2019 INSC 1227

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3105 OF 2017

HARI NIWAS GUPTA ..... APPELLANT(S)

VERSUS

STATE OF BIHAR AND ANOTHER ..... RESPONDENT(S)

W I T H

CIVIL APPEAL NOS. 3106-3107 OF 2017

KOMAL RAM AND JITENDRA NATH SINGH ..... APPELLANTS

VERSUS

STATE OF BIHAR AND ANOTHER ..... RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

This common judgment would dispose of the above-captioned appeals preferred by three judicial officers namely, Hari Niwas Gupta, Komal Ram and Jitendra Nath Singh, who were working as Principal Judge, Family Court, Samastipur; Chief Judicial Magistrate, Araria; and ad-hoc Additional District and Sessions Judge, Araria, respectively.

2. On 29th January 2013, a news item was published in a local daily (*Udghosh*), that on 26th January 2013 the Nepal Police had apprehended three judicial officers belonging to the State of Bihar as they were allegedly found in a compromising position with three Nepali women in a guest house at Biratnagar, Nepal. Thereupon the judicial officers were brought to the district police station in Nepal, but were released on account of pressure from various circles. On learning about the incident, the High Court of Judicature at Patna ('High Court' for short) had addressed the letter dated 18th February 2013 to the District and Sessions Judge, Purnea to submit a report in the matter. The District and Sessions Judge vide report dated 24th February 2013 had informed that during the inquiry the three judicial officers had denied having left India for Nepal. Komal Ram had claimed that he was in Purnea, and in the process of vacating his quarters on transfer. The report had made reference to another news item published by the same daily on 22nd February 2013, expressing regret over erroneous reportage and that the Superintendent of Police, Araria appeared to have held a bias against the judicial officers. After receipt of the report, the High Court had addressed a letter to the Ministry of Home Affairs, Government of India to collect and ascertain information, details and records. By communication dated 20th

June 2013, the Deputy Secretary, Ministry of Home Affairs, Government of India, had informed the High Court that the mobile phones of the judicial officers were simultaneously switched off for a long time on 26th and 27th January 2013 and when the phones were active during that period, they were within the range of the tower at Forbesganj town, which indicated that the judicial officers were together in proximity to Nepal, and not at the place of their posting. The hotel bill submitted and relied upon by Komal Ram to support his claim that he was staying at a hotel in Purnea between 26th and 27th January 2013 was considered to be fabricated based on the handwriting and Komal Ram's signature on the bill. Further, the hotel was not of the standard where a judicial officer of Komal Ram's rank would have stayed.

3. The Standing Committee of the High Court in its meeting held on 5th February, 2014 had resolved that the judicial officers should be placed under suspension and also that they should be dismissed from service without an inquiry in exercise of power under clause (b) of the second proviso to Article 311(2) of the Constitution of India, read-with Rules 14 and 20 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. At the Full Court of the judges of the High Court held on 10th February, 2014, the recommendation of the Standing Committee was

accepted and Full Court resolution was passed for dismissal of the judicial officers from judicial service in the State Government of Bihar, dispensing with the disciplinary proceedings by invoking clause (b) of the second proviso to Article 311(2) of the Constitution of India. The recommendation of the Full Court was accepted by the State Government and vide common order dated 12th February 2014 issued by the Governor of the State of Bihar the judicial officers were dismissed from service.

4. The judicial officers had challenged the dismissal order by filing separate writ petitions, which were allowed by the Division Bench of the High Court ('Division Bench' for short), vide judgment dated 19th May 2015, primarily on the ground that the Full Court had contravened clause (b) of the second proviso to Article 311(2) of the Constitution by not recording reasons for dispensing with the disciplinary inquiry at the time of recommending dismissal of the judicial officers. The note relied upon by the Registry of the High Court as purportedly recording the reasons for dispensing with the inquiry, it was observed, did not contain any date or signatures and lacked authenticity. Thus, the High Court had not been able to place on record any material to show that any reasons were recorded for dispensing with the disciplinary proceedings.

