

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.219 of 2024

In
Civil Writ Jurisdiction Case No.20954 of 2018

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Rajesh Kumar S/o Ishwar Prasad Sinha, R/o at and PO- Gopalbad, P.S.-
Sarmera, District- Nalanda.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Principal Secretary to Hon'ble His Excellency the Governor, Governor's
Secretariat, Bihar, Patna.
3. Joint Secretary, Governor's Secretariat, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Navin Kumar Singh, Advocate Mr. Sanket, Advocate Mr. Sanjay Kumar, Advocate
For Respondent nos. 2 &3	:	Mr. Janardan Pd. Singh, Sr. Advocate Mr. Rajiv Ranjan Kr. Pandey, Advocate
For the State	:	Mr. G.P. Ojha, GA-7 Mr. Abhinav Ashok, AC to GA-7

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 29-04-2025

Re: I.A No. 01 of 2024.

The learned Advocate for the appellant presses
I.A. No. 01 of 2024 for condoning the delay of 01 day in
preferring this appeal.

2. For the reasons stated in the application, the
delay of 01 day in filing this appeal is condoned.

3. I.A. No. 01 of 2024 stands allowed.



Re: L.P.A No. 219 of 2024.

4. Heard Mr. Mrigank Mauli, the learned Senior Advocate for the appellant and Mr. Janardan Prasad Singh, the learned Senior Advocate for the respondent nos. 2 and 3. The State is represented by Mr. Abhinav Ashok, AC to GA-7.

5. The appellant was compulsorily retired by order dated 13.04.2018, which order was challenged before a learned Single Judge of this Court vide C.W.J.C No. 20954 of 2018.

6. The learned Single Judge upheld the order on the ground that the appellant did not comport himself in accordance with the Bihar Government Servant's Conduct Rules, 1976, which obligated him to maintain absolute integrity, devotion to duty and do nothing which is unbecoming of a Government Servant at any point of time, as also for the reason that the contents of the order of compulsory retirement is not stigmatic at all.

7. The appellant assails the judgment of the



learned Single Judge on various counts.

8. It appears that the appellant was subjected to a departmental proceeding for having leaked a confidential information. Within a period of ten days, while the departmental proceeding was still continuing, an order compulsorily retiring the appellant was passed under Section 74(a) of the Bihar Service Code.

9. Section 74 of the Bihar Service Code reads as hereunder :-

“**74.**(a) The State Government may require any Government servant who has completed twenty one years of duty and twenty-five years of total service calculated from the date of his first appointment to retire from Government service, if it considers that his efficiency or conduct is not such as to justify his retention in service. Where any Government servant is so required to retire no claim to any special compensation shall be entertained.

(b)(i) Notwithstanding anything contained in the preceding sub-rule a Government servant may, after giving at least three months previous notice, in writing, to the appointing authority concerned



retire from service on the date on which such a Government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice:

Provided that no Government servant under suspension shall retire from service except with the specific approval of the State Government :

Provided further that in case of the officers and servants of the Patna High Court (including those of Circuit Bench at Ranchi) under the rule making authority of the Chief Justice, no such officer and servant under suspension shall retire from service except with the specific approval of the Chief Justice.

(ii) The appointing authority concerned may after giving a Government servant at least three month's previous notice in writing, or an amount equal to three month's pay and allowance in lieu of such notice, require him in public interest, to retire from service on the date on which such a Government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

(iii) A Government servant who retires



voluntarily is required to retire in public interest under this rule on attaining the age of 50 years, or completing qualifying service of 30 years, shall be entitled to retiring pension and death cum-retirement gratuity.”

10. The learned counsel for the appellant has submitted that the order of compulsory retirement does not pass the muster of any one of the requirements for justifying such an order.

11. In ***State of Orissa & Ors. vs. Ram Chandra Das; (1996) 5 SCC 331***, the settled legal position was reiterated that the Government/authorities is empowered to compulsorily retire a Government servant in public interest, with a view to improve efficiency of the administration; or to weed out people of doubtful integrity or who are corrupt; but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in the service. However the Government, before taking such decision to retire a Government employee compulsorily from service,



has to consider the entire record of the Government servant including the latest reports.

12. Similarly, in ***State of Gujarat & Anr. vs. Suryakant Chunilal Shah; (1999) 1 SCC 529***, the order of compulsory retirement on such test was found to be punitive and to have been passed for collateral purpose of the immediate removal of the Government servant rather than a decision in public interest and thus it was set aside.

13. The Supreme Court after taking into account the judgment in ***Union of India vs. Col. J.N Sinha; (1970) 2 SCC 458*** culled out the necessary safeguards before compulsorily retiring a Government servant in ***Baikuntha Nath Das vs. Chief District Medical Officer; (1992) 2 SCC 299***. The same is being extracted hereunder for ready reference :-

“(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the



government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary — in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter — of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse



remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference.”

14. Similar views were expressed by the Supreme Court in ***Allahabad Bank Officers' Association vs. Allahabad Bank & Ors.; (1996) 4 SCC 504, Union of India vs. Dulal Dutt; (1993) 2 SCC 179 and R.L. Butail vs. Union of India & Ors.; (1970) 2 SCC 876 .***

15. Thus the law relating to compulsory retirement is very clear that it has not to be treated as a punishment but only for better administration and in public interest. It cannot be imposed as a punitive measure. The most important safeguard in order to ensure the aforementioned requirements is that such order can



be passed only after having due regard to the entire service record of the Officer concerned [also refer to ***State of Gujarat vs. Umedbhai M. Patel; (2001) 3 SCC 314***].

16. The order of compulsory retirement of the appellant clearly indicates that it was punitive and that the order was passed on a solitary incident of suspicion against the appellant of having disseminated an information which was to be kept under cover/confidential.

17. The appellant has submitted that the charge against him was only of having received a whatsapp message regarding a secret/confidential information in connection with the decision making of the Government.

18. However for the aforementioned misdemeanor, a departmental proceeding had already been initiated.

19. Taking a decision within 10 days of the initiation of the departmental proceeding of compulsorily retiring the appellant, clearly reflects that it was meant



for the purposes of removing the appellant from service, as a punishment and that also for a solitary incident.

20. The order does not indicate that the records of the appellant were ever looked into.

21. The very purpose of invoking Section 74 of the Bihar Service Code is to, in public interest and better administration, remove a dead wood.

22. The order therefore is thus not only stigmatic but punitive as well, which order could not have been passed under Section 74 of the Bihar Service Code.

23. The learned Single Judge, it appears to us, did not look into the entire aspect of the matter and erroneously held the impugned order to be non-stigmatic. The aspects of verifying the entire service record of the appellant and invocation of Section 74 of the Bihar Service Code only for the purposes of removal of the appellant was totally ignored.

24. For the aforementioned reasons, we set aside the judgment of the learned Single Judge, impugned in the



present appeal, as also the order of compulsory retirement dated 13.04.2018.

25. The respondent shall be at liberty to continue with the departmental proceeding against the appellant.

26. The appropriate authority shall take a decision regarding suspension of the appellant during the course of departmental proceeding, which shall be concluded after affording all opportunities to the appellant to defend himself and the proceeding shall be concluded expeditiously.

27. Accordingly, the appeal stands allowed.

28. Interlocutory applications, if any, also stand disposed off.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Shiv/Sunil-

AFR/NAFR	
CAV DATE	N/A
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