

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10270 of 1997

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Deo Nandan Sah, Son of Late Rajrup Sah, resident of Village and P.O.-Bhikhpur,
Bhagwanpur, P.S.-M.H. Nagar, District-Siwan.

..... **Petitioner/s**

Versus

1. The State of Bihar.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Secretary & Commissioner, Cabinet & Coordination Department, Govt. of Bihar, Patna.
4. The Commissioner and Secretary to the Governor, Governors' Secretariat, Raj Bhawan, Bihar, Patna.
5. The Deputy Secretary and Private Secretary to the Governor, Bihar, Patna.
6. Shri C.R. Venkatraman, Officer-on Special Duty and Principal Secretary to the Governor, Governors' Secretariat, Raj Bhawan, Bihar, Patna.
7. The Under Secretary, Governors' Secretariat, Raj Bhawan, Bihar, Patna.

..... **Respondent/s**

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Appearance :

For the Petitioner/s : Mr. Shanti Pratap, Advocate

For the State : Mr. M. K. Sinha (SC-1), Advocate

Mr. S. K. Karn (AC to SC-1), Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 06-04-2015

Heard the parties.

2. Impugned is an order dated 30.06.1997 issued by
the Governor Secretariat, Bihar in exercise of power under



Rule 74 (b) (ii) of the Bihar Service Code, 1952 (**hereinafter referred to as the 'Code'**), whereby the petitioner, who was a driver in the Governor's Secretariat, has been made to retire with the stipulation that he will be entitled to an amount equal to three months' pay and allowances in lieu of three months' previous notice, as contemplated under the said Rule. The petitioner has also challenged the subsequent order dated 24.10.1997 passed by the O.S.D.-cum-Principal Secretary to the Governor of Bihar, whereby his representation against the order dated 30.06.1997, retiring him compulsorily from service, has been rejected.

3. Mr. Shanti Pratap, learned counsel appearing on behalf of the petitioner, has submitted that though the impugned order dated 30.06.1997 does not impute any misconduct or misdemeanor on the part of the petitioner but he submits, referring to the subsequent order dated 24.10.1997, which is also under challenge in the present writ application, that the order is punitive in nature and, therefore, passing of an order in the garb of jurisdiction conferred upon the appointing authority under Rule 74 (b) (ii) of the Code is nothing but colourable exercise of power. He has submitted that as a matter of fact on the basis of

wrong facts, the respondents decided to retire the petitioner compulsorily.

4. Rule 74 (b) (ii) of the Code confers jurisdiction upon an appointing authority to retire any government servant from service in public interest on the date on which such government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter, to be specified in the notice. Rule 74 (b) (iii) of the Code, on the other hand, confers an option upon the government servant to retire voluntarily, upon attaining the age of fifty years or completing qualifying service of thirty years.

5. In my opinion, the power of the State government to retire a government servant upon completion of thirty years of qualifying service or attainment of fifty years of age and option to the government servant to retire voluntarily on completion of such period of qualifying service or age has element of mutuality and reciprocity in matter of bringing to end employer-employee relationship in the given situation. The decision in this from either side of the two should normally be honoured and accepted.

6. In my view, it is the discretion of the appointing



authority to retire a government servant in public interest upon completion of thirty years of qualifying service or fifty years of age and any decision taken by the State government in this regard will not warrant interference on the grounds of violation of principle of natural justice, till it is shown from the order itself that the decision to retire a government servant pre-mature is punitive one or colourable exercise of power. Such power has been conferred upon the appointing authority to achieve better and efficient administration and in order to get rid of employees, who have outlived their utility. Exercise of such power under Rule 74 (b) (ii) of the Code cannot be said to be dismissal or removal from service.

7. On perusal of the order dated 30.06.1997, requiring the petitioner to retire from service, which is under challenge in the present application, I find that there is no imputation of any misconduct against the petitioner and it does not cast stigma on him. On face of it, this is a termination simplicitor and cannot be said to be punitive in nature.

8. It is true that the O.S.D.-cum-Principal Secretary to the Governor of Bihar in his order dated 24.10.1997 has dealt with the petitioner's conduct justifying his compulsory

retirement but, in my view, on that account the order dated 30.06.1997 would not require interference. A decision under Rule 74 (b) (ii) of the Code requiring a government servant to retire compulsorily is taken on the basis of the records and information available with the appointing authority which may be adverse. On the basis of such materials, if the appointing authority decided to retire the petitioner in public interest after completion of the period of service/attainment of age in exercise of power under Rule 74 (b) (ii) of the Code without disclosing such materials in the order, such order will certainly not require interference by this Court.

9. Thus, I do not find any merit in this application.

10. The application is, accordingly, dismissed.

11. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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