5. While setting aside the order of dismissal, in the case of the judicial officers, dated 12th February 2014 for failure to record reasons for dispensing with the inquiry, the Division Bench had given the following liberty and discretion to the High Court:

> "The writ petitions are, accordingly, allowed, and the common order dated 12.02.2014 is set aside. It is made clear that in case, the High Court intends to invoke its power under Sub-clause (b) of the 2nd proviso to Article 311 (2) of the Constitution of India, it shall be under obligation to record reasons, at the appropriate stage and follow the prescribed procedure.
>
> It is brought to our notice that two (*sic- one*) of the officers have attained the age of superannuation, during the pendency of the writ petitions. We direct that as a result of the judgment in these writ petitions, the petitioner, who is already in service, shall be deemed to be under suspension, and the other two would be deemed to be continuing in service for the limited purpose of enabling the departmental proceedings to continue. The High Court shall take a decision in this behalf, within a period of two months from today. If no decision is taken in this regard, the proceedings would lapse and the petitioners would be entitled for all the consequential benefits, as though the proceedings have been set aside in their entirety. If, on the other hand, the proceedings are initiated, the petitioners shall await the outcome thereof. While the one who is in service shall be paid subsistence allowance, the other two shall be paid provisional pension to the extent of 25%, forthwith.
>
> Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs."

6. The judicial officers have challenged this afore-quoted portion and the liberty granted to the High Court to invoke the power under clause (b) of the second proviso to Article 311(2) of the

Constitution at an appropriate stage with the requirement to record reasons and follow the prescribed procedure, on the ground that the liberty granted permits the High Court to record reasons post the earlier order of dismissal dated 12th February 2014, which is contrary to law and the Constitution.

7. The respondents, that is, the State of Bihar and the High Court, have not preferred any appeal and have accepted the decision.

8. Clauses (1) and (2) of Article 311 of the Constitution, read:

> **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 an 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."

Clause (1) states that persons employed in civil services or posts under the Union or the States or members of the all-India service shall not be dismissed, removed or reduced in rank by an authority subordinate to that by which he/she was appointed. Clause (2) provides that such a person could be dismissed or removed or reduced in rank only after an inquiry in which he has been informed of the charges against him and after being afforded a reasonable opportunity of being heard in respect of those charges. The second proviso incorporates exceptions when the need for holding an inquiry under clause (2) can be dispensed with. Clause (b) of the second proviso to Article 311(2) can be invoked to impose a punishment of dismissal, removal, or reduction in rank on the satisfaction, to be recorded *in writing*, that it is not reasonably practicable to conduct an inquiry before imposing the punishment. This Court in ***Jaswant Singh v. State***

of Punjab,[1] relying on an earlier decision in ***Union of India v. Tulsiram Patel***,[2] has affirmatively held that the obligation of the competent authority to record reasons when passing an order under clause (b) to the second proviso to Article 311(2) is mandatory, and it was inter alia observed:

> "**5.** …It was incumbent on the respondents to disclose to the court the material in existence at the date of the passing of the impugned order in support of the subjective satisfaction recorded by respondent 3 in the impugned order. Clause (*b*) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at page 270 of *Tulsiram case*: (SCC p. 504, para 130)
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> > "A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the department's case against the government servant is weak and must fail."

9. In the present matter, the Division Bench vide the impugned judgment has as a fact found that the High Court had failed to record satisfaction in writing for dispensing with an inquiry before arriving at its decision to dismiss the judicial officers. For this reason, the order of dismissal dated 12th February 2014 passed by the Governor of the State of Bihar under clause (b) of the second proviso to Article 311(2) was quashed and set aside. Consequently, the judicial officers were to be reinstated in service.

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1 (1991) 1 SCC 362
2 (1985) 3 SCC 398

This is what has been observed in the quoted portion of the final directions by the Division Bench, which refers to the fact that “two” (*sic-one*) judicial officers had attained the age of superannuation during the pendency of the writ petitions and, therefore, they would be deemed to be continuing in service for the limited purpose of enabling the disciplinary proceedings to continue. The other officer(s) would be deemed to be under suspension. The High Court was required to take a decision within two months and if no decision was taken, the proceedings would lapse and the judicial officers would be entitled to all consequential benefits as if the proceedings had been set aside in entirety. It was directed that the judicial officer(s) who continued to be in service, would be paid subsistence allowance, and the retired would be paid provisional pension to the extent of 25% forthwith.

