

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10537 of 2024

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

... .. Petitioner/s

Versus

The Principal Secretary, to the Governor Governors Secretariat, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sarva Deo Singh, Advocate Mr.Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Janardan Pd. Singh, Sr. Advocate Mr.Rajiv Ranjan Kr. Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 15-07-2024

Heard Mr. Sarva Deo Singh along with Mr. Sanjay
Kumar, learned counsels appearing on behalf of the petitioner;
Mr. Janardan Pd. Singh, learned senior counsel along with Mr.
Rajiv Ranjan Kr. Pandey, learned counsel for respondent no.1.

2. Petitioner has *inter alia* prayed for following
reliefs in the paragraph No.1 of the writ petition:-

*“That the petitioner prays for issuance of
an appropriate writ/writs, order/orders,
direction/directions for quashing the office order which
contain in memo no.193 dated 10.02.2023 by which the
petitioner has been inflicted of compulsory retired.
However, the impugned order has been passed in*



violation of principle of natural justice. The petitioner even has not been asked for any show cause, on the other hand the punishment of compulsory retirement is a major punishment.

And for any other relief/reliefs the petitioner may be found entitled.”

3. Learned counsel appearing on behalf of the petitioner submitted that the impugned order contained in Memo No.193 dated 10.02.2023 has been passed without giving any opportunity of hearing to the petitioner, not having served show cause to the petitioner, allegedly which has been passed as per the provision of Rule 74 (b) of the Bihar Service Code. Learned counsel further submitted that sub-clause (ii)(b) of Rule 74 provides that 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 qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice. Learned counsel submitted that there is a complete violation of the Rule 74 and the procedure prescribed therein by not giving any clear three months previous notice to the petitioner in writing. Learned counsel submitted that Rule 74 provides that efficiency or conduct of the concerned employee is required to be assessed for making him to retire in special circumstances as contained in the said Rule. Learned counsel



referring to paragraph no.4 of the impugned order, which requires that the work assessment of an employee was required to be taken in respect of all such employees, in whose respect, the Governor of Bihar has taken a decision for compulsorily retiring such employee on the basis of conduct and efficiency.

4. Learned counsel further submitted that it is the case of in the case of the petitioner that the authority concerned has not considered the five years past service record of the petitioner, which reveals that from period 01.04.2021 to 31.03.2022, no adverse remark has been entered into his service book and same finds reference in the impugned order. Learned counsel further submitted that the authority has also taken into consideration the past penalty order, which was passed against the petitioner relating to the year 1999, which has no relevance in view of assessment as required in paragraph no. 4 of the order impugned. Learned counsel has emphatically submitted that the remark which was entered into against the petitioner is in respect of the fact that he was not efficient in his work which don't constitute misconduct.

5. Learned senior counsel appearing on behalf of the respondent submitted that there is no infirmity in the impugned order, however, he has not denied the fact that the prescribed



procedure, as required under Rule 74 of the Bihar Service Code has not been followed by giving three months prior notice to the petitioner.

6. Having considered the rival submissions, as well as, the fact that the impugned order contained in Memo No. 193 dated 10.02.2023 is not in accordance with the prescribed Rule 74, under which the authority has acted upon to compulsorily retired the petitioner on the ground of his inefficiency or conduct which is not such as to justify his retention in service, I find it proper to reproduce Rule 74 as contained in Bihar Service Code.

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."

7. From the perusal of the Rule prescribed therein, it appears that any employee is required to retire in special circumstances as contained in the Rules, who is not efficient or his conduct is not satisfactory, sub-rule (ii)(b) which came into effect from 30.06.1976 provides for three months previous notice in writing and in the present case, from the impugned order, it is reflected that no three months previous notice was given to the petitioner to make him retire on the ground of



inefficiency and his conduct which may be not satisfactory. From the impugned order, one can gather that from paragraph no.5 therein the authority has found no adverse remark against the petitioner from 01.04.2021 to 31.03.2022 relating to the past five years conduct and at the same time, the remark contained in paragraph no.6 in respect of the fact that the petitioner used to delay in pagination and producing the record, for which he was already issued show cause notice and the remark is that he could not improve himself.

8. The interference which calls for by this Court in respect of the impugned order contained in Memo No.193 dated 10.02.2023 is for the reason that the statutory Rule 74 prescribes for previous three months notice before the State requires an employee to retire on the basis of inefficiency or conduct and the same having not been done in the case of petitioner, is violative of principle of natural justice and at the same time, Sub-rule(ii)(b) of Rule 74 of Bihar Service Code, and as such the impugned order as contained in Memo No.193 dated 10.02.2023 is hereby quashed and set aside. Since the order impugned has been quashed, the petitioner will continue in the service and the authority may take appropriate action in accordance with law, if so required.



9. The writ petition is accordingly disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.07.2024
Transmission Date	NA

