

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.956 of 2017**

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Niranjan Prasad, S/o Late Jadunandan Prasad, R/o Moh. Maulabag, Idgha Road, P.O. + P.S. Ara, Nawada, District- Bhojpur, Bihar.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Disciplinary Authority cum District & Sessions Judge Bhojpur at Arrah.
3. The Presenting Officer Cum Registrar Civil Court at Ara.
4. The Enquiry Officer Cum 1st Sub Judge Bhojpur at Ara.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Vijay Kumar

For the Respondent/s : Mr. Kaushal Kumar Jha- AAG8

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 13-10-2017**

Challenging the order dated 22.5.2017 passed by the writ court in CWJC No. 18201 of 2010, this appeal has been filed under Clause 10.

The writ petitioner-appellant was an employee working in the Class III category and was posted in the Civil Court at Ara. On particular date i.e. 3.3.2009 the writ petitioner-appellant reached the office late and therefore, he was proceeded against and vide order dated 28.8.2010 one increment with cumulative effect was directed to be withdrawn as a measure of punishment. Apart from taking the aforesaid action, the District & Sessions Judge exercised power under Rule 74b (iii) of the Bihar Service Code and



compulsorily retired the writ petitioner-appellant vide order dated 23.9.2010. Challenging this order the writ petition in question was filed. The writ court went into the provisions of Rule 74b(ii) of the Bihar Service Code and found that under the aforesaid provision an employee can be compulsorily retired if he is declared to be dead wood after scrutiny of the service record, subject to the condition that he has completed 30 years qualifying service or attained 50 years of age.

The writ court found that the date of birth of the writ petitioner is 21.5.1961 and he would complete 50 years of age only on 21.5.2011 and therefore when the impugned action was taken on 23.9.2010 he was below 50 years of age. That apart the writ court found that he entered in service on 27.3.1985 and he would complete 30 years of service only on 27.3.2015. That being so as both the preconditions for invoking jurisdiction under Rule 74b(ii) of the Bihar Service Code was not fulfilled, the learned writ court ordered that once the statute contemplate conditions for taking action for retiring the person compulsorily treating him to be a dead wood and for taking such action certain preconditions prescribed in the statutory Rule are not fulfilled that are required under the law, any action in violation thereto becomes nullity in the eye of law and therefore in quashing such illegal order, the writ



court has not committed any error. However, having done so, the grievance of the writ petitioner-appellant is that he is denied the arrears of salary during the period he remained out of service by order dated 23.9.2010 till his date of reinstatement and therefore for the said period, he is entitled to arrears of salary.

That apart the grievance of the writ petitioner with regard to punishment of stoppage of increment has not been adverted to and considered by the writ court.

Even though learned counsel appearing for the State Government refuted the aforesaid contention, we are of the considered view that once in view of non-compliance of the statutory Rule under Rule 74b(ii) of the Bihar Service Code, compulsory retirement was found to be unsustainable and illegal, as a consequence thereof payment of arrears of salary should have been granted and there was nothing which prevented or dis-entitled in particular the claim aforesaid.

It is a settled principle of law that when an illegal order or action is quashed, grant of consequential benefit like back wages is the normal rule and denial of the same is an exception, if circumstances exceptional in nature are available. In this case no exceptional circumstances or reasons are available for denial of back wages.



We allow the appeal to the extent that for the period the appellant remained out of service after the appellant was made to retire compulsorily from 23.9.2010 till his actual date of reinstatement, arrears of salary should be paid to him after deducting the pension amount already paid to him.

That apart, with regard to non-consideration of the order of punishment regarding stoppage of one increment by order dated 28.8.2010, the statutory remedy of appeal is available to the appellant and we see no reason to make any indulgence into the said order in this appeal. We grant liberty to the appellant to file an appeal before the appellate authority and the appellate authority is directed to consider and decide the same within two months from the date of filing of the appeal.

With the aforesaid, the appeal stands allowed and disposed of.

**(Rajendra Menon, CJ)**

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**( Anil Kumar Upadhyay, J)**

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