

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2801 of 2014

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Satish Chandra Srivastava, (Ex Munsif, Gopalganj) Son of Late Banke Bihari Lal, Resident of MIG. 976, Avas Vikas Colony, Kunraghat, Gorakhpur, UP

... .. Petitioner

Versus

1. The State of Bihar.
2. The Law Secretary-Cum-Legal Remembrancer Bihar Patna
3. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The High Court of Judicature at Patna through Registrar General, Patna High Court, Patna.
5. The District and Sessions Judge, Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mrs. Smriti Singh, <i>Amicus Curiae</i>
For the High Court	:	Mr. Piyush Lall, Advocate
For the State	:	Mr. U.S.S. Singh, G.P.-19
		Mr. Uday Bhan Singh, A.C. to G.P.-19

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 07-03-2024

Taking note of the fact that the petitioner is a judicial officer, who was compulsorily retired way back in the year 2013, but despite repeated deferments and the appropriate opportunity allowed, consistently none appeared on behalf of the petitioner, hence, this Court, for the ends of justice, appointed Mrs. Smriti Singh, as *Amicus Curiae*, in the instant writ application for assisting the Court on behalf of the



petitioner.

2. Mr. Piyush Lall, learned advocate, represents the Patna High Court and Mr. U.S.S. Singh, learned GP-19, represents the State.

3. The petitioner who was an officer of 22nd Batch of Bihar Judicial Service and was appointed and submitted his joining on 04.07.1989 on the post of Munsif, on being aggrieved by Notification No. 18521 dated 05.12.2013 of the Department of the General Administration, Government of Bihar, by which he was compulsorily retired from Bihar Judicial Service in public interest under Rule 74(b)(ii) of the Bihar Service Code, 1952 has filed the present writ petition, seeking quashing of the same. The petitioner also sought quashing of the Order No. 226A dated 11.12.2013 issued by the learned District and Sessions Judge, Gopalganj, relieving him from judicial works in view of Letter No. 6887/Admn.(Appt.) dated 07.12.2013 of the Patna High Court and directed him to handover the charge of his court and office being that of Munsif, Gopalganj.

4. The short facts, which led to the filing of the present writ petition are that while the petitioner was posted as Munsif in the judgeship of Gopalganj, certain allegation petition was received in the Patna High Court, whereupon a report was



called for from the concerned District and Sessions Judge and the matter was placed before the learned Inspecting Judge of the judgeship along with the report.

5. On being dissatisfied with the explanation submitted by the Presiding Officer concerned, the matter was placed before the Standing Committee. In the meantime, further joint allegation petition by a team of advocates against the petitioner was also received in the High Court, which was also placed before the Standing Committee through the learned Inspecting Judge of Gopalganj after receipt of a report of the District and Sessions Judge, Gopalganj.

6. The Standing Committee of the Patna High Court, having considered the minutes of the learned Inspecting Judge; the report of the concerned District and Sessions Judge and the explanation submitted by the petitioner, directed the Registry to place the matter with the entire service records and the allegation file.

7. The Standing Committee having took note of the confidential remarks recorded by the concerned District Judge of the judgeship and the service record, which revealed that altogether eleven allegation petitions were processed against the petitioner, out of which, seven allegation petitions were



disposed off and three allegation petitions were found pending against him at the relevant time. From the service record, it also appeared that a departmental proceeding was initiated against the petitioner vide Memo No. 16287/Legal Cell, dated 10.12.2007 and the charges of insubordination and misconduct were alleged against him, leading to his suspension, which finally culminated into dropping of the departmental proceeding with warning to be careful in future vide Memo No. 4652 dated 28.03.2009.

8. Having considered all the afore-noted gamut of facts, the service record of the petitioner and his dubious probity, the Standing Committee of the Patna High Court, resolved to recommend that in exercise of power conferred under Rule 74(b)(ii) of the Bihar Service Code, 1952, he be retired from his service in public interest and he be paid three months salary and other allowances in lieu of notice. The afore-noted resolution was put in the Full Court meeting of the High Court held on 05.10.2013 and it was resolved that the petitioner be retired from his service in public interest. Accordingly, in the light of above recommendation of the Patna High Court as communicated vide Letter No. 770 dated 19.10.2013, the State Government in the General Administration Department, issued



Notification No. 18521 dated 05.12.2013 compulsorily retiring the petitioner from his service in public interest along with three months salary and other allowances in lieu of three months prior notice under Rule 74(b)(ii) of the Bihar Service Code, 1952.

