection afforded by these provisions, is in nature and extent, substantially the same. Of course, the word “removal”, which appears in Article 311(2),

does not find mention in Section 240(3). But this does not mean that Section 240(3) did not cover a case of “removal”. It is by now well settled that from the constitutional standpoint, ‘removal’ and ‘dismissal’ stand on the same footing except as to future employment. In the context of Section 240(3), “removal” and “dismissal” from service are synonymous terms, the former being only a species of the latter. Moreover, according to the principles of interpretation laid down in Section 277 of the 1935 Act, the reference to dismissal in Section 240 would include a reference to removal.

35. Despite the aforesaid observation made by the Supreme Court, it does not flows from this judgment that the rules framed by the Patna High Court giving a power to the standing committee which, in fact, acts as the High Court becomes illegal or that the decision taken by the Standing Committee is not binding upon the Governor of the State of Bihar. Moreover the said case was not decided on identical facts.

36. Another judgment relied upon by the petitioner delivered in the case of *T. Lakshmi Narasimha Chari Vs. High Court of A.P. and Another* **(1996) 5 SCC 90** has also been perused by us. The submission made by the petitioner is that in that case it has been held, that the High Court can only recommend punishment upon a subordinate judicial officer and it is the Governor of the State which is the final authority. In this regard, observations made by the Apex Court in para-18 are relevant which are reproduced hereunder:

**18.** The question now is of the kind of final order to be made in these cases. In the cases of both these officers, namely, T. Lakshmi Narasimha Chari and K. David Wilson, the order of removal made by the High Court is set aside for the reasons already given. However, the action of the

High Court against both these judicial officers who held the substantive rank of District Munsiff, is to be treated as the recommendation of the High Court to the Governor for their removal from service. In view of the control over them vested in the High Court by virtue of Article 235 of the Constitution, the Governor is bound, in each case, to act in accordance with the recommendation of the High Court and each of them has to be removed from service for the misconduct found proved by the High Court against them. The Governor of the State of Andhra Pradesh is to proceed and make the necessary consequential orders in accordance with the recommendation of the High Court in each case, in accordance with law. It was submitted by the learned counsel for T. Lakshmi Narasimha Chari that he has attained the age of superannuation in the meantime. Any such subsequent event is to be brought to the notice of the High Court and it is for the High Court to consider and decide the effect thereof in making any further recommendation to the Governor. In formulating its recommendation, the High Court is to keep in view the relevant rules and the decisions relating to this aspect. No such question arises for consideration by us in this appeal and, therefore, we need not deal with this aspect any further. All consequential actions are to be considered and taken by the High Court in accordance with law.

37. In the present case also it is apparent from the reading of the resolution of the standing committee which has been quoted above that, the standing committee has only recommended removal of the petitioner for consideration of the State of Bihar. It is only after the Governor who is bound by the recommendation of the State of Bihar, that the Government has issued notification of removal of the petitioner from service. Thus, this judgment is also of no help in the case of the petitioner in the peculiar facts of this case.

38. The petitioner has also submitted that the word "to pass orders" was used in Rule 3(vii) whereas the word "recommendation" was used

in Rule 3(x) and Rule 15(1)(ii). In this regard, it is also pointed out that in the case of *Ranjit Prasad Sinha Vs. State of Bihar and Ors.* (CWJC No. 3068/1980) the High Court relied upon the aforesaid distinction and it was held that it had power to pass orders for suspension and therefore use of the word “recommendation” was not proper and the High Court Rules should be amended. Pursuant to the said direction Rule 3 (vii) was amended on October 8, 1982 and in place of word “recommendation”, the words “to pass orders” were substituted. This itself shows that while carrying the amendment, the High Court contemplated inclusion of only such punishments in Rule 3 (vii) in respect of which the Hon’ble High Court could itself pass an order without making a recommendation. As removal is not such a punishment, it cannot be read into Rule 3 (vii).

39. The aforesaid submission made on behalf of the petitioner has no legs to stand as the judgments which have been cited above nowhere says that the power to order removal, which has been given to the Standing Committee under the Rules, is not a power of the High court or that such power is subject to recommendation by the Full Court. It is true that any recommendation of the High Court is then required to be sent to the State Government which becomes effective after it is accepted by the Governor. As discussed above the standing committee of the High Court appointed under the Rules acts as High Court for the purpose of powers vested in the said committee. Any order passed by the said committee in relation to the disciplinary proceedings taken

against the Superior Judicial Officer/Subordinate Judicial Officer would be the orders of the High Court except in the case of recommendation made for dismissal of an officer from service in view of Rule 3(x) and Rule 15(1)(ii) of the Rules. Moreover, the recommendations of the Standing Committee were sent to the State of Bihar and have been accepted by the State after the approval has been granted by the Governor. The notification dated 02.11.1996 has been issued consequent thereto.

