

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23655 of 2018

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Mahfooz Alam, Son of Mahmood Alam, resident of Quarter No. 111, Raj Bhawan, Raj Bhawan Campus, Patna, Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Bihar, Patna.
2. Principal Secretary to the Hon'ble Governor, Raj Bhawan, Bihar, Patna.
3. Officer on Special Duty (Establishment), Governor's Secretariat, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Priyank Deepak, Advocate
		Mr. Punit Kumar, Advocate
For Respondent Nos, 2 &3:		Mr. Rajendra Kumar Giri, Advocate
For the State	:	Mr. Md. Fazle Karim, AC to SC-01

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 18-05-2022

Heard learned counsels for the parties.

2. In the present petition, petitioner has prayed for following reliefs:-

“(i) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the office order dated 02/07/2018 issued by the Officer on Special Duty (Establishment), Governor's Secretariat, Bihar, Patna, by which the petitioner has been compulsorily retired from the services of the Governor's Secretariat, Bihar, Patna from the post of Lower Division Clerk in terms of the provisions contained under rule 74 of the Bihar Service Code;

(ii) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the order as communicated by a letter dated 13/09/2018



issued by the concerned authorities under the Governor's Secretariat, Bihar, Patna, by which the petitioner was informed that the review petition preferred by him against the order of compulsory retirement passed against him by the aforesaid order dated 02/07/2018 had been rejected;

(iii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the Governor's Secretariat, Bihar, Patna to allow the petitioner to resume his duties in the capacity of Lower Division Clerk in the services of the Governor's Secretariat, Bihar, Patna, alongwith all the consequential benefits that he may be found to be entitled to upon reinstatement of the service in the said capacity;

(iv) Any other relief/reliefs that the petitioner/petitioners may be found to be entitled to in the facts and circumstances of the present case.”

3. Petitioner has been retired compulsorily while invoking Rule 74 of the Bihar Service Code and not as the measure of penalty. In order to ascertain the reasons, on 23.03.2022 following order was passed:-

“Counsel for the Secretariat of Governor is hereby directed to get translation of proceedings drawn in retiring petitioner compulsorily under Rule 74 of the Bihar Service Code before the next date of hearing and place it on record.

Re-list the matter on 20.04.2022.”

4. Today, learned counsel for the respondent furnished office note maintained in the office of His Excellency



Governor. At page 43/N dated 06.09.2017 till page 58/N dated 08.06.2018 there were certain allegations against the petitioner in respect of dereliction of duties, indiscipline etc., In fact, superiors to the petitioner made various allegations against the petitioner in not obeying their orders from time to time. After recording page 43/N to 58/N relating to allegations against the petitioner, abruptly official respondents commenced process of retiring the petitioner compulsorily while invoking Rule 74 of Bihar Service Code from 27.06.2018, vide page 60/N. In the light of these material information one has to draw inference that the official respondent while retiring petitioner compulsorily under Rule 74 of the Bihar Service Code have adopted short circuit method. In other words, the petitioner should have been subjected to disciplinary proceedings with reference to page 43/N dated 06.09.2017 to page 58/N dated 08.06.2018 which are relating to various allegations against the petitioner. In order to circumvent disciplinary proceedings the concerned respondent invoked Rule 74 of the Bihar Service Code and get rid of petitioner's services.

5. In the light of these facts and circumstances, it is material evident that official respondents have initially taken a decision to initiate disciplinary proceedings as is evident from



the record. Thereafter, abruptly invoked Rule 74 of the Bihar Service Code in retiring the petitioner compulsorily. Thus, petitioner has made out a *prima facie* case so as to interfere with the proceedings read with the compulsory retirement order dated 02.07.2018 (Annexure-10). Accordingly, order dated 02.07.2018 (Annexure-10) is set aside.

6. The concerned respondent is hereby directed to reinstate petitioner with all monetary benefits, reserving liberty to the official respondent to initiate inquiry proceedings in the light of page 43/N dated 06.09.2017 to 58/N dated 08.06.2018 of the proceedings drawn by official respondent.

7. Petition stands allowed.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.05.2022
Transmission Date	

