

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9776 of 2020

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Satish Kumar Singh, Son of Late Ram Mohan Singh, resident of D- 305,
Magestic Janky City, East Gola Road, P.S.- Nizamat Danapur, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Bihar, Patna.
3. The Additional Secretary, Building Construction Department, Bihar, Patna.
4. The Secretary, Bihar Public Service Commission, Patna.

... .. Respondent/s

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with
Civil Writ Jurisdiction Case No. 9779 of 2020

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Rakesh Kumar Singh, Son of Late Bachcha Singh resident of Flat No. 202,
Kaushalaya Enclave Apartment, Rajendra Path, North S.K. Puri, P.S.- S.K.
Puri, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Bihar, Patna.
3. The Additional Secretary, Building Construction Department, Bihar, Patna.
4. The Secretary, Bihar Public Service Commission, Patna.

... .. Respondent/s

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with
Civil Writ Jurisdiction Case No. 3047 of 2021

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Kumar Rajesh, Son of Late Raghunath Prasad Sinha Resident of Village-
Kashipur, P.S.- Bidhupur, District- Vaishali, at present House No. 67, Road
No. 14, Sri Krishna Nagar, P.S.- Buddha Colony, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Bihar, Patna.
3. The Additional Secretary, Building Construction Department, Bihar, Patna.
4. The Secretary, Bihar Public Service Commission, Patna.

... .. Respondent/s



with
Civil Writ Jurisdiction Case No. 3727 of 2021

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Praveen Pandit, Son of Ram Udgar Pandit, Resident of Village - Naulagarh,
P.S. Bhagwanpur, District - Begusarai, presently residing at Abhiyanta Nagar,
East Ram Krishna Nagar, P.S. Ram Krishna Nagar, District - Patna - 800027.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Bihar, Patna.
3. The Additional Secretary, Building Construction Department, Bihar, Patna.
4. The Executive Engineer, Building Construction Division, Darbhanga.
5. The Secretary, Bihar Public Service Commission, Patna.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 9776 of 2020)

For the Petitioner/s : Mr. Prabhu Nath Pathak, Advocate

For the State : Mr. A.K. Dubey (AC to AAG-11)

(In Civil Writ Jurisdiction Case No. 9779 of 2020)

For the Petitioner/s : Mr. Prabhu Nath Pathak, Advocate

For the State : Mr. Sanjay Kumar (AC to GA-13)

(In Civil Writ Jurisdiction Case No. 3047 of 2021)

For the Petitioner/s : Mr. Prabhu Nath Pathak

For the State : Mr. Rakesh Ranjan (AC to GP-22)

For BPSC : Mr. Nawal Kishore Singh, Advocate

(In Civil Writ Jurisdiction Case No. 3727 of 2021)

For the Petitioner/s : Mr. Prabhu Nath Pathak, Advocate

For the State : Mr. A.K. Dubey (AC to AAG-11)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 12-10-2023

Learned counsel for the petitioners and learned
counsel for the State in all the cases are present.

2. Learned counsel for the petitioners submits that vide
order dated 22.08.2023, it was directed by this Hon'ble Court to
list all these cases after disposal of CWJC No. 407 of 2021.

3. Learned counsel for the petitioner further submits



that the said CWJC No. 407 of 2021 has been disposed of vide order dated 29.08.2023. The order passed by this Hon'ble Court has been annexed as Annexure-18 to the present writ petition. Learned counsel further submits that the petitioners of all the four writ petitions are aggrieved by notification containing Memo No. 3604(Bh) dated 18.06.2020 issued by the Additional Secretary Building Construction Department, Bihar, Patna (annexed as Annexure-1) whereby, invoking powers under Rule 74 of the Bihar Service Code, 1952, the petitioners have been compulsorily retired from service.

4. Learned counsel for the petitioners submits that by the said notification dated 18.06.2020, there are in total six officials who were compulsorily retired from the service and out of one namely, Shyam Sundar Sharma preferred CWJC No. 407 of 2021 which was allowed in his favour on 29.08.2023. Rest four petitioners have preferred different writ petitions who are petitioners here in the present writ petitions in which order is being passed.

5. The parties agreed that the issue involved in the present writ petitions is directly and substantially identical. This Hon'ble Court at the time of deciding CWJC No. 407 of 2021 has pleased to observe as follows:-



“a) The Court on consideration of rival submissions finds that the impugned order dated 18.06.2020, purporting to be under Rule 74 of the Bihar Service Code, 1952 contains statements of the petitioner’s indictment for misconduct’s. Relevant extract of impugned notification reads as follows:-

“...विचारोपरान्त अत्यधिक खराब कार्य-कलाप / प्रदर्शन वाले वैसे कुल छः (06) अभियंताओं को चिन्हित किया गया, जिनकी कार्य दक्षता या आचार ऐसा नहीं है, जिससे उन्हें सेवा में बनाये रखना लोकहित में उचित है। चिन्हित किये गये उक्त अभियंताओं को पूर्व में भी औपचारिक एवं अनौपचारिक रूप से कार्य-कलाप में सुधार, पदीय दायित्वों के समुचित निर्वहन हेतु बार-बार सचेत किये जाने एवं उच्चाधिकारियों के आदेशों का अक्षरशः पालन हेतु निर्देश दिये जाने के बावजूद भी उनके कार्य-कलाप तथा पदीय दायित्व निर्वहन में अपेक्षित सुधार परिलक्षित नहीं हो पाया है। साथ ही इनके द्वारा वरीय पदाधिकारियों एवं सरकार के निर्देश की लगातार अवहेलना की गयी है।”

b) The impugned notification as is, apparent from bare reading of the same is not based on consideration in terms of Rule 74 of the Bihar Service Code, 1952. The same casts aspersions, and alleges



misconduct, which is clearly beyond the purview of Rule 74 (a) of the Bihar Service Code, 1952, quoted above.

*c) The notification, therefore, leaves the petitioner with stigma, and is apparently, as a consequence of the various alleged acts of omission and commission, as per the impugned order, extracted above. The impugned notification, therefore, is apparently punitive in nature, and beyond the scope of Rule 74 of the Bihar Service Code. The decision of the Division Bench in the case of **Vidya Nand Sharma** (supra) supports such conclusion of this Court in the instant writ proceedings. The impugned notification, in the above noted facts and circumstances, and the settled legal position based on decision of the Division Bench, noted above, is clearly unsustainable in the eyes of law.*

d) The impugned notification dated 18.06.2020 (Annexure-1) is, therefore, quashed.

e) Accordingly, this writ petition is allowed.”

6. In the light of the observations made by the Coordinate Bench of this Hon'ble Court, that the observation quoted above is basically stigma casted upon consequence of various alleged acts of omission and commission and therefore,



this Court is of this view that the impugned notification is punitive in nature because the scope of Rule 74 of the Bihar Service Code, 1952, is absolutely different as mentioned in the notification.

7. This Court is also of the view that parity should be maintained and therefore, in the light of the reasons above, all the writ petitions are hereby allowed and the impugned notification containing Memo No. 3604(Bh) dated 18.06.2020 issued by the Additional Secretary, Building Construction Department, Bihar, Patna (annexed as Annexure-1) is hereby quashed for all the four petitioners of the present writ petitioners mentioned above.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.10.2023
Transmission Date	