40. The petitioner has also tried to assail the impugned notification and the order passed by the Standing Committee dated 28-29/06/1996 alleging that the report of the enquiry officer was not such which makes it necessary for the Standing Committee to remove him from services. At the outset, we may observe that this Court is not to sit in appeal for re-appreciating the findings given by the Inquiry Officer which has been considered and accepted by the Standing Committee of seven sitting judges, including the chief Justice unanimously. In any event, it is an admitted fact by the petitioner himself that he appointed 31 class IV employees although there were no vacancies in class IV establishment of the said judge. Further in making such appointment, he also violated the instructions contained in Court's letter No.511-45 dated 8.2.1991, where in the direction of the court was that appointments could be made only after adjustment of the staff of the vacant courts. Similarly findings of the enquiry officer qua charges No.I,II,IV(a),(b),(g),(h),(m),(n) & VI and conclusion whereby he is found guilty of gross negligence

amounting to misconduct. The Enquiry Report dated 18<sup>th</sup> April, 1996 specially the findings relating to charges NO.I,II,IV(a), (b),(g),(h),(m),(n) & VI which were found to be proved had been accepted by the standing committee in its meeting held on 20<sup>th</sup> April, 1996. In this meeting it was also resolved that the punishment of dismissal from service be proposed against the petitioner and he should be asked to show cause as to why the proposed punishment of dismissal from service be not imposed upon him. The petitioner was also placed under suspension and after his response was received and considered further orders were passed. After the response of the petitioner was received, the Standing Committee reduced the proposed punishment of dismissal to the punishment of removal and made recommendations to the State Government which had been accepted.

41. Even otherwise, it is well settled that this Court is not to interfere with the punishment imposed under Article 226 of the Constitution unless and until the impugned order contravenes certain provisions of law or is without jurisdiction or has been passed taking into account certain extraneous materials or has been passed based upon a finding which could not have been arrived at by any reasonable man. Reference can be made to a judgment of the Apex Court delivered in the case of Maharashtra Academy of Engineering & Educational Research Vs. State of Maharashtra & Others, (2001) 10 SCC 166 wherein it has been held as under:

2. .... It is well settled that an order of an inferior tribunal or a statutory authority could be interfered with by the High Court while exercising jurisdiction under Article 226 of the Constitution, only if the Court comes to the conclusion that the order is contrary to certain provisions of law or the authority concerned has no jurisdiction or the authority concerned took into consideration certain extraneous materials, not germane to the issue or the authority concerned failed to take into consideration certain materials which are otherwise relevant or the finding is one on the materials which could not have been arrived at by any reasonable man. We have scrutinized the order of the Minister concerned from the aforesaid standpoint and we do not find the said order to be suffering from any of the aforesaid infirmities, requiring interference by the Court in exercise of its discretionary jurisdiction under Articles 226 and 227 of the Constitution. It may be stated that the said order of the Minister has not been assailed by alleging any mala fides and the only ground on which the said order was assailed is that the Minister concerned did not have enough materials to come to the conclusion in question. On examining the order of the Minister as well as the materials on record, we do not find any force in the aforesaid contention. In the aforesaid premises, we dismiss the special leave petition.

42. In the case of Shama Prashant Raje Vs. Ganpat Rao, (2000) 7 SCC 522, where also the Apex Court held as under:

“.....  
Undoubtedly, in a proceeding under Articles 226 and 227 of the Constitution the High Court cannot sit in appeal over the findings recorded by a competent Tribunal. The jurisdiction of the High Court, therefore, is supervisory and not appellate. Consequently Article 226 is not intended to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decision impugned

and decide what is the proper view to be taken  
or order to be made.  
.....”

43. Taking into consideration the facts and circumstances of this case which involve a senior judicial officer, who at the relevant time was working as a District and Sessions Judge, it is not a case for grant of any discretionary and equitable relief under Article 226 of the Constitution of India as charges had been proved against the petitioner, which are very serious, amounting to gross misconduct and unbecoming of a responsible and high ranking judicial officer. Full opportunity was given to the petitioner and principles of natural justice were complied with. The petitioner cannot be allowed to contend that even though High Court was seized of the matter and this fact was mentioned in the bail application, yet there was no judicial indiscretion on part of the petitioner, in granting bail to the accused. The charge-sheet itself shows that the matters in which bail was granted were very grave. Petitioner has admitted that due to inadvertence he missed the fact that the bail application of accused persons had been rejected by the learned High Court and that he had committed mistake in granting bail to the accused.

44. Referring to the submissions made on behalf of the petitioner that removal from services is dismissal from service, respondents have placed reliance upon the judgment in the case of *UOI and Others Vs. Ghulam Mohd. Bhat* reported in (2005) 13 SCC 228 and *Mohammad Abdul Salam Khan Vs. Sarfaraz Ahmad Khan*, reported in (1975) 1 SCC,

where it was observed that expressions “dismissal” and “removal” look alike for the laity but in law they have acquired technical meanings sanctified by long usage in Service Rules. The only difference is that in case of dismissal, the employee is disqualified from future employment while in the case of removal he is not de-barred from getting future employment. Petitioner has been awarded a lesser punishment as dismissal has more serious consequences in comparison to removal.

