

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1468 of 2023

In

Civil Writ Jurisdiction Case No.9776 of 2020

-
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.

... .. Appellant/s

Versus

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.

... .. Respondent/s

with

Letters Patent Appeal No. 1450 of 2023

In

Civil Writ Jurisdiction Case No.407 of 2021

-
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.

... .. Appellant/s

Versus

Shyam Sundar Sharma son of Late Janeshwar Sharma, Resident of Village-
Chatar, P.S.-Kako, District-Jehanabad.

... .. Respondent/s

with

Letters Patent Appeal No. 1451 of 2023

In

Civil Writ Jurisdiction Case No.3047 of 2021

-
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.

... .. Appellant/s

Versus



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- Budha Colony, District- Patna.

... .. Respondent/s

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with

Letters Patent Appeal No. 1452 of 2023

In

Civil Writ Jurisdiction Case No.3727 of 2021

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- 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.

... .. Appellant/s

Versus

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

... .. Respondent/s

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with

Letters Patent Appeal No. 1453 of 2023

In

Civil Writ Jurisdiction Case No.9779 of 2020

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- 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.

... .. Appellant/s

Versus

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.

... .. Respondent/s

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Appearance :
(In Letters Patent Appeal No. 1468 of 2023)
For the Appellant/s : Mr. P.K.Shahi, AG
Mrs. Binita Singh, SC 28
Mr. Kumaresh Singh, AC to SC 28
Mr. Nishant Kumar Jha, AC to SC 28



For the Respondent/s : Mr. Prabhu Nath Pathak, Advocate
(In Letters Patent Appeal No. 1450 of 2023)
For the Appellant/s : Mr. P.K.Shahi, AG
Mrs. Binita Singh, SC 28
Mr. Kumaresh Singh, AC to SC 28
Mr. Nishant Kumar Jha, AC to SC 28
For the Respondent/s : Mr. Prabhu Nath Pathak, Advocate
(In Letters Patent Appeal No. 1451 of 2023)
For the Appellant/s : Mr. P.K.Shahi, AG
Mrs. Binita Singh, SC 28
Mr. Kumaresh Singh, AC to SC 28
Mr. Nishant Kumar Jha, AC to SC 28
For the Respondent/s : Mr. Prabhu Nath Pathak, Advocate
(In Letters Patent Appeal No. 1452 of 2023)
For the Appellant/s : Mr. P.K.Shahi, AG
Mrs. Binita Singh, SC 28
Mr. Kumaresh Singh, AC to SC 28
Mr. Vivek Anand Amritesh, AC to SC28
For the Respondent/s : Mr. Prabhu Nath Pathak, Advocate
(In Letters Patent Appeal No. 1453 of 2023)
For the Appellant/s : Mr. P.K.Shahi, AG
Mrs. Binita Singh, SC 28
Mr. Kumaresh Singh, AC to SC 28
Mr. Vivek Anand Amritesh, AC to SC28
For the Respondent/s : Mr. Prabhu Nath Pathak, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date :20-11-2024

Heard learned Advocate General assisted by Smt.
Binita Singh, learned Standing Counsel for the appellant-State
of Bihar and Mr. Prabhu Nath Pathak, learned counsel for the
writ petitioners-respondents.

2. All the five writ petitioners-respondents herein
having been compulsorily retired by a common order contained
in notification dated 18.6.2020 under the signature of the
Additional Secretary, Building Construction Department,
Government of Bihar preferred separate writ applications, all



having been allowed, the orders have been challenged in appeal by the State of Bihar.

3. CWJC no.407 of 2021 preferred by Shyam Sundar Sharma was allowed vide judgment dated 29.8.2023. The other writ applications i.e. CWJC no.9776 of 2020 filed by Satish Kumar Singh, CWJC no.9779 of 2020 filed by Rakesh Kumar Singh, CWJC no.3047 of 2021 filed by Kumar Rajesh and CWJC no.3727 of 2021 filed by Praveen Pandit were all allowed on the ground of similarity/parity with CWJC no.407 of 2021, by judgment dated 12.10.2023 against which separate four appeals have been preferred by the State of Bihar. All the five appeals filed against the orders passed in the writ petitions have been taken up together and are decided by this common order.

