

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5615 of 2022

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Sanjiv Kumar Chandhariyavi, Son of Sri Nawal Kishore Prasad, Resident of
 Mohalla- Kagzi, P.O. and P.S.- Biharsharif, District- Nalanda.

... .. Petitioner/s

Versus

1. The High Court of Judicature at Patna through its Registrar General.
2. The Registrar General, High Court of Judicature at Patna.
3. The State of Bihar through the Principal Secretary, Department of General Administration.
4. The Principal Secretary, Department of General Administration, Govt. of Bihar, Old Secretariat, Patna.
5. The Under Secretary-I, Department of General Administration, Govt. of Bihar, Old Secretariat, Patna.

... .. Respondent/s

Headnotes

Bihar Service Code, 1952 – Rule 74(b)(ii) – compulsory retirement of a Judicial officer – The petitioner challenged the order of his compulsory retirement – The petitioner who was initially appointed as a civil judge(junior Division) was promoted as a civil judge(senior Division) and immediately suspended from service – inquiry against him was initiated – proceedings of the inquiry was abruptly kept in abeyance – the other was compulsorily retired – petitioner also challenged the fact that he was deprived of pension since he had not completed the minimum qualifying service – held the petitioner was a judicial Officer and unlike an ordinary government employee exercised sovereign function – captain Pramod kumar bajaj vs U.O.I. (2023) sec online sc 234 relied on to hold that compulsory retirement projects two elements: the first, the absolute right of the government to retire an employee, and the second, the requirement of meeting the condition of public interest for doing so – Allahabad Bank officers Association vs Allahabad bank, (1996) 4 SCC 504 was relied on to find the power to compulsory retire to a facet of the doctrine of pleasure 4/A-310 of the constitution: the object being to weed out dead wood in order to maintain efficiency – Pyare Mohan Lal vs State of Jharkhand & ors, (2010) 10 SCC 693 relied on to hold that mere promotion would not enable the continuance in service, if the employee is found unsuitable for continuance in service, if the

employee is found unsuitable for continuance in service: Gujarat Steel Tubes Ltd. Vs mazdoor Sabha,(1980)2 SCC 593 was relied on held that order is not punitive and Rule 74(ii) specifically provides for compulsory retirement in public interest after completion of 30 years of qualifying service on attaining 50 year of age etc – Held that the petitioner is disentitled from pension not because of the order of compulsory retirement, but for the reason that at the time of his compulsory retirement, but for the reason that at the time of his compulsory retirement, he did not have the minimum qualifying service. The petitioner was found entitled to entire salary due during the period of suspension. The writ petition is dismissed [Para 1,4,18,34,35,39]

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1. The High Court of Judicature at Patna through its Registrar General.
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5. The Under Secretary-I, Department of General Administration, Govt. of Bihar, Old Secretariat, Patna.

... .. Respondent/s

Appearance :

| | | |
|----------------------|---|---|
| For the Petitioner/s | : | Mr. Jitendra Kumar Singh, Sr. Advocate Mr. Anjani Kumar Sinha, Advocate Mr. Harsh Singh, Advocate |
| For the Respondent/s | : | Mr. Manish Kumar, GP-4 Mr. Manoj Kumar, AC to GP-4 |
| For the High Court | : | Mr. Piyush Lall, Advocate |

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY

CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-01-2024

A Judicial Officer compulsorily retired from service
is before this Court challenging his severance from service.

2. Shri Jitendra Kumar Singh, learned Senior
Advocate appeared for the petitioner and argued for setting
aside the order of compulsory retirement. The petitioner who
was initially appointed as a Civil Judge (Junior Division) was



promoted as a Civil Judge (Senior Division) and immediately thereafter suspended from service. The suspension was based on allegations with respect to which an inquiry was initiated. The inquiry was proceeded with and the evidence of the department was completed. While so, abruptly the proceedings were kept in abeyance as also the suspension and the officer was compulsorily retired. The learned Senior Counsel would stress on the aspect of the hasty manner in which the compulsory retirement was carried out especially when the inquiry was at the stage of the evidence of the delinquent employee. The doctrine of pleasure insofar as a compulsory retirement is concerned, cannot be invoked in a vacuum nor on extraneous considerations. When charges have been levelled and a disciplinary proceeding initiated, necessarily it has to be taken to its logical conclusion.

