

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.234 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 611 of 2011

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The Registrar General Hon'ble High Court of Judicature at Patna

.... Respondent-Petitioner/s

Versus

1. Pramod Kumar, son of Sri Anand Prasad, resident of House No.B/12-A, Road No.18, Rajiv Nagar, P.S. Rajiv Nagar, at present posted as Additional District & Sessions Judge, Bhojpur at Ara.

.... ... Petitioner- Opposite Party.

2. The State of Bihar through the Principal Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna.

3. The Joint Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna.

4. Deputy Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna.

.... Respondents- Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Piyush Lall, Advocate

For opposite party No.1 : Mr. Sushil Kumar Singh, Advocate
Mr. Rajesh Kumar Sinha, Advocate

For opposite parties no.2 to 4 : Mr. K. K. Jha, A.A.G.-8
Mr. S. K. Choudhary, A.C. to A.A.G.-8

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 04-08-2016

The present petition is for review of the order passed by this Court on 30th of June, 2015 whereby the writ petition (CWJC No.611 of 2011) filed by opposite party no.1 herein, Mr. Pramod Kumar, the then Additional District & Sessions Judge, was allowed and the order retiring him compulsorily in exercise of power conferred under Rule 74(b) (ii) of the Bihar Service Code on 16th December,

2010 was set aside.

2. Against the order impugned in the present review application, the applicant filed Special Leave to Appeal (C) No.28402 of 2015 before the Hon'ble Supreme Court which was withdrawn on 12th of October, 2015 with liberty to file review petition before this Court. It is thereafter, the present petition has been filed.

3. With able assistance of the learned counsel for the applicant, we have gone through the record once again and find that there is no error apparent on record which may warrant review of the order.

4. The date of birth of opposite party no.1 herein, is 1st of November, 1956. He completed 50 years of age on 31st of October, 2006. The Bihar Service Code empowers an appointing authority in terms of Rule 74(b)(ii) to compulsory retire an officer on his attaining 50 years of age or on any date thereafter. Though the officer attained the age of 50 years on 31st of October, 2006, but his case for compulsory retirement was taken up by the Standing Committee of the High Court on 07.09.2010. Thus, the immediate factor which led to the meeting of the Standing Committee and to resolve that opposite party no.1 herein should be retired compulsorily is an order passed by this Court in Cr. Misc. No.18214 of 2010 on 28th of July, 2010. This Court in the said order adversely commented upon the order passed by



opposite party no.1 herein. It was ordered that tone and tenor of the order shows that it is a clear case of disobedience of the order of this Court for which file should be processed and placed before the Hon'ble the Chief Justice for proper administrative action against the Officer for being arrogant and disobedient to the orders of this Court. Admittedly, it is the said order which led the Standing Committee to consider the case of compulsory retirement of opposite party no.1. The Standing Committee has though observed that the order of compulsory retirement is being recommended after perusal of the entire service record, but the background in which the order was passed leaves no doubt that it was a decision prompted by an order passed in Criminal Misc. No.18214 of 2010 by this Court. It is the said decision of the Standing Committee which was considered and approved by the Full Court on 18th of September, 2010. Thus, the immediate and proximate cause of initiating the proceedings for compulsory retirement was the order passed by this Court in Cr. Misc. No.18214 of 2010 on 28th of July, 2010.

5. Still further, opposite party no.1 was promoted as Additional District & Sessions Judge (Fast Track Court) in the year 2009. It raises a presumption that there was nothing adverse in the service record of opposite party no.1 which made him eligible for promotion. Therefore, though the Standing Committee records that the

entire service record was taken into consideration, but, in substance, it is an order passed on 28th of July, 2010 which was the basis of initiating the proceedings against the applicant.

6. Learned counsel for the applicant refers to Supreme Court judgment reported as Pyare Mohan Lal Versus State of Jharkhand and others, (2010) 10 SCC 693 wherein the Hon'ble Supreme Court quoted the earlier judgment reported as State of Punjab Vs. Dewan Chuni Lal, (1970) 1 SCC 479 to hold that adverse entries regarding dishonesty and inefficiency of a Government employee cannot be ignored even if the officer has been allowed to cross the efficiency bar.

7. The said judgment has no applicability to the facts of the present case. There were adverse remarks against opposite party no.1 regarding his integrity in the ACR for the year 1992-93, but the said remarks were expunged. It is thereafter, opposite party no.1 has mixed ACRs; some reports are very good and couple of reports are satisfactory as well. Therefore, the said judgment dealing with as one entry 'integrity doubtful' was sufficient for an order of compulsory retirement of an officer will not be available to the applicant in the facts of the present case.

8. In view thereof, we do not find any error apparent on record which may warrant review of the order. The Civil Review

application is dismissed. However, the High Court may reconsider the case of compulsory retirement of opposite party no.1 herein in view of his entire service record in accordance with law.

(Hemant Gupta, J.)

(Sudhir Singh, J.)

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