9. Mrs. Smriti Singh, learned *Amicus Curiae*, while challenging the impugned order of compulsory retirement, apart from various submissions, emphatically submitted that in any view of the matter, it was obligatory on the part of the respondents to supply a copy of the letter dated 07.12.2013 issued by the Patna High Court through the Registrar General to the petitioner, whereby he had been relieved from all the judicial works forthwith. Much persuasion has been made that in any view of the matter, the petitioner was entitled to know the ground and the charges on the basis of which he was precluded from discharging judicial works, which led to passing of an order of compulsory retirement. She contended that the principles of natural justice comes into play before taking such action against the members of judicial service. Thus, the action of the respondents is challenged being violative of the principles of natural justice. She further contended that even the service book reveals that the petitioner was a good officer and his work has been found to be satisfactory, though not very good and



outstanding. Moreover, the confidential remarks recorded by the learned Inspecting Judge of the judgeship where the petitioner was posted, he secured B+.

10. Learned *Amicus Curiae*, further referred a decision of the Hon'ble Apex Court in the case of **Ram Ekbal Sharma v. State of Bihar [(1990) 3 SCC 504]**.

11. *Per contra*, Mr. Lall, learned Advocate for the High Court, contended that it is the settled law that principles of natural justice are not applicable while taking a decision to retire a government servant in public interest, as it is neither penal in nature nor causes any adverse consequences. He thus submitted that in the present case, before taking decision to retire the petitioner in public interest on the basis of his entire service records under Rule 74(b)(ii) of the Bihar Service Code, 1952, no show-cause or notice affording an opportunity was required to be issued to him by the High Court. The petitioner cannot take any benefit from his claim that letter dated 07.12.2013 of the High Court was not supplied to him along with the impugned order(s), as the decision to compulsory retire the petitioner was not taken on the basis of said letter. Moreover, later on, the petitioner was supplied with a copy of the said letter dated 07.12.2013, as produced by him in the writ petition, marked as



Annexure-2.

12. It was further contended that the decision to compulsory retire the petitioner was taken by the High Court after considering his entire service records in public interest and not by way of any punishment as alleged, as the same being a facet of doctrine of pleasure taken subjectively on the basis of objective materials and is not a termination of service. Learned counsel further argued that law does not require that the concerned government servant be informed of the reasons to compulsory retire him or that the order of such retirement reassign any reason other than that the same is in public interest. Once, the Court has taken a decision in exercise of its power conferred under Article 235 of the Constitution of India, the retention of the petitioner in service would not be in public interest. The decision of the High Court in retiring the petitioner compulsorily, was taken in exercise of its constitutional power of complete control over judicial officers and district judiciary of the State of Bihar.

13. Having heard the *Amicus Curiae* and the learned Advocate for the High Court, this Court has also perused the service records as produced by the Registry of the High Court.

14. After careful consideration of the records, it is



evident that the petitioner was appointed on the post of Munsif way back in the year 1989 and he was compulsorily retired w.e.f. 11.12.2013 from the post of Munsif itself while he was working under the judgeship of Gopalganj, which speaks vociferously as to his performance being never found to be above the benchmark. The confidential remarks of the petitioner clearly speaks of his average merit and on some of the occasions, apart from his doubtful probity, his reputation has also been found to be not good. Most of the times, he has been found discourteous and had no good relationship with his colleagues, apart from his service record also highlighting his erratic orders, leading to warning and caution by the concerned District and Sessions Judge.

15. It is worth mentioning that the formation of opinion for compulsory retirement though based on the subjective satisfaction of the authority concerned, which satisfaction, all the same, should be based on a valid material. In **Nand Kumar Verma v. State of Jharkhand [(2012) 3 SCC 580]**, it was held as follows:-

“34. It is also well settled that the formation of opinion for compulsory retirement is based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a



valid material. It is permissible for the Courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based.”

