

IN THE HIGH COURT OF JUDICATURE AT PATNA

LETTERS PATENT APPEAL No.138 of 2013

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Rajendra Prasad Sah, son of Bhubneshwar Sah, Resident of Mohalla- Sandalpur (Bibichak), Police Station- Kasimbazar (Kotwali), District- Munger, at present residing at Rajeevnagar, Police Station- Rajeevnagar, District- Patna.

.... Appellant

Versus

1. The State of Bihar, through its Chief Secretary.
2. The Secretary, Personnel and Administrative Reforms Department, Govt. of Bihar, Old Secretariat, Patna.

.... Respondents

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Appearance :

For the Appellant : Mr. Anil Kumar Mukund, Advocate.
For the State : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 30-03-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 10th of October, 2012 in C.W.J.C. No. 1320 of 2003, whereby while dismissing the writ application, the learned Single Bench has refused to interfere with the order of compulsory retirement of the appellant.

2. The appellant impugned the decision dated 19th of April 2002, whereby he was ordered to be compulsorily retired on attaining the age of 50 years in exercise of powers conferred under Rule 74(a) and (b)(ii) of the Bihar Service Code (hereinafter referred to as “the Code”) in the writ application.

3. The appellant was born on 3rd of July, 1945. He joined the service of the State as Steno-typist in the year 1968. He completed 50 years of age on 03rd of July, 1995 and 30 years of service in the year 1998. He challenged the order of his compulsory retirement on the ground that it has not preceded with any inquiry or show-cause notice, therefore, the order of compulsory retirement is in violation of principles of natural justice. Still further, the order does not recite that the services are being dispensed with in public interest. Therefore, such order is not in terms of Rule 74(b)(ii) of the Code.

4. The appellant has been made to compulsory retire in terms of Rule 74(a) and (b)(ii) of the Code before attaining the age of superannuation. It is not an order of punishment



but an order to weed out the dead wood. The learned Single Bench has found that the competent authority was well within its jurisdiction to pass such an order keeping in view the age and number of years of the service of the appellant. Rule 74 (a) of the Bihar Service Code contemplates that the State Government may require any Government servant who has completed twenty one years of duty and twenty-five years of total service calculated from the date of his first appointment to retire him from Government service, if it considers that his efficiency or conduct is not such as to justify his retention in service. Sub-clause (b) gives an option to a Government servant to opt for retirement on completion of 30 years of qualifying service or attaining 50 years of age. Sub-clause (ii) of Clause (b) contemplates that the appointing authority after giving at least three month's previous notice in writing, or an amount equal to three month's pay and allowance in lieu of such notice, require a Government servant in public interest to retire from service on the date on which the Government servant completes 30 years of qualifying service or attains 50 years of age.

5. The learned Single Bench has rightly found that the State Government is well within its jurisdiction to compulsory retire the appellant. The Court referred to the Supreme Court judgment dealing with analogous provisions of Rule 56(j) of the Fundamental Rules reported as Union of India Vs. J.N. Sinha 1970 (2) SCC 458. The learned Single Bench referred to another judgment reported as Rajendra Singh Verma Vs. Lt. Governor (NCT of Delhi) (2011) 10 SCC 1 wherein it has been held that compulsory retirement is neither dismissal nor removal. It is not a form of punishment prescribed under the rules and involves no penal consequences. Since the requirement of Rule is only to give three month's prior notice or pay in lieu thereof, and that order of compulsory retirement is not a punishment, the same is not required to be followed by any show-cause notice. Therefore, there is no illegality in the order compulsorily retiring the appellant.

6. The argument of learned counsel for the appellant is that the word 'public interest' has not been mentioned in the order of compulsory retirement. Therefore, the appellant could not be retired in exercise of the powers conferred under Section 74(b)(ii), as such an order can be passed only in public interest. We do not find any merit in the said argument also.

7. The impugned order has to be read as a whole. Mere reproduction of the

words of the rule is not sufficient nor does it meet the mandate of law. What is stated in the impugned order is that the conduct of the appellant and his working capacity is not such that he should be continued in the Government service. Since all Government employees are working in public interest, such finding means that it is not in public interest to allow the appellant to continue in Government service. The word ‘public interest’ is not a word of art but the same has to be inferred on the reading of the entire order. The order clearly reads to mean that it is not in public interest to retain the appellant in view of his conduct and efficiency. There is specific reference to Rule 74(b)(ii) of the Code, thus the order passed is in public interest.

8. The argument is that the order is stigmatic inasmuch as it says that the conduct and the working capacity is not good, which expressions are stigmatic. In fact, such is the requirement of Rule 74. The power of State Government to retire a Government servant is only if it considers that the efficiency or conduct of the Government servant is not such as to justify his retention in service. Therefore, efficiency or conduct are the twin test which are necessary to be satisfied before an official can be retained in service or vis-à-vis ordered to be compulsorily retired.

9. In view thereof, since the order has been passed keeping in view the efficiency and the conduct of the appellant as wanting, of which the government is the best judge, therefore, the order of retirement cannot be said to be illegal in any manner.

10. We do not find any error in the order passed by the learned Single Bench which may warrant interference in the present intra court appeal. The Letters Patent Appeal is, thus, dismissed.

(Hemant Gupta, J)

Navaniti Prasad Singh, J I agree.

(Navaniti Prasad Singh, J)

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