10. The directions and observations of the judgment quoted above do not confer a new and unconventional right or power on the High Court, instead clarifies what is an obvious and perspicuous consequence of quashing the order of dismissal in the present case. The direction requires the High Court to proceed in accordance with law and rightly did not put any fetters on the course of action the High Court as a disciplinary authority would like to follow. Therefore, it is observed, more out of abundant

caution rather than as a typical direction, that the High Court was entitled, if it deemed it appropriate and proper, to invoke the power under clause (b) of the second proviso to Article 311(2) of the Constitution at an appropriate stage, after recording reasons and following the prescribed procedure.

11. Striking down and setting aside the earlier order dated 12th February, 2014 under clause (b) of the second proviso to Article 311(2) for failure to record reasons for dispensing with the departmental inquiry annuls the earlier order, which ceases to exist and stands obliterated, but does not adjudicate on the merits of the allegations so as to attract the bar of *res judicata*. Conscious of the seriousness of the allegations and the reason for allowing the writ petition, the Division Bench was justified in not barring the High Court from fresh application of mind and from invoking clause (b) of the second proviso to Article 311(2) if required and justified in accordance with law. The expression *'at appropriate stage'* used by the Division Bench is not a direction for initiation of a regular departmental inquiry nor does it prohibit recourse to clause (b) to the second proviso of Article 311(2) of the Constitution in accordance with law. We do not see such fetters and restrictions placed on the High Court by the Division Bench.

12. The judicial officers had referred to ***Mohinder Singh Gill and Another v. The Chief Election Commissioner, New Delhi and Others***[3] and ***East Coast Railway and Another v. Mahadev Appa Rao and Others***[4] to assert that this Court had rejected the contention that reasons under clause (b) of the second proviso to Article 311(2) could be subsequently recorded to support the order. The submission does not bolster the appellants' case because in these decisions this Court had refused to accept affidavits providing reasons for dispensing with the inquiry, observing that these were post the dismissal order. The reasons were submitted in the Court proceedings, and were not recorded at the time of exercise of the power under clause (b) to the second proviso to Article 311(2) of the Constitution. As per the dicta in ***Tulsiram Patel*** (supra) and ***Jaswant Singh*** (supra), the law in terms of clause (b) of the second proviso to Article 311(2) mandates that the reasons for dispensing with the inquiry must be recorded in writing before the order of dismissal.

13. Similarly reference to ***Chief Security Officer and Others v. Singasan Rabi Das***,[5] ***State of Orissa and Others v.***

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[3] (1978) 1 SCC 405
[4] (2010) 7 SCC 678
[5] (1991) 1 SCC 729

Dinabandhu Beheta and Others,[6] ***Sudesh Kumar v. State of Haryana and Others***,[7] ***Tarsem Singh v. State of Punjab and Others***,[8] ***Reena Rani v. State of Haryana and Others***,[9] and ***Risal Singh v. State of Haryana and Others,***[10] do not support the contention raised by the judicial officers, but would support the contrary view. In these judgments, the orders under clause (b) to the second proviso of Article 311(2) of the Constitution were struck down for want of recorded reasons for dispensing with the departmental inquiry. Notwithstanding the quashing, this Court in several cases had expressly permitted the authorities to proceed further and take action in accordance with law. For example, in ***Reena Rani*** (supra), it was held,

> "**12.** In the result, the appeal is allowed. The impugned judgment as also the order passed by the learned Single Judge are set aside and the writ petition filed by the appellant is allowed with the direction that she shall be reinstated in service and given all consequential benefits. However, it is made clear that this order shall not preclude the competent authority from taking action against the appellant in accordance with law. At the same time, we deem it necessary to observe that liberty given by this Court shall not be construed as a mandate for initiation of disciplinary proceeding against the appellant and the competent authority shall take appropriate decision after objectively considering the entire record."

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6 (1997) 10 SCC 383
7 (2005) 11 SCC 525
8 (2006) 13 SCC 581
9 (2012) 10 SCC 215
10 (2014) 13 SCC 244

Similarly, in ***Risal Singh*** (supra), it was observed as under:

> "**10.** Consequently, we allow the appeal and set aside the order passed by the High Court and that of the disciplinary authority. The appellant shall be deemed to be in service till the date of superannuation. As he has attained the age of superannuation in the meantime, he shall be entitled to all consequential benefits. The arrears shall be computed and paid to the appellant within a period of three months hence. Needless to say, the respondents are not precluded from initiating any disciplinary proceedings, if advised in law. As the lis has been pending before the Court, the period that has been spent in Court shall be excluded for the purpose of limitation for initiating the disciplinary proceedings as per rules. However, we may hasten to clarify that our observations herein should not be construed as a mandate to the authorities to initiate the proceeding against the appellant. We may further proceed to add that the State Government shall conduct itself as a model employer and act with the objectivity which is expected from it. There shall be no order as to costs."

