

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16762 of 2022

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Sudhir Kumar Sinha, Son of Late Bageshwari Prasad, resident of village -
Tilak Nagar, Katira, Arrah, Bhojpur, P.O. and P.S. - Nawada, District -
Bhojpur, Bihar – 802301.

... .. Petitioner/s

Versus

1. The High Court of Judicature at Patna through its Registrar General, Patna High Court, Patna, Bihar.
2. The Registrar General, Patna High Court, Patna, Bihar.
3. The District and Sessions Judge, East Champaran, Motihari.
4. The State of Bihar through Principal Secretary, General Administration Department, Government of Bihar, Patna.
5. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
6. The Secretary-cum-Legal Remembrancer, Law Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate Mr. Om Prakash Kumar, Advocate
For the State	:	Mr. Sanjay Kumar Ghosarvey, AC to AAG-3
For the High Court	:	Mr. Piyush Lall, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V. JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)



Date : 04-02-2025

On the recommendation made by the Patna High Court *vide* Letter No. 14571, dated 09.03.2022, His Excellency, the Governor of Bihar, issued a notification dated 16.03.2022, compulsorily retiring the petitioner from his service by invoking Rule 74(b)(ii) of the Bihar Service Code (*in short the Code*).

2. The afore-noted order of compulsory retirement is under challenge in the present petition.

3. We have heard Mr. Rajendra Narain, the learned Senior Advocate for the petitioner/Judicial Officer and Mr. Piyush Lall, the learned counsel for the Patna High Court. The State is represented by Mr. Sanjay Kumar Ghosarvey, the learned AC to AAG-3.

4. The issues raised in the present petition are as follows :

(i) There were no sufficient material evidences available before the High Court against the petitioner to form any bonafide opinion that he has become a dead wood and



that his services were not needed in public interest.

(ii) The recommendation of the High Court and the decision of the Government suffers from the vice of malafide' and unreasonableness.

(iii) The appointing authority was required to subjectively test the recommendations made by the Patna High Court on the anvil of public interest before taking a decision to compulsorily retire the petitioner/Judicial Officer.

(iv) The petitioner had been a diligent Judicial Officer, who has suffered the ignominy of having been shown the door much before his date of superannuation.

5. Section 74(b)(ii) of the Bihar Service Code reads as hereunder :-

"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."

6. A quick look at the law, which has developed with respect to compulsory retirement of an employee/Judicial Officer, would only serve the requisite purpose of testing the case of the petitioner.

7. The Supreme Court in ***Union of India Vs. J.N. Sinha : (1970) 2 SCC 458*** had held that compulsory retirement does not involve civil consequences. The appropriate authority has the absolute right to retire a Government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one, which power can be exercised, subject to conditions mentioned in the Rule, one of which is that the authority concerned must be of the opinion that it is in public interest to do so. If that authority *bonafide* forms that opinion, the correctness of that opinion cannot be



challenged before the Courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. This judgment was followed in ***State of Gujarat Vs. Suryakant Chunulal Shah : (1999) 1 SCC 529.***

8. Later, in ***Baikuntha Nath Das Vs. District Medical Officer : (1992) 2 SCC 299,*** a three-Judge Bench of the Supreme Court laid down that :

(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 public interest to retire a Government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) The principles of natural justice have no place in the test of the order of compulsory retirement; which does not mean that judicial scrutiny is excluded altogether. While the High Court or the



Supreme Court would not examine the matter as an appellate Court, but the order of compulsory retirement could be interfered, if the Courts are satisfied that the order passed is malafide or is based on no evidence or that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material or that the order is found to be perverse.

(iv) For coming to such a conclusion, the entire records of the service is to be considered, but, of course, attaching more importance to record of and performance during the later years, which would include the entries in the confidential records/character rolls, both favourable and adverse.

9. In ***Pyare Mohan Lal Vs. State of Jharkhand & Ors. : (2010) 10 SCC 693***, dealing with a case of Judicial Officers, the Supreme Court in relation to the powers under the same Rule, after referring to a number of judgments, summarized the law on the point as follows :

"Thus, the law on the point can be



summarized to the effect that an order of compulsory retirement is not a punishment and it does not imply stigma unless such order is passed to impose a punishment for a proved misconduct. The authority must consider and examine the overall effect of the entries of the Officer concerned and not an isolated entry as it may well be in some cases that in spite of satisfactory performance, the authority may desire to compulsorily retire an employee in public interest, as in the opinion of the said authority, the post has to be manned by a more efficient and dynamic person and there is sufficient material on record to show that the employee "referred himself a liability to the institution". There is no occasion for the Court to interfere in the exercise of its limited power of judicial review."

10. In ***R.C. Chandel Vs. High Court of M.P. : (2012) 8 SCC 58***, the Court had taken note of the fact that judicial service is not an ordinary Government service. They hold the public office and their function is one of the essential functions of the State. The standard



of conduct expected of a Judge is much higher than an ordinary man. The credibility of the judicial system is dependent upon Judges who man it. For a democracy to thrive and the rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty.

11. The records reveal that the petitioner was appointed on probation in Bihar Judicial Service by way of direct recruitment on the post of Civil Judge (Jr. Division) on 07.11.2001, on which post, he joined on 01.12.2001. He was promoted to the post of Civil Judge (Sr. Division) in the year 2016 and was also confirmed on the said post in the year 2019.