3. Learned Senior Counsel would stress upon the fact that the officer was even deprived of pension since he had not completed the minimum qualifying service. The compulsory retirement of the petitioner is hence stigmatic and punitive and cannot be considered as a weeding out, of deadwood, especially when he was found eligible for a promotion just prior to his suspension. The allegations raised against him were



misconceived and ill motivated and his conduct as a Principal Magistrate of the Juvenile Justice Board was above board.

4. The compulsory retirement has been made under the Bihar Service Code, 1952 specifically under Rule 74, the proviso of which requires the specific approval of the State Government before the order is passed. The suspension of the petitioner having not been revoked, the petitioner was earning only 50 per cent pay and he was thus deprived of even the notice pay in accordance with the provision under Rule 74. The allegations 1 to 8 and 10 & 12 were consigned and allegation 11 was the specific one under which the disciplinary proceedings were taken which was abruptly stopped. The learned Senior Counsel places reliance on the following judgments: -

- (i) ***M.S. Bindra v. Union of India & Others; (1998) 7 SCC 310,***
- (ii) ***Captain Pramod Kumar Bajaj v. Union of India and Another; 2023 SCC OnLine SC 234,***
- (iii) ***Abhay Jain v. High Court of Judicature for Rajasthan and Another; (2022) 13 SCC 1,***
- (iv) ***Gujarat Steel Tubes Ltd. and Others v. Gujarat Steel Tubes Mazdoor Sabha and Others; (1980) 2 SCC 593.***

5. Shri Piyush Lall, learned Standing Counsel for the High Court submits that even if adverse entries are expunged, it can be considered for compulsorily retiring a person, without



stigma and without it being deemed as a punishment, as has been held in *State of U.P. and Another v. Bihari Lal; 1994 Supp (3) SCC 593*; when an officer is of doubtful integrity. If there are very many allegations, even if they are closed for reason of the impracticability of initiating a domestic inquiry, there could be a compulsory retirement imposed, as held in *Arun Kumar Gupta v. State of Jharkhand and Another; (2020) 13 SCC 355*. The allegations, gross in nature, were pointed out from the counter affidavit which were raised against the officer one after another. None of the allegations raised was closed on exoneration of the officer. One of the allegations had also led to a warning being issued and allegation No. 11 itself was serious enough to warrant the compulsory retirement.

6. There is no allegation of *mala fides* and there can be no ground of non-application of mind raised; especially considering the conduct of the officer as revealed from the various allegations raised against him. The petitioner was a Judicial Officer and unlike an ordinary government employee exercise sovereign function. It has been held in *Pyare Mohan Lal v. State of Jharkhand and Others; (2010) 10 SCC 693* that there could often be circumstances in which no direct evidence would be obtained and in such circumstances the continuance of



a person as a Judicial Officer would be a liability to the justice delivery system. It is in such circumstance that the measure of weeding out of deadwood is employed. One of such instances is the subject order, which is challenged in the writ petition. The officer was of doubtful integrity as is revealed from the various allegations. His judicial acumen as also impartiality were often questioned, as revealed from the allegation petitions.

7. The proviso to Rule 74(1) does not apply in so far as the subject compulsory retirement is under Rule 74(2). Suspension and disciplinary proceedings were kept in abeyance, since, if any interference is caused to the order of compulsory retirement, the petitioner has to be proceeded against, on the allegations and charges levelled against him. The learned Standing Counsel would seek to sustain the order of punishment and implores that there is no valid cause to interfere with the same.