14. The second contention raised by the judicial officers is with reference to the earlier observation of the Division Bench while dealing with the third issue or point (c) to the following effect:

> "In the instant case, the High Court did undertake a preliminary enquiry and got possession of certain materials; be it in the form of the paper clippings, report of the District Judge, Purnea or letter from the Home Ministry, Government of India. When it was possible for the High Court to undertake such an enquiry, it would have been equally possible to frame charges, and then attempt to proceed with the departmental enquiry. It is only when conducting of departmental enquiry was turning out to be a difficult task, either at the inception or half way-through, that a decision could have been taken to dispense with the enquiry; by recording specific reasons. The judgments of the Hon'ble Supreme Court in *Tarsem Singh (supra) and Tulsi Ram Patel (supra)* throw light upon this. On applying the principles laid therein, it becomes clear that there is patent violation in the impugned proceedings. Therefore, we hold this point also in favour of the petitioners."

Learned counsel, referring to the portion, submits that the Division Bench has held that the departmental inquiry was possible and could not have been dispensed with.

15. The observations in our opinion are being misread as the afore-quoted portion refers to the legal position that normally departmental inquiry should be held. It also refers to the scenario where a departmental inquiry cannot be conducted that is, "when conducting of departmental enquiry was turning out to be a difficult task", in which case a "decision could have been taken to dispense with the enquiry; by recording specific reasons". It is observed that the principles laid down in ***Tulsiram Patel*** (supra) and ***Tarsem Singh*** (supra) have to be kept in mind. Appropriate in this regard, would be a reference to the following observations in ***Tulsiram Patel*** (supra), which read:

> "**130.** The condition precedent for the application of clause (*b*) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the *Oxford English Dictionary* "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". *Webster's Third New International Dictionary* defines the word "practicable" inter alia as meaning "possible to practice or perform: capable of being put into practice, done or accomplished: feasible". Further, the words

> used are not "not practicable" but "not reasonably practicable". *Webster's Third New International Dictionary* defines the word "reasonably" as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (*b*). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation."

Thus, the authorities to invoke the power under clause (b) to the second proviso of Article 311(2) to dispense with a departmental inquiry must record a finding that such an inquiry cannot be conducted and record specific reasons for the same. In this case, the Division Bench had recorded the contention of the respondent- High Court as the disciplinary authority that it would be impossible to assimilate, collect and produce direct evidence and material as the acts and misdeeds were in another country. The Division Bench having found that reasons had not been recorded for dispensing with the inquiry, has neither accepted nor rejected this contention of the High Court. It will not be appropriate and correct to interpret the decision of the Division Bench by reading one or more sentences of a paragraph in isolation. The entire judgment has to be read to understand the ratio and finding and the observations must be read in the context in which they have been made.

16. Learned counsel appearing for Komal Ram and Jitendra Nath Singh had raised another contention relating to the power of the High Court to dispense with the inquiry under clause (b) of the second proviso to Article 311 of the Constitution. The contention is that this power exclusively vests with the Governor alone who has to satisfy himself and record in writing the reasons why it is not reasonably practical to hold an inquiry. Reliance was placed on the following observations in the Constitutional Bench judgment of this Court in ***State of West Bengal*** v. ***Nripendra Nath Bagchi***,[11]:

> "...within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, subject however to the conditions of service, to a right of appeal if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by clause (2) of Article 311 unless such opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause."

