A

RAMESHWAR PRASAD

v.

STATE OF BIHAR AND ORS.

August 31, 1979

B [S. MURTAZA FAZAL ALI, P. S. KAILASAM AND A. P. SEN, JJ.]

Supersession for promotion as Additional District Judge—Challenge under Constitution of India, Articles 14 *and* 16*—When can arise.*

Malice—Plea of malice not taken or made out in the Petition cannot be taken notice of when argued.

C The petitioner challenged the order of the High Court recommending his supersession by promoting other Sub-judges as Additional District Judges, and also the acceptance thereof by the Government, on the ground that his judicial career was without any blemish and therefore, the impugned orders were in violation of Articles 14 and 16 of the Constitution and that there was a colour of malice in the recommendation by the High Court.

D Dismissing the petition, the Court

HELD : 1. All that Article 16 requires is that the case of the employees similarly situate and eligible for promotion must be considered before others are promoted. The petitioner must establish that his case was not considered at all and persons junior to him were promoted without any reason. [457D-E]

E In this case, Article 16 is not violated as his case for promotion was fully considered by the High Court and the Government and then it was decided not to promote him. At any rate, since the High Court is the best judge of the performance of its officers and if the High Court was not satisfied about the suitability of the Petitioner having regard to his past record, for promotion Art. 16 is not attracted and this Court would not, therefore interfere at this stage. [457B-C, 458A-B]

F

(b) The petitioner and other Sub-judges not being similarly situate as being of equal merit the question of discrimination or infraction of Article 14 of the Constitution also does not arise. [457H, 458AB]

Supreme Court cannot take notice of allegation of malice as an argument when no such plea has been taken in the petition or proved in the affidavit filed G in support of the petition. [458B]

ORIGINAL JURISDICTION : Writ Petition No. 4313 of 1978.

Under Article 32 of the Constitution.

Sarjoo Prasad, (Dr.) Y. S. Chitale and *M. L. Verma* for the Petitioner.

H

U. P. Singh and *S. N. Jha* for Respondent No. 1.

S. V. Gupte and *B. P. Singh* for Respondent No. 2.

The Judgment of the Court was delivered by

FAZAL ALI, J. This petition under Article 32 has been filed against the order of the Governor of Bihar accepting recommendations of the High Court and superseding the petitioner Rameshwar Prasad by promoting other subordinate Judges as Additional District Judge, Mr. Sarjoo Prasad appearing in support of the petitioner mainly raised two points before us. In the first place it was contended that the judicial career of the petitioner was without any blemish and there was nothing against him to justify his supersession when the High Court recommended the case of promotion of the Sub-Judges for appointment as Additional District Judge and hence the order impugned is violative of Article 16 of the Constitution. There is, however, abundant material on the record to show that the case of the petitioner was fully considered by the High Court and he was not considered fit for promotion by the High Court, hence his case was not recommended for promotion as Additional District Judge. In this view of the matter it is manifest that Article 16 cannot be violated because the petitioner's case for promotion was fully considered by the High Court and the Government and then it was decided not to promote him. All that Art. 16 requires is that the case of employees similarly situate and eligible for promotion must be considered before others are promoted. If it was established that the petitioner's case was not considered at all and persons junior to him were promoted without any reason, then something could be said in support of the petitioner's case. It would appear from the affidavit filed by the High Court that the Government considered the case of the petitioner. The averment in para 14 of the affidavit filed by the High Court runs :

> "It is incorrect to say that there was any departure from any common usual practice in sending the second proposal though final orders on the first proposal were not passed by the State Government specially in the context that at the time of sending the second proposal this Respondent came to a definite conclusion that the work and conduct of the petitioner was such that he should not be recommended for promotion unless he showed improvement in his conduct."

Further more at page 85 of Annexure I it is clearly mentioned that the Court has recommended the case of other Sub-Judges after considering the case of the concerned appellant Mr. Rameshwar Prasad and it is also established that the Government concurred with the recommendation of the High Court. Although Mr. Prasad submitted that the petitioner had an unblemished career, there are enough materials on the record to show that this is not correct. Thus the petitioner and

A other Sub-Judges not being similarly situate as being of equal merit the question of discrimination or infraction of Article 14 of the Constitution also does not arise. At any rate, since the High Court is the best Judge of the performance of its Officers and if the High Court was not satisfied about the suitability of the petitioner having regard to his past record, for promotion, Art. 16 is not attracted and this Court would B not, therefore, interfere at this stage. Secondly, it was faintly suggested that there was a colour of malice in the recommendation by the High Court but no such clear plea has been taken in the petition or proved in the affidavit filed by the petitioner. In these circumstances, we cannot take any notice of such an allegation. For these reasons, we find C no merit in this petition. We would, however, like to observe that the High Court itself was of the opinion that in case the petitioner improves his merit and ability, he may be considered for promotion and for this purpose one vacancy was kept reserved. Although this vacancy has since been filled up, yet if in future there is any vacancy, the High Court may consider his case for promotion, if he shows D improvement and progress.

The application is accordingly dismissed. There will be no order as to costs.

S.R. *Petition dismissed.*