

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11545 of 2011

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1. Smt. Meenakshi Jha And Ors D/o Sri Bhawanand Jha R/O Village- Belahi, P.S.-Pandaul, District- Madhubani, At Present Residing At Mohalla- Chandra Vihar Colony, Ashiana Digha Road, P.S.- Rajivnagar, District And Town - Patna
 2. Ashish Kr. S/o Sri Bhawanand Jha R/o Village- Belahi, P.S.-Pandaul, District- Madhubani, At Present Residing At Mohalla- Chandra Vihar Colony, Ashiana Digha Road, P.S.- Rajivnagar, District And Town - Patna
 3. Manish Kr. Jha S/o Sri Bhawanand Jha R/o Village- Belahi, P.S.-Pandaul, District- Madhubani, At Present Residing At Mohalla- Chandra Vihar Colony, Ashiana Digha Road, P.S.- Rajivnagar, District And Town - Patna
 4. Barkha S/o Sri Bhawanand Jha R/o Village- Belahi, P.S.-Pandaul, District- Madhubani, At Present Residing At Mohalla- Chandra Vihar Colony, Ashiana Digha Road, P.S.- Rajivnagar, District And Town - Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Co-Operative Department, Govt. Of Bihar Patna
3. The Bihar State Housing Cooperative Federation, Null Lalit Bhawan, Jawahar Lal Nehru Magr, Patna Through Its Managing Director
4. The Managing Director, Bihar State Housing Cooperative Federation Lalit Bhawan, Jawahar Lal Nehru Magr, Patna Through Its Managing Director
5. The Board Of Director, Bihar State Housing Cooperative Federation Lalit Bhawan, Jawahar Lal Nehru Magr, Patna Through Its Managing Director
6. The Secretary, Bihar State Housing Cooperative Federation Lalit Bhawan, Jawahar Lal Nehru Magr, Patna Through Its Managing Director

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dhirendra Kumar Jha, Advocate
For the Respondent/s : Mr.Jawahar Pd. Karn Aag4

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

Date : 26-09-2022

In the instant petition deceased Sunil Kumar Jha has
prayed for the following reliefs:-

*“I. For quashing letter bearing Memo
No. 705 date 31.01.2011 issued by Respondent
No. 4, by which the petitioner has been
compulsorily retired from the services of the*



Bihar State Housing Cooperative Federation Limited.

II. For directing the respondent authorities to reinstate the petitioner on the post of Manger (Recovery) in the Bihar State Housing Cooperation Federation Limited, with effect from the date from which he has been compulsorily retired.

III. For directing the Respondent authorities to pay full salary and allowance consequent upon his reinstatement on the above post.”

During pendency of the present petition, petitioner-Sunil Kumar Jha has died and his legal heirs were brought on record. Deceased employee-Sunil Kumar Jha while working as a Manager (Recovery) was subjected to disciplinary proceedings in framing of article of charges on 02.08.2006 and further supplementary charge memo was issued on 21.11.2006. He had filed his explanation to the charge memo denying the alleged charges on 08.08.2007. The disciplinary authority was not satisfied with the deceased employee explanation dated 08.08.2007, thus, proceeded to hold enquiry while appointing enquiry and presenting officer. Inquiring Officer submitted his report on 02.08.2009 while holding the charges levelled against the deceased employee were proved. On receipt of enquiring officer's report disciplinary authority proceeded to issue a second show cause notice on 13.10.2009 for which deceased employee had submitted his explanation on 16.11.2009. Thus, disciplinary proceedings were abruptly stalled



by the disciplinary authority. In other words, disciplinary authority/appointing authority to the deceased employee had resorted to Rule 74 of the Bihar Service Code in retiring deceased employee on compulsory. In other words, compulsory retirement was ordered not as a measure of penalty under Rule 14(ix) of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. Feeling aggrieved and dissatisfied with the order of compulsory retirement dated 31.01.2011 the deceased employee preferred the present petition.

Learned counsel for the petitioner submitted that disciplinary/appointing authority had resorted to short circuit method in compulsory retiring deceased employee while invoking Rule 74 of Bihar Service Code while the disciplinary proceedings initiated on 02.08.2006 was pending consideration. It is submitted that enquiry proceedings were at the final stage. In other words, disciplinary authority was required to pass a speaking order/final order on receipt of deceased employees explanation/reply to the second show cause notice dated 13.10.2009 read with 16.11.2009. Sidetracking the enquiry proceedings appointing authority proceeded to retire deceased employee compulsorily while invoking Rule 74 of Bihar Service Code is arbitrary and illegal. It is further submitted that before retiring compulsorily the



disciplinary authority has not withdrawn disciplinary proceedings commenced on 02.08.2006, therefore, decision to retire compulsory while invoking Rule 74 of Bihar Service Code is exercise arbitrarily.

Per contra, learned counsel for the respondent resisted the aforesaid contention and submitted that disciplinary /appointing authority during pendency of the enquiry has perused the complete service record of the deceased employee and after perusal of service record of the deceased employee proceeded to invoke Rule 74 of Bihar Service Code. Therefore, there is no infirmity in the order of compulsory retirement as it is not measure of penalty under Rule 14 (ix) which is one of the measure penalties under Rules, 2005.

Heard learned counsel for respective parties.

Deceased employee was subjected to enquiry and disciplinary proceedings on 02.08.2006 in framing of charges and further supplementary charge was issued on 21.11.2006 and it was almost in the final stage that the disciplinary authority was required to examine enquiring officer's report read with the deceased employee explanation/reply to the second show cause notice at that juncture appointing authority proceeded to invoke Rule 74 of Bihar Service Code.



Perusal of the records it is evident that disciplinary /appointing authority instead of completing the enquiry proceedings either in accepting enquiry officer's report and deceased employee's explanation or rejecting the same he should have passed an order. Under Rule 18 of CCA Rules that is action on the enquiry report. On the other hand, resorted to short circuit method in retiring deceased employee compulsorily with reference to Rule 74 of Bihar Service Code. The impugned action is clear case of short circuit method adopted by the appointing authority in retiring compulsorily.

Having regard to the facts and circumstances, and the fact that during pendency of the present petition deceased Sunil Kumar Jha has died, therefore, question of remanding the matter to the disciplinary authority to pass final order in a disciplinary proceedings is not warranted as legal heirs of the deceased employee were already brought on record.

In the light of these facts and circumstances, impugned order dated 31.01.2011 stands sets aside. Accordingly, the present petition stands allowed. The concerned respondent is hereby directed to settle all service benefits of the deceased-Sunil Kumar Jha to his legal heirs including monetary benefits. The monetary benefits shall be calculated and disbursed along with interest @8%



per annum. The aforesaid exercise shall be undertaken by the concerned respondent within a period of three months on receipt of this order.

(P. B. Bajanthri, J)

abhishekk/-

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