17. The contention misreads the ratio in ***Nripendra Nath Bagchi*** (supra), which rather holds to the contrary. Interpreting Articles 233 and 235 of the Constitution, and on the aspect of 'control' of the High Court in matters relating to the subordinate judiciary in ***Nripendra Nath Bagchi*** (supra), it was held:

> "**13.** […] the history which lies behind the enactment of these Articles indicate that "control" was vested in the

[11] AIR 1966 SC 447

High Court to effectuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control as well the very object would be frustrated. This aid to construction is admissible because to find out the meaning of a law, recourse may legitimately be had to the prior state of the law, the evil sought to be removed and the process by which the law was evolved. The word “control”, as we have seen, was used for the first time in the Constitution and it is accompanied by the word “vest” which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge. Article 227 gives to the High Court superintendence over these courts and enables the High Court to call for returns etc. The word “control” in Article 235 must have a different content. It includes something in addition to mere superintendence. It is control over the conduct and discipline of the judges. This conclusion is further strengthened by two other indications pointing clearly in the same direction. The first is that the order of the High Court is made subject to an appeal if so provided in the law regulating the conditions of service and this necessarily indicates an order passed in disciplinary jurisdiction. Secondly, the words are that the High Court shall “deal” with the judge in accordance with his rules of service and the word “deal” also points to disciplinary and not mere administrative jurisdiction.

14. Articles 233 and 235 make a mention of two distinct powers. The first is power of appointments of persons, their postings and promotion and the other is power of control. In the case of the District Judges, appointments of persons to be and posting and promotion are to be made by the Governor but the control over the District Judge is of the High Court. We are not impressed by the argument that the term used is “District Court” because the rest of the Article clearly indicates that the word “court” is used compendiously to denote not only the court proper but also the presiding Judge. The latter part of Article 235 talks of the man who holds the office. In the case of the judicial

service subordinate to the District judge the appointment has to be made by the Governor in accordance with the rules to be framed after consultation with the State Public Service Commission and the High Court but the power of posting, promotion and grant of leave and the control of the courts are vested in the High Court. What is vested includes disciplinary jurisdiction. Control is useless if it is not accompanied by disciplinary powers. It is not to be expected that the High Court would run to the Government or the Governor in every case of indiscipline however small and which may not even require the punishment of dismissal or removal. These Articles go to show that by vesting "control" in the High Court the independence of the subordinate judiciary was in view. This was partly achieved in the Government of India Act, 1935 but it was given effect to fully by the drafters of the present Constitution. This construction is also in accord with the Directive Principles in Article 50 of the Constitution which reads:

> "50. The State shall take steps to separate the judiciary from the executive in the public services of the State".

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17. […] That the Governor appoints District Judges and the Governor alone can dismiss or remove them goes without saying. That does not impinge upon the control of the High Court. It only means that the High Court cannot appoint or dismiss or remove District Judges. In the same way the High Court cannot use the special jurisdiction conferred by the two provisos. The High Court cannot decide that it is not reasonably practicable to give a District Judge an opportunity of showing cause or that in the interest of the security of the State it is not expedient to give such an opportunity. This the Governor alone can decide. That certain powers are to be exercised by the Governor and not by the High Court does not necessarily take away other powers from the High Courts. The provisos can be given their full effect without giving rise to other implications. It is obvious that if a case arose for the exercise of the special powers under the two provisos,

> the High Court must leave the matter to the Governor. In this connection we may incidentally add that we have no doubt that in exercising these special powers in relation to inquiries against District Judges, the Governor will always have regard to the opinion of the High Court in the matter. This will be so whoever be the inquiring authority in the State. But this does not lead to the further conclusion that the High Court must not hold the enquiry any more than that the Governor should personally hold the enquiry."

18. The expression/words "within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, subject however to the conditions of service, to a right of appeal if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by clause (2) of Article 311 unless such opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause" is not to deny the High Court the authority to decide whether conditions for invoking clause (b) of the second proviso to Article 311(2) are satisfied, but recognises that the resolution and recommendation of dismissal, removal or reduction in rank or for dispensing with the inquiry in terms of clause (b) [also clause (c)] of the second proviso to Article 311(2) would require an order of the Governor. The observations do not hold that the Governor, and not the High Court, is vested with the jurisdiction and is the competent authority

to decide whether the inquiry should be dispensed with upon recording of satisfaction in terms of clause (b) of the second proviso to Article 311(2) of the Constitution. The decision refers to Article 235 of the Constitution and states that the control vests with the High Court, *albeit* order of appointment, dismissal or removal is passed and made in the name of the Governor who passes the formal order be it a case of appointment, dismissal or removal. This is clear from the last portion of paragraph 17 in ***Nirpendra Nath Bagchi*** (supra) which records "that the Governor will always have regard to the opinion of the High Court in the matter. This will be the inquiring authority in the State. But this does not lead to the further conclusion that the High Court must not hold the enquiry any more than that the Governor should personally hold the enquiry."