4. The case of the writ petitioners-respondents was that all of them have had an unblemished career with no adverse entries in the ACRs. No show cause notice had been served on them prior to passing of the order of compulsory retirement. The only option for the State of Bihar was to proceed against the writ petitioners under the provisions of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 ('C.C.A. Rules' in short) by framing memo of charges against the writ petitioners and proceeding as per the procedure laid



down under the CCA Rules. It was the case of the writ petitioners that though the power exercised is purportedly under Rule 74 of the Bihar Service Code, however, the order impugned being stigmatic in nature, the order is unsustainable and fit to be quashed.

5. It was the case of the State of Bihar that the services of the writ petitioners have not been satisfactory and their continuance in service was not in public interest. A meeting was convened under the Chairmanship of the Principal Secretary of the department which discussed all the names and based on the records submitted, the past performance of the persons concerned were thoroughly examined and thereafter the six persons including the writ petitioners-respondents herein were identified whose continuance in service was considered not in public interest. As such, in exercise of powers conferred under Rule 74 of the Bihar Service Code, the order was passed compulsorily retiring them from service. It was submitted that the order is in accordance with law and there is no merit in the case of the writ petitioners-respondents.

6. As stated above, CWJC no.407 of 2021 was allowed by a judgment dated 29.8.2023 and the impugned notification dated 18.6.2020 was quashed. The other four writ



applications preferred by the other writ petitioners, on the ground of their cases being similar to the writ petitioner of CWJC no.407 of 2021 and the order impugned being same in all the five writ applications, the same was allowed on the ground of parity, by a judgment dated 12.10.2023. The State of Bihar has preferred separate appeals in all the writ applications.

7. Mr. P.K.Shahi, learned Advocate General appearing for the appellants-State of Bihar submitted that the order impugned in all the writ applications as contained in notification dated 18.6.2020 has been passed by the Additional Secretary, Building Construction Department, Bihar, Patna invoking powers under Rule 74 of the Bihar Service Code. Rule 74 provides that if the State Government considers that the efficiency or conduct of a Government servant is not such as to justify his retention in service, the State Government may require such Government servant who has completed 21 years of duty and 25 years of total service to retire after giving three months at least previous notice or an amount equal to three months pay and allowance in lieu of such notice. It is submitted that a meeting was convened under the Chairmanship of the Principal Secretary of the Department on 3.6.2020 and 4.6.2020. After receipt of the report with respect to the performance from



various divisions and circles of the Department, the report so received and the performance of the concerned persons was examined and finally six persons of engineering service were identified whose continuance was not considered proper in public interest. As such, under the powers conferred under Rule 74 of the Bihar Service Code, they were directed to be superannuated compulsorily. It was submitted that there is no illegality in the order impugned, the order cannot be said to be stigmatic in nature and the learned Single Judge had committed an error in allowing CWJC no.407 of 2021 by a judgment dated 29.8.2023 and the other writ applications on ground of parity with the said judgment. Learned Advocate General in support of his submissions relied on the judgment of the Hon'ble Supreme Court in the case of ***Central Industrial Security Force vs. HC (GD) Om Prakash [(2022) 5 SCC 100]***.

8. In response, Mr. Prabhu Nath Pathak, learned counsel appearing for the writ petitioners-respondents submitted that the writ petitioners had never been served with any charge memo or show cause nor had they been paid the three months salary in lieu of the notice as contemplated under Rule 74 of the Bihar Service Code. The order impugned was in violation of the principles of natural justice. The entire service performance of



the writ petitioners was to be considered. The order impugned in the writ applications cast aspersions, was punitive in nature and beyond the scope of Rule 74 of the Bihar Service Code. The learned Single Judge had rightly allowed the writ applications. There is no merit in the appeals and as such, the appeals be dismissed.