8. *Captain Pramod Kumar Bajaj* (supra) was a case in which the Hon'ble Supreme Court analyzed the case law relating to compulsory retirement, especially in the context of the fundamental rule applicable to the Central Civil Services. The fundamental rule provided an absolute right to retire any Government servant by giving him notice of not less than three



months in writing or three months' pay and allowances in lieu of notice. The provision as held by the Hon'ble Supreme Court projects two elements; the first, the absolute right of the Government to retire an employee and the second, the requirement of meeting the condition of public interest for doing so.

9. The decision in ***Allahabad Bank Officers' Association v. Allahabad Bank; (1996) 4 SCC 504*** was relied on to find the power to compulsorily retire to be one of the facets of the doctrine of pleasure incorporated in Article 310 of the Constitution; the object being to weed out dead wood in order to maintain efficiency and initiative in the service and also dispense with the services of those whose integrity is doubtful; so as to preserve purity in the administration. It was held that “*while misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held- and there is no duty to hold an enquiry- is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal they form the very basis on which the order is made, as pointed out by this Court in Shyam Lal v.*



State of U.P., (1955) 1 SCR 26 and *State of Bombay v. Saubhagchand M.Doshi*, 1958 2 SCR 57...”.

10. *Swami Saran Saxena vs. State of U.P.; (1980) 1 SCC 12* was a case in which the order of compulsory retirement was interfered with, since the Court was unable to reconcile the apparent contradiction in the employee having crossed the second efficiency bar a few months back; having been considered to have worked with distinct ability and with integrity beyond question; after a few months of which he was found unfit and retired compulsorily.

11. In *Ram Ekbal Sharma v. State of Bihar; (1990) 3 SCC 504*, it was held so:-

“On a consideration of the above decisions the legal position that now emerges is that even though the order of compulsory retirement is couched in innocuous language without making any imputations against the government servant who is directed to be compulsorily retired from service, the court, if challenged, in appropriate cases can lift the veil to find out whether the order is based on any misconduct of the government servant concerned or the order has been made bona fide and not with any oblique or extraneous purposes.”

12. In *Nand Kumar Verma v. State of Jharkhand; (2012) 3 SCC 580*, it was held so:-

“It is also well settled that the formation of



opinion for compulsory retirement is based on the subjective satisfaction of the authority concerned but such satisfaction must be based on a valid material. It is permissible for the Courts to ascertain whether a valid material exists or otherwise, on which the subjective satisfaction of the administrative authority is based.”

13. As has been held in *Nisha Priya Bhatia v. Union of India; (2020)13 SCC 56*, the real test for examination whether the order of compulsory retirement is a penalty or a dismissal under that garb, “*is to see whether the order of compulsory retirement is occasioned by the concern of unsuitability or as a punishment for misconduct*”.

14. In *State of Gujarat v. Umedbhai M.Patel; (2001) 3 SCC 314*, the Hon’ble Supreme Court delineated the following broad principles:-

“11. The law relating to compulsory retirement has now crystalised into a definite principle, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having the regard to



the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.”

15. Coming back to ***Captain Pramod Kumar Bajaj***

(supra), that was the case of a civil service officer, who had exemplary assessment in his ACRs and who was also recommended for appointment as a Member of the Income Tax Appellate Tribunal and the same having not come through, empanelled by the ACC for appointment as a Joint Secretary with the Central Government. He was witch-hunted for reason of initiating a litigation against the adverse report filed by the Intelligence Bureau. Even after the adverse report was set aside and directions were issued for reconsideration by the Tribunal and the High Court, a vigilance inspection was carried out based on which the earlier clearance granted for appointment to the Tribunal was sought to be withdrawn. Again, the appellant had



approached the Tribunal, which had interfered with the withdrawal of the vigilance clearance, upon which the employee was placed in the 'Agreed List' as an officer of suspected integrity and compulsorily retired. The order of compulsory retirement was three months short of the date of his superannuation and just prior to the publication of the list of promotions to the post of Principal Commissioners. It is in these compelling facts that an interference was caused to the order of compulsory retirement.

