

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5113 of 2007

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Mahendra Kumar Prasad, son of Late Hira Ram, Resident of village and P.O. Umraon Ganj, P.S. Bihia, District- Bhojpur, Ara, presently posted as the post of Junior Clerk cum typist (done compulsory retired) at Muzaffarpur, Bihar State Scheduled Caste Sahkarita Vikas Nigam Limited, Combined Building Muzaffarpur, P.S. and District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Bihar Rajya Anusuchit Jati Sahkarita, Vikas Nigam Ltd. Malyalin Bhawan, Buddh Colony, Government of Bihar, Patna.
2. The District Magistrate, Banka.
3. The Managing Director, Bihar Rajya Anushuchit Jaati Sahkaria Vikas Nigam Limited Malyalim Bhawan, Buddha Colony, Government of Bihar, Patna.
4. The District Executive Officer, Muzaffarpur, Bihar Rajya Anusuchit Jati Sahkarita Vikas Nigam, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar 1
For the Respondent/s : Mr. (Sc20)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 28-11-2018

Heard the parties.

2. This writ petition has been filed by petitioner for issuance of writ of certiorary for setting aside the order dated 30.02.2007 passed by Managing Director, Bihar Rajya Anusuchit Jati Sahkarita Vikash Nigam Limited, Patna as contained in Annexure-2 by which petitioner has been compulsory retired from service. Petitioner was appointed on 01.08.1979 on the post of Clerk Cum Typist in Bihar Rajya Anusuchit Jati Sahkarita Vikash Nigam Limited, Patna and was compulsory retired on 30.03.2007 under Section 74(ii) of Bihar



Service Code.

3. A counter affidavit has been filed on behalf of respondents in which it has been stated that petitioner was posted in the District Office of the Corporation at Jehanabad and he was found responsible for misappropriation of funds of corporation and accordingly an FIR was instituted against him by the District Executive Officer and he was put under suspension from 03.05.1995 and a departmental enquiry was also initiated against him.

4. Petitioner was found guilty of the charges and his order of suspension was revoked on 15.01.1996 and he was imposed minor punishment by the Managing Director of the Corporation.

5. It has been further stated that earlier also petitioner was suspended on 25.07.1992 while he was posted at Jehanabad and FIR was also instituted against him for indecent behaviour with the female members of his landlord and he was also sent to jail in connection with said offence.

6. It has been further submitted that petitioner while posted in the District Office at Madhepura withdrew an amount of Rs. 2,50,000/- from the State Bank of India, Madhepura by making forged signature of District Executive Officer,



Madhepura and FIR was instituted on 12.05.1999 and he was again suspended and departmental proceeding was also initiated and charge of defalcation and misappropriation of fund of corporation was found to be proved and in a Criminal Case also police had chargesheeted the petitioner.

7. Petitioner while posted in the District Office at Muzaffarpur was again suspended by order dated 02.03.2006 and departmental proceeding was initiated against him for remaining unauthorized absent and same was proved and suspension order was revoked on 20.05.2006 imposing minor punishment. Even after petitioner being warned not to remain absent, the District Executive Officer, Muzaffarpur by his letter dated 01.03.2007 reported that petitioner was not performing his duty properly and remains absent from the office after marking the attendance which is causing hindrance in official works.

8. After attaining the age of 55 years the service record and conduct of petitioner was scrutinized and it was found that petitioner has become a liability for the corporation and in the interest of corporation he was prematurely retired from the service of corporation.

9. In accordance with Rule 74 (II) of Bihar Service Code three months salary in lieu of notice amounting to Rs.



27,189/- was sent to petitioner by cheque dated 11.05.2007 and same was received by petitioner on 29.05.2007.

10. It has been stated that all retiral benefits after deducting the dues found payable against petitioner has been made after making deduction of the admitted dues.

11. It has been submitted that petitioner had become a dead wood for the department and was of no utility and as such after considering the past record of petitioner his conduct and his service record being unsatisfactory he was retired compulsory from the corporation and there is no fault in decision making process and there were sufficient reasons for making petitioner compulsory retired from the service. Compulsory retirement under rule 74(ii) of Bihar service Code is not a punishment.

12. The scope of judicial review of Administrative orders by High Court under its writ jurisdiction is very limited and can be resorted to in exceptional cases where conclusion drawn by authorities are perverse or without any material or there is any procedural irregularity in decision making process, however this court does not find impugned order to be suffering from any such infirmities.

13. After hearing the parties and perusing the materials



available on record, this Court finds that the order by which petitioner has been compulsory retired from service is based upon due consideration of his service record and after proper appraisal of his performance during his service period and decision cannot be faulted and as such requires no interference by this Court under its writ jurisdiction and accordingly the writ petition is dismissed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.12.2018
Transmission Date	N.A.