9. Having heard learned counsel for the parties and having perused the material on record, from the contents of the counter affidavit filed on behalf of the State of Bihar in the writ application, it transpires that a committee was constituted under the Chairmanship of the Principal Secretary of the Building Construction Department, Bihar, Patna to consider the case of persons who were aged over 50 years with respect to their continuance in service and they being compulsorily retired under Rule 74 of the Bihar Service Code. The committee besides the Principal Secretary consisted of the Special Secretary, Engineer-in-Chief-cum-Chief Engineer, Additional Secretary, Joint Secretary, Chief Electrical Engineer, Chief Engineer (North), Chief Engineer (Patna), Chief Engineer (South), Deputy Secretary (Incharge Non-Gazetted, Establishment) and Deputy Secretary (Incharge Gazetted, Establishment). From the minutes of the meeting held on



3.6.2020 and 4.6.2020, copy of which has been brought on record by way of annexures in the counter affidavit filed in CWJC no.3047 of 2021, it transpires that the committee touching upon the entire service record of the writ petitioners and in each of the cases having come to the conclusion was of the opinion that it was not in public interest for the writ petitioners to continue in Government service. As such, in terms of Rule 74 of the Bihar Service Code, the committee recommended for compulsorily retiring them from service.

10. It was consequent to the decision of the committee that the order impugned contained in notification dated 18.6.2020 was passed under the signature of the Additional Secretary, Building Construction Department, Government of Bihar compulsorily retiring the writ petitioners from service in terms of Rule 74 of the Bihar Service Code. The order further provided that the writ petitioners would be entitled for pension, death-cum-retiral gratuity and other post retiral benefits. It also provided that they would be entitled for three months salary.

11. It was contended on behalf of the writ petitioners that they were never served with any charge, memo or show cause and thus did not have any opportunity to give a



reply to the same. It was thus submitted that the order impugned was in violation of principles of natural justice.

12. In paragraph no.9 of the judgment in the case of **Om Prakash** (supra), the Hon'ble Supreme Court relying on the earlier judgment of the Hon'ble Supreme Court has held that rule of audi alteram partem has no application since the order of compulsory retirement in such a situation is not penal in nature.

“9. In Union of India v. V.P. Seth, relying upon Baikuntha Nath Das and other judgments, it was held as under: (V.P. Seth case, SCC p. 1054, para 3)

“3. These principles were reiterated with approval in the subsequent decision. It would, therefore, seem that an order of compulsory retirement can be made subject to judicial review only on grounds of mala fides, arbitrariness or perversity and that the rule of audi alteram partem has no application since the order of compulsory retirement in such a situation is not penal in nature. The position of law having thus been settled by two decisions of this Court, we are afraid that the order of the Tribunal cannot be sustained as the same runs counter to the principles laid down in the said two decisions.”

13. The next contention on behalf of the writ petitioners was that the career of the writ petitioners was unblemished and for inflicting punishment of compulsory



retirement, the State of Bihar was required to proceed against them under the C.C.A. Rules. With respect to this contention, it may be noted that the Hon'ble Supreme Court has held in the case of **Om Prakash** (supra) that the tribunal erred in assuming that there ought to have been a speaking order for compulsory retirement. Such an order is a prerogative of the Government based on its subjective satisfaction. The order is not required to be a speaking order.

“7. A three Judge Bench of this Court reported as Union of India and Others v. Dulal Dutt examined the order of compulsory retirement of a Controller of Stores in Indian Railway. It was held that an order of compulsory retirement is not an order of punishment. It is a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government and that it is not required to be a speaking order. This Court held as under: (SCC pp.184-85, para 18)

“18. It will be noticed that the Tribunal completely erred in assuming, in the circumstances of the case, that there ought to have been a speaking order for compulsory retirement. This Court, has been repeatedly emphasising right from the case of R.L. Butail v. Union of India and



Union of India v. J.N. Sinha that an order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order. From the very order of the Tribunal it is clear that the Government had, before it, the report of the Review Committee yet it thought it fit of compulsorily retiring the respondent. The order cannot be called either mala fide or arbitrary in law .”

14. Further, in paragraph no.12, in the case of **Om Prakash** (supra), the Hon’ble Supreme Court held that even adverse entries prior to promotion of a Government servant are not wiped out and can be taken into account while considering the overall performance of the employee when it comes to consideration of the case of that employee for premature retirement.

