

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.898 of 2024

In
Civil Writ Jurisdiction Case No.10537 of 2024

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The Principal Secretary to the Governor of Bihar, Governors Secretariat, Raj Bhawan, Patna, through Shailendra Kumar 56 yrs(M), S/o Narendra Jha R/o. Q No. B/3 Raj Bhawan, P.S- Sachiwalay Distt- Patna.

... .. Appellant/s

Versus

Md. Kalim Khan Son of Md. Jamil Khan Resident of B-13 A, Indrapuri Colony, Raza Bazar, Samanpura, Police Station- Shastri Nagar, District- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Rajiv Ranjan Kr. Pandey, Advocate
For the Respondent/s : Mr.Sanjay Kumar, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ALOK KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 15-09-2025

Principal Secretary to the Governor of Bihar has presented the present LPA assailing the order of the learned Single Judge dated 15.07.2024 passed in CWJC No. 10537 of 2024.

2. Learned counsel for the appellant submitted that breathing time was not granted to file the counter affidavit in a matter where respondent has been retired compulsorily while invoking Rule-74(b) of the Bihar Service Code. In such matter, it was requirement of the Court to summon the records and examine whether relevant statutory provision has been complied



by the concerned authority or not. It is further submitted that writ petition was presented on 12.07.2024 and the learned Single Judge has proceeded to decide the writ petition on 15.07.2024, this would suffice that opportunity of filing counter affidavit has not been provided.

3. *Per contra*, learned counsel for the respondent resisted the aforementioned contention and submitted that the learned Single Judge has recorded in para 5 after hearing the learned senior counsel on behalf of the respondent.

4. Heard learned counsel for the respective parties.

5. On perusal of the dates and events, it is crystal clear that the appellant has not been provided ample opportunity of furnishing relevant records for the purpose of examining whether Rule 74 of the Bihar Service Code has been taken note of while retiring respondent-petitioner Md. Kalim Khan, compulsorily and it is to be noted that such order is in respect of special circumstance and not as a measure of penalty under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. Invariably, in such circumstance, the Court should have summoned the relevant records and found out whether is there any compliance to Rule 74 of Bihar Service Code or not?

6. In the light of these facts and circumstances, the



appellant has made out a case so as to interfere with the order of the learned Single Judge dated 15.07.2024 passed in CWJC No. 10537 of 2024 and it is set aside. CWJC No. 10537 of 2024 is restored on the file.

7. Registry is hereby directed to list CWJC No. 10537 of 2024 before the concerned Roster Bench at the earliest.

8. In the meanwhile, appellants are permitted to file counter affidavit in the restored CWJC No. 10537 of 2024 at the earliest.

9. With the above observation, LPA No. 898 of 2024 stands disposed of.

(P. B. Bajanthri, ACJ)

(Alok Kumar Sinha, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
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