16. The order of compulsory retirement, which is challenged in the above writ petition, produced at Annexure-7, refers to Rule 74(b)(ii) of the Bihar Service Code, 1952 to retire 14 persons named therein. There is no stigma cast on them and it cannot be said to be a measure of punishment. The statement of public interest though not explicit is evident from the reference to Rule 74(b)(ii).

17. The learned Standing Counsel for the High Court had referred to the counter affidavit to substantiate the unsuitability of the petitioner, which led to his compulsory retirement. As has been held in *Allahabad Bank Officers' Association* (supra), the order of compulsory retirement casts a stigma on the government servant only if it contains statements



casting aspersion on his conduct or character; in which event the same has to be treated as an order of punishment attracting provisions of Article 311(2) of the Constitution of India. A mere reference to the Rule; even if it mentions grounds of compulsory retirement, cannot be regarded as sufficient for treating the order of compulsory retirement as an order of punishment; from which a different intention cannot be inferred.

18. The petitioner was appointed on probation to the Bihar Judicial Service by way of direct recruitment to the post of Civil Judge (Junior Division) by order dated 19.06.2012, pursuant to which, he joined on 16.08.2012 as Judicial Magistrate. His services were confirmed in the year 2019 and he was promoted to the post of Civil Judge (Senior Division) on 12.12.2019. It is in accordance with the reported decision of the Hon'ble Supreme Court in *All India Judges Association vs. Union of India; (2002) 4 SCC 247*, that a committee was constituted by the Standing Committee of the Patna High Court to consider the records of the judicial officers on their attaining the age of 50, 55 to 58 years. The constituted Committee, consisted of J.A.D.-I and J.A.D.-II and was headed by the Hon'ble the Chief Justice. Vide minutes dated 19.01.2018, it had been unanimously resolved to adopt yardsticks to be applied



for consideration of cases of judicial officers for their compulsory retirement under Rule 74(b)(ii), which was to be on the basis of (i) ACRs; (ii) disposal of the last ten years; (iii) vigilance complaints; (iv) departmental inquiry; and (v) administrative complaints. Apart from which, the entire service record of the concerned judicial officer was also to be reckoned. The Hon'ble Standing Committee recommended the compulsory retirement of 16 officers which was considered by the Full Court on 08.02.2022. These proceedings occurred simultaneous to the disciplinary proceedings; which were running parallel.

19. It was specifically found by the Full Court that the expunging of adverse entries in the ACR of a Judicial Officer need not be taken into consideration while considering him for continuance at the age of 50, 55 and 58 years, especially since the parameters for consideration under the subject rule was different; wherein overall assessment of the service record of the officer was required. *Arun Kumar Gupta* (supra) was yet another case of compulsory retirement of a judicial officer after a collective decision by the Screening & Standing Committee, as is the instant case. It was held that the 'washed-off theory', meaning, the record prior to promotion losing its sting after the



promotion to a higher post, would not apply in the case of judicial officers. The Court examining a decision of the Committee appointed for assessing the performance and deciding on the compulsory retirement of a judicial officer as approved by the Standing Committee and the Full Court is not sitting in appeal of the decision, as held in ***T.S. Naqshbandi v. State of J& K (2003) 9 SCC 592***. It cannot substitute the decision of the Committee/ Full Court or make an independent reassessment of the same.

20. Before the Full Court, in so far as one of the officers recommended, it was resolved that he be put under suspension and a disciplinary proceeding initiated against him, thus, keeping in abeyance the decision of compulsory retirement. Another officer whose retirement was within three months, was also not compulsorily retired since there was no provision for giving him three months notice pay. The other 14 judicial officers recommended for compulsory retirement was resolved to be expedited by the Full Court as unsuitable for continuance and a measure of weeding out dead wood. The petitioner was one of the said officers who was compulsorily retired.