This legal position with reference to Articles 233 to 236 and 'control' of the High Court is beyond doubt as was explained in ***Ajit Kumar v. State of Jharkhand***[12] in the following words:

> "**15.** The next contention raised by the appellant was that the aforesaid power under Article 311(2)(b) of the Constitution could not have been invoked by the High Court. The aforesaid submission also cannot be accepted in view of the fact that a Subordinate Judge is also a Judge within the meaning of the provision of Article 233 of the Constitution of India read with the provisions of Articles 235 and 236 of the Constitution of India.

[12] (2011) 11 SCC 458

16. Article 233 clearly lays down that appointments and promotions of District Judges in any State are to be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. The aforesaid provision, like Articles 234 to 236, has been incorporated in the Constitution of India inter alia to secure the independence of the judiciary from the executive and the same deals with the scope of separation of power of the three wings of the State.

17. It cannot be disputed that the power under the aforesaid articles [Articles 233-236] is to be exercised by the Governor in consultation with the High Court. Under the scheme of the Indian Constitution the High Court is vested with the power to take decision for appointment of the subordinate judiciary under Articles 234 to 236 of the Constitution. The High Court is also vested with the power to see that the high traditions and standards of the judiciary are maintained by the selection of proper persons to run the District Judiciary. If a person is found not worthy to be a member of the judicial service or it is found that he has committed a misconduct he could be removed from the service by following the procedure laid down. Power could also be exercised for such dismissal or removal by following the preconditions as laid down under Article 311(2)(b) of the Constitution of India. Even for imposing a punishment of dismissal or removal or reduction in rank, the High Court can hold disciplinary proceedings and recommend such punishments. The Governor alone is competent to impose such punishment upon persons coming under Articles 233-235 read with Article 311(2) of the Constitution of India. Similarly, *such a power could be exercised by the High Court to dispense with an enquiry for a reason to be recorded in writing and such dispensation of an enquiry for valid reasons when recommended to the Governor, it is within the competence of the Governor to issue such orders in terms of the recommendation of the High Court* in exercise of power under Article 311(2)(b) of the Constitution of India." (emphasis supplied)

19. During the course of hearing before us, it was pointed out that the Full Court had subsequently again recommended dismissal of the judicial officers dispensing with the departmental inquiry in the exercise of power under clause (b) of the second proviso to Article 311(2) of the Constitution vide recommendation dated 13th August 2015. However, the matter is pending with the State Government and we were informed that no final order has been passed in view of the stay order dated 11th September 2015 passed by this Court. It was also initially urged and argued that the order of dismissal under clause (b) of the second proviso to Article 311(2) of the Constitution cannot be passed against the officer who has retired. We were informed that the other two officers had also retired during the pendency of the present appeals. Therefore, at best the pensionary and retirement benefits can be forfeited and denied, but an order of dismissal from service by invoking powers under clause(b) of the second proviso to Article 311(2) cannot be passed against the appellants - judicial officers. Subsequently, the counsel for the appellants - judicial officers did not press this contention as the matter is still pending before the State authorities, and the final order is yet to be passed. A challenge cannot be made in anticipation. Further, this challenge was also not the subject matter of the writ petitions in which the impugned

order was passed and would constitute an entirely new cause of action. Counsels for the appellants - judicial officers have, accordingly, reserved their right to challenge the order if, and as and when it is passed. In view of the aforesaid position, we would not go into the merits of the said contention and leave the issue open. It is equally open to the respondents, that is, the State of Bihar and the High Court to examine this contention.

20. Recording the aforesaid, the appeals are dismissed and the stay order is vacated, *albeit* we clarify that the respondents, in terms of the judgment passed by the Division Bench, would be required to proceed in accordance with law. We also clarify that we have expressed no opinion on the merits of the allegations made against the three judicial officers. There would be no order as to costs.

.....J.
(INDU MALHOTRA)

.....J.
(SANJIV KHANNA)

NEW DELHI;
NOVEMBER 08, 2019.