12. For taking a decision under Rule 74(b)(ii) of the Code, the Standing Committee of the Patna High Court, way-back on 19.01.2018, had adopted the yardstick to be applied for consideration of cases of Judicial Officers for their compulsory retirement to be :



- (i) ACRs. of the Judicial Officer;
- (ii) Assessment of disposal of the last
10 years;
- (iii) Vigilance complaints;
- (iv) Departmental enquiry, and
- (v) Administrative complaints.

And, apart from these, the entire service record of the concerned Judicial Officer.

13. In the present case, after carrying out the aforesaid exercise, on a due consideration of the entire service records of certain Judicial Officers on the afore-noted parameters, a Sub-Committee of the Patna High Court submitted an interim report relating to 16 Judicial Officers including the petitioner on 04.02.2022.

14. The integrity of the petitioner was found to be doubtful.

15. The Standing Committee, thereafter, resolved to accept the report of the Sub-Committee and recommended for compulsory retirement of 16 Judicial Officers named in the report including the petitioner. But, later, the recommendations with respect to two of the



Judicial Officers were withdrawn on finding that one of them was required to be subjected to departmental proceeding and the other Officer was about to superannuate. Thus, in all, 14 Judicial Officers were recommended for being compulsorily retired and they be paid three months' salary and other allowances.

16. We have also examined the service records of the petitioner, which reflects that for the period between 2002 to 2010, the petitioner had served well, but his performance black-sided since 2010. He was found to be an average Officer with doubtful integrity and did not evince the behaviour required of a Judge. The representations of the petitioner for expunction of such adverse remarks were disallowed several times.

17. The service record of the petitioner further revealed that the Inspecting Judge of East Champaran at Motihari was apprised by the District & Sessions Judge of East Champaran, Motihari regarding the allegation against the petitioner of granting bail to an accused in a



case without awaiting the report of the Medical Board regarding the injuries sustained by the informant, which he had himself called for, for taking a final decision in the case. However, no action was taken on this.

18. In his service record, there were altogether 18 allegation petitions received against him, out of which, 15 were disposed off, but three were pending.

19. A below par Judicial Officer, whose performance was continuously on decline and the declivity was getting sharper by the day, with the assessment of his being a person of doubtful integrity, could not have been allowed to remain in service; notwithstanding the fact that he had only few years to superannuate as it would have been against the public interest.

20. It would not be necessary, as questioned by the petitioner, that the order impugned should clearly state that it was in public interest. Not saying so in so many words would not render the order invalid. The law



is well settled that in cases where the exercise of statutory power is subject to the fulfilment of a condition, then the recital about the said condition having been fulfilled in the order raises a presumption regarding the fulfilment of the said condition. The validity of the order does not depend upon the recital of the formation of the opinion in the order, but upon the actual formation of the opinion and the making of the order in consequence ***[refer to Swadeshi Cotton Mills Co. Ltd. Vs. State of U.P : (1962) 1 SCR 422].***

21. The records clearly reveal that because of the dishonest ways of the Judicial Officer and his below par performance, his services were no longer required.

22. The two citations canvassed by the petitioner, viz., ***Madan Mohan Choudhary Vs. State of Bihar & Ors. : (1999) 3 SCC 396*** and ***Rana Abhai Singh Vs. The Hon'ble High Court of Judicature at Patna & Ors. : (2006) SCC OnLine Pat 145***, do not help the case of the petitioner/Judicial Officer in any ways.



23. In ***Madan Mohan Choudhary (supra)***, the adverse remarks for three years were not recorded in the normal course, but were recorded at one go and that too when the Standing Committee of the High Court had already formed an opinion to compulsorily retire the Judicial Officer from service. Even his representations were not dealt with promptitude, but were disposed off after one year. While dealing with the case, the Supreme Court had found that only one single act of granting anticipatory bail by him in a criminal case formed the basis for retiring him compulsorily.

24. In ***Rana Abhai Singh (supra)***, the order of compulsory retirement was in violation of Rule 74(b) (ii) of the Code for want of compliance of the provisions referable to the statutory notice or, in lieu thereof, salary after the statutory extended period of superannuation from 58 years to 60 as well as for it to be factually irrational, unreasonable and unjust and, therefore, it was set aside.



25. As noted above, the citations, referred to above, are of no help to the case of the petitioner/Judicial Officer.

26. It would also be relevant to note that one of those 14 Judicial Officers who was compulsorily retired, namely, Sanjeev Kumar Chandriyavi had also challenged his compulsory retirement on other grounds, viz., that with such compulsory retirement, he would be deprived of pension since he had not completed the minimum qualifying service and that the decision was stigmatic and punitive and not for the purposes of weeding out of dead wood, especially, when he was found eligible for promotion just prior to his suspension. In his case, finding that there was no allegation of *mala fide* and there could be no ground of non-application of mind either, the challenge was repudiated.

27. The compulsory retirement of the petitioner/Judicial Officer, however, is neither stigmatic nor can it be said to be punishment. The statement of



public interest though not explicit is evident from the reference to Rule 74(b)(ii) of the Code.

28. We are satisfied that no good ground is available for making any interference with the decision to retire the petitioner/Judicial Officer compulsorily.

29. The writ petition stands dismissed.

30. Interlocutory application(s), if any, shall also stands disposed off.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Praveen-II/-

AFR/NAFR	NAFR
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