“12. In the judgment reported as *Rajasthan State Road Transport Corporation and Others v. Babu Lal Jangir*, the High Court had taken into consideration adverse entries for the period 12 years prior to premature retirement. This Court held that *Brij Mohan Singh Chopra v.*



State of Punjab was overruled only on the second proposition that an order of compulsory retirement is required to be passed after complying with the principles of natural justice. This Court also considered the “washed-off theory” i.e., the remarks would be wiped off on account of such record being of remote past. Reliance was placed upon a three Judge Bench judgment of this Court reported as Pyare Mohan Lal v. State of Jharkhand and it was observed that:(Babu Lal Jangir case, SCC pp. 563-64, paras 22-23)

“22. It clearly follows from the above that the clarification given by a two-Judge Bench judgment in Badrinath is not correct and the observations of this Court in Gurdas Singh to the effect that the adverse entries prior to the promotion or crossing of efficiency bar or picking up higher rank are not wiped off and can be taken into account while considering the overall performance of the employee when it comes to the consideration of case of that employee for premature retirement.

23. The principle of law which is clarified and stands crystallised after the judgment in Pyare Mohan Lal v. State of Jharkhand is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the government employee is to be considered for further promotion. However, this “washed-off



theory” will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on “entire service record”, there is no question of not taking into consideration the earlier old adverse entries or record of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be a clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the government servant.”

15. On the point of the scope of judicial review of an order of compulsory retirement, relying on the judgment in the case of **Ram Murti Yadav vs. State of Uttar Pradesh [2020 (1) SCC 801]**, the Hon’ble Supreme Court in paragraph no.13 of the judgment in the case of **Om Prakash** (supra) held that the scope is extremely narrow and restricted and there would be limited scope of interference only if the order is found to be based on arbitrary or capricious grounds, vitiated by mala fides or overlooks relevant materials.



“13. There are numerous other judgments upholding the orders of premature retirement of judicial officers inter alia on the ground that the judicial service is not akin to other services. 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 discharge of a pious duty, therefore, it is a very serious matter. This Court in Ram Murti Yadav v. State of Uttar Pradesh held as under: (SCC p. 805, para 6)

“6.The scope for judicial review of an order of compulsory retirement based on the subjective satisfaction of the employer is extremely narrow and restricted. Only if it is found to be based on arbitrary or capricious grounds, vitiated by mala fides, overlooks relevant materials, could there be limited scope for interference. The court, in judicial review, cannot sit in judgment over the same as an appellate authority. Principles of natural justice have no application in a case of compulsory retirement.”

16. So far as the facts of the instant case are concerned, this Court finds that the reports of each of the writ petitioners along with their entire service records was considered by the eleven member Committee presided by the



Principal Secretary of the Department who as borne out from the minutes of the meeting briefly touching each of them recommended for their compulsory retirement under Rule 74 of the Bihar Service Code leading to passing of the impugned notification.

17. A perusal of the order impugned would show that it clearly states that it was unanimously decided in the meeting that continuance of the six persons including the five respondents herein was not in public interest and as such, they were compulsorily retired under Rule 74 of the Bihar Service Code giving them three months salary as contemplated therein along with all other post retiral benefits.

18. In the opinion of this Court, the learned Single Judge committed an error in coming to the conclusion in judgment dated 29.8.2023 in CWJC no.407 of 2021 that the order impugned was stigmatic in nature, was punitive and beyond the scope of Rule 74. For the aforesaid reasons, the Court finds merit in the instant appeal and no merit in the writ applications filed by the writ petitioners.

19. The writ petitions are dismissed. The orders of the Hon'ble Single Judge dated 29.8.2023 passed in CWJC no.407 of 2021 and the common order dated 12.10.2023 passed



in CWJC no.9776 of 2020, CWJC no.9779 of 2020, CWJC no.3047 of 2021 and CWJC no.3727 of 2021 are all set aside and all the appeals are allowed.

(Partha Sarthy, J)

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

(K. Vinod Chandran, CJ)

Saurabh/-

AFR/NAFR	
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