16. In **State of Gujarat v. Umedbhai M. Patel [(2001) 3 SCC 314]**, enunciated the following broad principles on the compulsory retirement:-

“11. The law relating to compulsory retirement has now crystalised into a definite principle, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having the regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not



be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.”

17. The real test for examination whether the order of compulsory retirement is a penalty or a dismissal under that garb, “is to see whether the order of compulsory retirement is occasioned by the concern of unsuitability or as a punishment for misconduct” as has been held in **Nisha Priya Bhatia v. Union of India [(2020)13 SCC 56]**.

18. In the light of afore-noted decision coming to the facts of the present case in hand, undoubtedly, the compulsory retirement of the petitioner was only in public interest, after having been found his service unsatisfactory and unsuitable for continuance in service. Besides taking into consideration the ACRs of the officer, assessment of disposal for last ten years, vigilance complaints, departmental enquiry and administrative complaints, which yardsticks were to be applied for consideration in cases of compulsory retirement from Bihar Judicial Service in public interest in terms of Rule 74(b)(ii) of the Bihar Service Code, 1952.



19. For the sake of highlighting some of the confidential remarks, which obligated the Full Court to resolve to take the decision of compulsory retirement, it would be relevant to reiterate some of the confidential remarks.

Sl. No.	Date	Remarks
1.	22.06.1994	Officer of average merit.
2.	25.07.1995	An officer of average merit.
3.	02.09.1996	An average officer.
4.	14.06.1997	Disposal-much better than average. Integrity-doubtful, as noted in column no.5 (Noted in column No.5 is as follows:- “Reputation-Not good. Integrity-Not above board. Example about his erratic orders:- (1) Vide order dt 17.10.95 passed in GR case no. 601/95 he had granted bail to the accused u/s 302 IPC with allegation of overt act on the very first day without even perusing case diary against which Cr. Misc. 50/95 for cancellation of bail was filed and he was directed by me to be careful in future. Several such allegations were received against him.”)
5.	27.04.1998	Satisfactory.
6.	11.05.1999	Satisfactory.
7.	23.05.2000	Poor.
8.	2000-2001	An average officer.
9.	14.08.2002	He is well behaved officer.
10.	25.07.2003	He is well behaved officer.
11.	12.05.2004	Average officer.
12.	25.05.2005	He is a good officer. Writes satisfactory judgment.
13.	04.05.2006	He is a good officer. Writes quite fair



		judgment.
14.	05.02.2007	Not a good officer. Needs improvement.
15.	25.06.2010	Satisfactory.
16.	23.02.2012	B+

20. It needs no reiteration that even a single adverse entry regarding the probity of an officer in a remote part is sufficient to award compulsory retirement, as has been held by the Hon’ble Apex Court in the case of **Pyare Mohan Lal v. The State of Jharkhand and Others [(2010) 10 SCC 693]**. It would be worth to quote para 29 thereof.

“29. The law requires the authority to consider the “entire service record” of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse entries had not been communicated to him and the officer had been promoted earlier in spite of those adverse entries. More so, a single adverse entry regarding the integrity of an officer even in remote past is sufficient to award compulsory retirement. The case of a judicial officer is required to be examined, treating him to be different from other wings of the society, as he is serving the State in a different capacity. The case of a judicial officer is considered by a committee of Judges of the High Court duly constituted by the Hon'ble the Chief Justice and then the report of the Committee is placed before the Full Court. A decision is taken



by the Full Court after due deliberation on the matter. Therefore, there is hardly any chance to make the allegations of non-application of mind or mala fides.”

21. This Court is also conscious of the fact that no challenge to the procedural irregularity or *mala fide* has been made, barring the impugned order(s) being in violation of the principles of natural justice.

22. Now coming to the decision rendered in **Ram Ekbal Sharma (supra)**, wherein it was held that:

“32. On a consideration of the above decisions the legal position that now emerges is that even though the order of compulsory retirement is couched in innocuous language without making any imputations against the government servant who is directed to be compulsorily retired from service, the court, if challenged, in appropriate cases can lift the veil to find out whether the order is based on any misconduct of the government servant concerned or the order has been made bona fide and not with any oblique or extraneous purposes.”