45. At this juncture, it would be appropriate to take note of the judgment delivered by the Apex Court in the case of Union of India & Ors. Vs. Ghulam Mohd. Bhat, (2005) 13 SCC 228, wherein it has been held:

8. It is fairly well settled position in law that removal is a form of dismissal. This Court in *Dr. Dattatraya Mahadev Nadkarni (since deceased by his L.Rs.) v. Municipal Corporation of Greater Bombay (1993)ILLJ813SC* explained that removal and dismissal from service stand on the same footing and both bring about termination of service though every termination of service does not amount to removal or dismissal. The only difference between the two is that in the case of dismissal the employee is disqualified from future employment while in the case of removal he is not debarred from getting future employment. Therefore, dismissal has more serious consequences in comparison to removal. In any event, Section 11(1) refers to Rules made under the Act under which action can be taken. Rule 27 is part of Rules made under the Act. Rule 27 clearly permits removal by the competent authority. In the instant case the Commandant who had passed the order of removal was the competent authority to pass the order.

46. Thus, it is possible to have different rules for deciding a case of removal and that of dismissal though they may be similar in various facets. In any event, as discussed above, the Standing Committee of the High Court acted as a High Court. The recommendations had gone to the Governor of the concerned State and only after recommendations were accepted by the Governor then punishment imposed became effective in accordance with Article 235 of the Constitution of India as would also be seen from the discussion held by the Apex Court in the case of The Registrar (Administration), High Court of Orissa, Cuttack Vs. Sisir Kanta Satapathy (Dead) by Lrs. and Anr. (1999)7 SCC 725 relied upon by the petitioner wherein it has been held:

17. In the instant case, the decision of the Orissa High Court dated 4.2.87 (on the Administrative Side) was required to be forwarded to the Governor for passing an order of compulsorily retirement. That was not done. It was wrong for the High Court to have passed the order of compulsory retirement itself.....

.....

21. After the recommendation of the Full Court was received, the Government on 2.12.91 chose not to proceed further on the plea that the matter was pending in the Supreme Court. They declined to act further on the recommendation. This, the Government could not have done. The course open to the Government was to forward the recommendation of the High Court to the Governor who would have passed an order in accordance with the recommendation made by the High Court as has been held in *State of Haryana Vs. Inder Prakash Anand (1976) 2 SCC 977* because the recommendation of the High Court was binding on the Government.

47. In the present case, the recommendations made by the Standing Committee were sent to the State of Bihar and had been accepted by the Governor and consequently notification dated 02.11.1996 had been issued. Thus, the aforesaid judgment does not come to the rescue of the petitioner rather it supports the case of the respondents.

48. It would, however, be interesting to note that in another judgment in the case of Yoginath D Bagde v. State of Maharashtra 1999(7) SCC 739 delivered on the same day on which the case of *Sisir Kant Satpathy (supra)*, was also decided confirming the decision of the Constitutional Bench in the case of *Batuk Deo Tripathy (supra)*. The relevant observations are reproduced hereunder:

17. It was also argued in that case that since the word “High Court” meant the entire body of Judges appointed to the Court, the control over the subordinate judiciary which was vested by Article 235 in the High Court had to be exercised by the whole body of Judges and that the High Court cannot delegate that power or functions to a Judge or a smaller body of Judges of the Court. This argument was rejected by the Constitution Bench and it was held that there was no delegation involved in the process adopted by the High Court for appointing an Administrative Committee under the rules made by the High Court in exercise of its power under Article 225 of the Constitution and that the Administrative Committee could recommend imposition of major penalty which could not be questioned on the ground that such recommendation was made not by the High Court but by the Committee of Judges to whom the power could not be delegated. It was further held that if a “power” was given to the High Court by the Constitution, the manner in which that power would be exercised, could also be laid down by the High Court.

18. The Constitution Bench decision still holds the field.

21. The case before us is also that of an officer belonging to the subordinate judicial service of Maharashtra under the control of the Bombay High Court, and is, therefore, squarely covered by the above decisions. We need not look into this question any further. We, therefore, hold that the recommendation to dismiss the appellant made by the Bombay High Court to the Governor would not be open to challenge on the ground that such recommendation was made by the Disciplinary Committee and not by the Full Court comprising of all the sitting Judges.

49. In view of the aforesaid discussion, we are satisfied that the recommendation was made by the Standing Committee to remove the petitioner from the Superior Judicial Service of the State of Bihar with immediate effect based upon the enquiry report which holds that the petitioner was guilty of gross misconduct and does not suffer from such infirmity which requires any interference by this Court under Article 226 of the Constitution of India inasmuch as this Court cannot act as an appellate court. The recommendations were accepted by the Governor of the State of Bihar and accordingly notification dated 2/11/1996 was issued, which complies with the provisions of Article 235 of the Constitution of India. The Standing Committee was empowered to make such a recommendation in view of the powers vested in the said Committee under Rule 3 (vii) of the Rules and thus acted as the High Court for that purpose. The vires of this rule has not been assailed by any one. Since it is not a case of dismissal, the matter

was not required to be considered by the Full Body of the Judges of the Patna High Court as claimed by the petitioner.

50. Thus, we find no merit in the writ petition and the same is accordingly dismissed leaving parties to bear their own costs.

**MOOL CHAND GARG, J.**

**MAY 06, 2010**

'anb/dc'

**ANIL KUMAR, J.**