21. We have to pertinently observe that in one of the



16 cases, the Full Court had specifically found that disciplinary proceedings should be initiated and in another, the decision of the Committee differed from, for reason of the impending retirement. In the case of the petitioner, the ACRs recorded are extracted in Paragraph-15, which indicates the officer having been assessed as 'Average' on 24.10.2019. In the subsequent ACR recorded on 12.09.2020, he was graded as 'Good' but, however, his quality of output and knowledge of law was recorded as 'Average'. As far as his industry in judicial work and prompt disposal of cases and the willingness to take higher duties and responsibilities, the opinion of the reporting officer was that it is only 'to some extent'. It was noted in both the ACRs that several allegation petitions are filed against him, which are in the process of inquiry.

22. The Monitoring Committee of Juvenile Justice of the Patna High Court has specifically considered the petitioner's performance, in its meeting held on 08.09.2020, which indicates that his performance as Principal Magistrate, Juvenile Justice Board, Patna (in short 'JJB'), was often wanting; having overlooked legal procedure, passing arbitrary orders that too with vested interest. The petitioner also did not maintain good relationship with the social members of the JJB, Patna who had



submitted several complaints.

23. The learned Senior Counsel for the petitioner argued that, in fact, the social members were at fault and they were creating hurdles in the functioning of the JJB. We do not see any such complaint having been raised by the petitioner before the High Court nor is the allegation substantiated. The Committee also recorded that the specific directions issued on its visit to the JJB and Observation Home, Patna was not complied with and the Principal Magistrate had not taken steps to ensure compliance. The Committee was of the opinion that the petitioner should be immediately relieved from the JJB.

24. Noticing the above report of the Monitoring Committee, the petitioner was placed under suspension by the Standing Committee pending initiation of the departmental proceeding. After issuance of the first chargesheet, a further report from the Monitoring Committee of the Juvenile Justice Patna High Court brought to the notice of the Standing Committee about the missing of records of two cases from the JJB Patna with the active connivance of the petitioner on which additional charges were also levelled. The petitioner submitted his written statement of defence to the additional article of charge and the Standing Committee, in its meeting on



28.03.2022, resolved to keep the matter in abeyance, presumably for reason of the petitioner's continuance in service being taken by the Standing Committee.

25. The counter affidavit at paragraph 22 also indicates almost 12 allegations having been levelled against the petitioner. It is true that most of the proceedings were closed. The first of the allegations referred to, was with respect to a judgment passed in a title suit, which was beyond the pecuniary jurisdiction of the court presided over by the petitioner. The complaint was closed noticing the fact that the State had not preferred an appeal, and evidently there could not be a proceeding against a judicial order. Another allegation petition dated 10.04.2018 alleged the petitioner was receiving bribes through touts and disposing of cases on the basis of extraneous considerations. This again was based on the judicial orders passed by the petitioner in three title suits, against which there was no appeal filed by the State of Bihar, which led to the proceedings being closed. The allegation raised on 04.05.2018 also with respect to an unfair and partial order passed in a title suit on which no action was taken. Another allegation was with respect to the petitioner compelling litigants to engage advocates of his choice, which was consigned. A further



allegation regarding the filing of a false complaint through the petitioner's younger brother was consigned for reason of no affidavit having supported the allegation petition.

26. The sixth allegation was one levelled by an advocate against the petitioner's conduct as Principal Magistrate, JJB Patna, especially with respect to passing of arbitrary orders; on which the District and Sessions Judge, Patna was directed to instruct the petitioner to remain vigilant in the discharge of his official duties. A further allegation of abusing a lady advocate and also an allegation of illegal and unlawful activity, were consigned after receipt a report from the District Judge. The spate of allegation petitions indicates complaints having been raised against the conduct of the petitioner as a Presiding Officer and also his orders; which complaint against judicial orders, cannot, obviously, lead to a disciplinary proceeding. A judicial order has to be challenged appropriately in an appeal and unless there is proof of extraneous consideration in passing a wrong order, there cannot be any disciplinary proceedings initiated. However, the multiple orders passed which gave rise to allegations, is a valid ground for considering the continuance of the judicial officer under Rule 74(b)(ii) of the Bihar Service Code.



