IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5824 of 2014

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Singheshwar Mandal, S/O Late Thakai Mandal, R/O Village - Hanuman Nagar, P.O. Chanaur Hanuman Nagar, P.S. Manigachhi, District – Darbhanga.

.... Petitioner

Versus

1. Patna University through its Registrar, Patna.
2. The Vice - Chancellor, Patna University, Patna.
3. The Registrar, Patna University, Patna.
4. The Principal, Patna College, Patna University, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Nishi Nath Ojha, Advocate.

For the Respondents : Mrs. Soni Shrivastava, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

2 05-12-2017 This writ application has been filed for quashing the Notification contained in Memo No.1629 dated 19.11.2011, issued by the Registrar, Patna University (Respondent No. 3), by which compulsory retirement of the petitioner was made, w.e.f. 25.08.2011, in terms of the provisions of Section 64(b) of the Patna University Act, 1976.

Learned counsel for the petitioner submitted that the order under challenge dated 19.11.2011 as contained in Annexure-1, has been passed in complete violation of the principles of natural justice and Article 16 of the Service Statutes of the University. He further submitted that the petitioner was initially appointed on daily wages basis and thereafter vide Memo No.

1803 dated 01.12.1982 (Annexure-2), he was regularized on a permanent Class IV post of Peon, in pay scale of Rs. 350-415/-. The petitioner had been performing his duties sincerely and to the satisfaction of the authorities.

Vide Memo No. 1009 dated 30.05.2011 (Annexure-3), the respondent no. 3, issued show cause to the petitioner, in respect of allegations made by the respondent no. 4 against him, in Letter No. 198 dated 01.02.2011 (Annexure-4), to the effect that why he should not be compulsorily retired after three months, in terms of Section 64(b) of the Patna University Act.

Prior to the said show cause dated 30.05.2011, earlier on 24.11.2010, a show cause was issued against the petitioner regarding his unauthorized and wilful absence from duty. The petitioner submitted his explanation on 02.07.2011 that his wife was seriously ill, thus he could not attend the duty. The Principal, Patna College, Patna, vide Letter No. 198 dated 01.02.2011, making allegation of unauthorized *absentia* against the petitioner, wrote letter to the respondent no. 3.

On 19.11.2011, the Respondent No. 3, on the basis of recommendation of the Principal, issued the order under challenge of compulsory retirement of the petitioner w.e.f. 25.08.2011, under the provisions of Section 64(b) of Patna University Act, vide Memo No. 1629 dated 19.11.2011 (Annexure-1).

A counter affidavit on behalf of the respondent nos. 1 to 3 has been filed. It has been contended that the petitioner was a habitual delinquent, he used to go on leave without any permission or information to the competent authority. He while discharging the duty used to take alcohol.

The petitioner, vide Annexure-A dated 15.06.2010, to the counter affidavit, was asked explanation for such conduct of wilful *absentia* and taking alcohol.

The petitioner submitted his explanation vide Annexure-B of the counter affidavit, on 17.06.2010 with undertaking: (i) not to take alcohol while on duty, (ii) not to use filthy language in the office.

Thereafter, considering his explanation, he was permitted to join the post, but again he remained absent from duty since 04.09.2010-13.09.2010, 19.10.2010-21.10.2010, 15.11.2010-31.11.2010 and 01.12.2010-29.01.2011, without any permission/authorization by the competent authority.

Noticing such conduct of the petitioner, the Principal of the College made such recommendation thereafter, the order contained in Memo No. 1629 dated 19.11.2011, challenged hereunder, came to be passed.

From the rival contention of the parties and the documents available on record, it appears that the petitioner was in habit of taking alcohol on duty and remaining absent from duty without authorization, thus the order under challenge came to be passed in terms of the provisions envisaged under Section 64(b) of the Patna University Act, 1976.

Section 64(b) of Patna University Act,1976 reads thus:-

> "64(b) The University may require any teaching and non-teaching employees, who reckoned from the date of first appointment, has completed the qualifying service of 23 years or a total service of 27 years, to retire from the University Service, if it considers that his conduct and efficiency is such as does not justify his continuation in the service."

From the bare reading of the provision referred above, it is evident that it talks about retirement directed by the employer before attaining the age of superannuation.

The term or expression 'compulsory retirement' is generally used in such cases, where an employee is directed that his services are no longer required before he reaches the normal prescribed age of superannuation under the service rules. In other words, it is a premature end of the relationship of master and servant before the servant reaches the prescribed age of retirement.

I am of the view that the purpose and object of premature retirement of a government employee is to weed out the inefficient, the corrupt, the dishonest or the dead-wood from the government service. In the case of National Aviation Company of India Ltd.–Vs- S. M. K. Khan, reported in (2009) 5 SCC 732, the Supreme Court of India explained the object of premature retirement. It was held that the unsatisfactory service of employee which may include any persistent misconduct or efficiency furnishes the background for forming a view that the employee had become a dead-wood and he should be retired compulsorily.

The law relating to compulsory retirement in public interest, is no longer res-integra and the provision has been made principally for weeding out dead-wood. An order of premature retirement is not a punishment. In the case of Shyamlal-Vs-State of U.P, reported in A.I.R. 54 SC 369, the Supreme Court of India explained why premature retirement is not a punishment.

In the present case, the order under challenge is not having nature of punishment, which may entail for forfeiture of some accrued benefits and invariably cast a stigma on the petitioner. If such order would have been passed as a punishment, in that case it must involve loss of benefit already earned in favour of the petitioner, but the order under challenge having no such consequences of deprivation or loss of accrued benefits.

In view of the discussions and observations made above, I do not find any valid reason to interfere with the order contained in Memo No. 1629 dated 19.11.2011 (Annexure-1), issued by the Registrar, Patna University.

This writ application is, therefore, accordingly, dismissed.

U.K./-

(Sudhir Singh, J)

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