

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18201 of 2010

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Niranjan Prasad S/O Late Jadunandan Prasad R/O Moh Maulalbag, Idgah Road,
P.O.+P.S.Ara Nawada, Distt-Bhojpur, Bihar

.... Petitioner

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 Ist Sub Judge Bhojpur At Ara

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Surendra Kumar Singh, Adv.
Mr. Avinash Shekhar, Adv,

For the Respondent/s : Mr. Y.P.Sinha, AAG-7
Mr. Shankar Kumar, AC to AAG-7

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 22-05-2017

Heard Mr. Surendra Kumar Singh, learned counsel for the
petitioner and Mr. Shankar Kumar, AC to AAG-7, for the State.

In the nature of the order which this Court purposes to pass it
would not require to delve deep into the merits of the claim. Suffice it
to say that the petitioner has been visited with two punishments for
the same charge, i.e., he was found absent from duty for half an hour.

It is not in dispute rather confirmed from the pleadings on
record that for the said charge one future increment of the petitioner
has been withheld with cumulative effect vide order bearing Memo
No. 1451 dated 28.8.2010, a copy of which is placed at Annexure 1/A
to the writ petition. Subsequently, the District Judge, Bhojpur at Arrah
thought it proper to compulsory retire the petitioner from service in



exercise of power vested under Rule 74b(ii) of the Bihar Service Code (hereinafter referred to as 'the Code'), which inter alia vests jurisdiction in the appointing authority to retire a Govt. servant from service in public interest subject to the condition that the Government servant concerned has completed 30 years of qualifying service or has attained 50 years of age. The order of compulsory retirement bearing Memo No. 1575 dated 23.9.2010 is impugned at Annexure 1/E.

The short argument advanced by Mr. Singh is that apart from the fact that the action taken suffers from double jeopardy for the petitioner cannot be punished twice from the same cause, the said order is also in gross violation of the stipulations present in Rule 74b(ii) of 'the Code', inasmuch as neither the petitioner had completed 30 years of service nor did he attain 50 years of age on the date of punishment. He submits from the records that the date of birth of the petitioner is 21.5.1961 and thus, the petitioner would have completed 50 years of age on 21.5.2011 but he has been made to compulsory retire vide the order bearing Memo No. 1575 dated 23.9.2010 vide Annexure 1/E to the writ petition. He submits that even alternative pre-requisite of completion of 30 years of service is not satisfied in the case of the petitioner because he entered in service on 27.3.1985 and thus, would have completed 30 years of service only on 27.3.2015. He thus submits that either of the two stipulations present



in Rule 74b(ii) of 'the Code' not being satisfied the order of compulsory retirement passed by the District Judge, Bhojpur at Arrah, impugned at Annexure 1/E is lawfully not sustainable.

Although endeavour is being made by Mr. Shankar Kumar to contest the arguments but it is undeniable that the two mandatory stipulations present in Rule 74b(ii) of 'the Code' has not been satisfied in the case of the petitioner as advanced by Mr. Singh.

In view of uncontested position discussed above, the order of compulsory retirement of the petitioner bearing Memo No. 1575 dated 23.9.2010 impugned at Annexure 1/E to the writ petition is quashed and set aside.

The writ petition is allowed. The petitioner is reinstated on his post. However, since the petitioner must have drawn his pension during this period, I am not persuaded to grant him the benefit of arrears of salary.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.05.2017
Transmission Date	NA