23. For careful consideration, this Court has also gone through the entire service records of the petitioner and found that the recommendation of the Standing Committee to retire the



petitioner from service in public interest in exercise of power conferred under Rule 74(b)(ii) of the Bihar Service Code, 1952, had duly been accepted in the Full Court Meeting held on 05.10.2013, which is entirely based upon his unsuitability to hold the post of judicial officer, as apart from his service being unsuited, his probity had also not been found above-board and non-granting of promotion in his entire service period from 1989 to 2013, speak eloquent about his performance, warranting a measure of 'weeding out deadwood' after a complete reassessment of the overall performance.

24. It would be worth noting that the scope for judicial review of order for compulsory retirement based on subjective satisfaction of employer is extremely limited unless it is found to be arbitrary, capricious, *mala fide* or overlooking or ignoring relevant material etc. In case of **Ram Murti Yadav v. State of Uttar Pradesh and Another [2020] 1 SCC 801**, the Apex Court while highlighting the duty of a judicial officer has held it to be a pious duty, commanding high standard of probity and integrity in both their professional and personal lives, holding the office of a public trust; and further while considering the scope of judicial review of the order of compulsory retirement has held as follows:



“14. A person entering the judicial service no doubt has career aspirations including promotions. An order of compulsory retirement undoubtedly affects the career aspirations. Having said so, we must also sound a caution that judicial service is not like any other service. A person discharging judicial duties acts on behalf of the State in discharge of its sovereign functions. Dispensation of justice is not only an onerous duty but has been considered as akin to discharge of a pious duty, and therefore, is a very serious matter. The standards of probity, conduct, integrity that may be relevant for discharge of duties by a careerist in another job cannot be the same for a judicial officer. A Judge holds the office of a public trust. Impeccable integrity, unimpeachable independence with moral values embodied to the core are absolute imperatives which brooks no compromise. A Judge is the pillar of the entire justice system and the public has a right to demand virtually irreproachable conduct from anyone performing a judicial function. Judges must strive for the highest standards of integrity in both their professional and personal lives.

15. It has to be kept in mind that a person seeking justice, has the first exposure to the justice delivery system at the level of subordinate judiciary, and thus a sense of injustice can have serious repercussions not only on that individual but can have its fall out in the society as well. It is,



therefore, absolutely necessary that the ordinary litigant must have complete faith at this level and no impression can be afforded to be given to a litigant which may even create a perception to the contrary as the consequences can be very damaging. The standard or yardstick for judging the conduct of the judicial officer, therefore, has necessarily to be strict. Having said so, we must also observe that it is not every inadvertent flaw or error that will make a judicial officer culpable. The State Judicial Academies undoubtedly has a stellar role to perform in this regard. A bona fide error may need correction and counselling. But a conduct which creates a perception beyond the ordinary cannot be countenanced. For a trained legal mind, a judicial order speaks for itself.”

25. Time without number, the Apex Court in clear terms held that any order based in terms of Rule 74(b)(ii) of the Bihar Service Code, 1952, if not stigmatic, the law does not obligate the State Government to assign any reason other than the same is in public interest.

26. This Court is satisfied that the decision impugned herein, is neither punitive nor casts a stigma on the petitioner, which was only taken in public interest on the basis of his service record and thus the claim of the petitioner of the principles of natural justice having been violated, is not at all



sustainable.

27. In view of the discussions made hereinabove and the settled position of law, no interference is required.

28. The writ petition stands dismissed.

29. There shall be no order as to cost(s).

30. Before parting with the writ petition, this Court would record its appreciation for the able assistance rendered by Mrs. Smriti Singh, *Amicus Curiae*.

31. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs. 5000/- to Mrs. Smriti Singh, *Amicus Curiae* in Writ Petition No. 2801 of 2014 as a consolidated fee for the services rendered by her.

(Harish Kumar, J)

(K. Vinod Chandran, CJ)-I agree.

(K. Vinod Chandran, CJ)

rohit/-

AFR/NAFR	AFR
CAV DATE	27-02-2024
Uploading Date	07-03-2024
Transmission Date	