27. The eighth allegation was again about indulging in illegal and unlawful activities at the JJB, Patna, based on judicial orders passed. The ninth allegation regarding the conduct of the Officer was the subject matter of the disciplinary proceeding with reference to the Officer's conduct as JJB, Patna. The 10th allegation referred to was identical to the earlier allegation made, which was consigned. The 11th and 12th allegation were also on the conduct of the officer in the JJB, Patna, which too were consigned.

28. The learned Senior Counsel for the petitioner had stressed upon the fact that the petitioner was promoted on 17.10.2019, obviously on finding him to be suitable to occupy the higher post, after which abruptly the High Court took a totally different view and ended up in compulsorily retiring the petitioner. In this context, we refer to the judgment of the Hon'ble Supreme Court in *Pyare Mohan Lal* (supra), wherein it has been specifically declared that mere grading in the ACRs, which are relevant for the consideration of promotions, would not enable a continuance, if the employee is found unsuitable for continuance in service. The principle that the adverse entries would be washed off when a person is found suitable for promotion will have no application when the case of a judicial



officer is being assessed to determine whether he is fit to be retained in service or required to be given compulsory retirement, especially since such a contingency is based on the entire service record of the officer. In *Pyarre Mohan Lal* (supra) the promotion was on an ad hoc basis. In the present case, the promotion though carried out, immediately thereafter he was posted as Principal Magistrate, JJB Patna. The petitioner was promoted on 12.12.2019 and posted as Sub-Judge-III-cum-ACJM, Patna City but again posted to JJB, Patna. This was as per the resolution of the Standing Committee, which permitted such posting to meet the exigencies of service, especially for the continuance of the Principal Magistrates, JJBs.

29. The complaints about his conduct as Principal Magistrate, JJB Patna arose after this, though there were complaints referring to the prior period also. The assessment recorded in his confidential report on 12.09.2020, was after the promotion of the Officer, almost simultaneous to the receipt of the mail dated 04.09.2020 from the Social Welfare Department of the State Government, which was not placed before the Standing Committee. The various irregularities regarding the functioning of the petitioner in the JJB Patna and non-compliance of the directions issued by the Monitoring



Committee, Juvenile Justice of the Patna High Court was also simultaneous. The recommendation of the Monitoring Committee, Juvenile Justice of the Patna High Court, to remove the officer was dated 08.09.2020, on an allegation of a juvenile being mercilessly beaten up for reason of non-compliance of the Committee's directions issued on 17.11.2019.

30. The minutes of the Monitoring Committee as extracted in the counter affidavit is extracted hereunder:-

"The Committee is getting recurrent complaints against Principal Magistrate, JJB, Patna. Sri Sanjiv Kumar Chandriyavi related with his act of overlooking of legal procedure, passing arbitrary orders, passing orders with vested interest, etc. It appears that he was not above board and he is very much allegation prone.

Apart from these allegations, even the Social Members of the J.J. Board, Patna have submitted several complaints regarding his behaviour even on trivial issues.

Recently J.J.S. has received a mail on 04.09.2020 from the Director, Department of Social Welfare, Govt. of Bihar containing a report regarding the functioning of JJB, Patna and illustrating grave irregularities at the same. It is apparent from the said report that the Social Members and the Principle Magistrate are loggerheads which is affecting the overall functioning of the Juvenile Justice Board, Patna.

The Committee during its visit to the JJB & Observation Home Patna on 17th November 2019 also found several irregularities and this issued specific



directions to remove the same, but the subsequent complaints received by the Juvenile Justice Secretariat sufficiently indicates that the same have not been complied with. The issues relating to stay of overaged inmates in the Observation Home was also noticed by the Committee during the said visit, but the practice of keeping those inmates is still continued leading to several incidence including the recent incident, wherein a juvenile has been thrashed mercilessly by some other inmates of the Observation Home Patna and widely reported by the newspapers.

Thus, considering the conduct of the Principal Magistrate, Juvenile Justice Board, Patna Sri. Sanjiv Kumar Chandriyavi and the nature of allegations received against him, the Committee is of the opinion that he should be urgently relieved from the job of Principle Magistrate, JJB, Patna and in his place a suitable officer be posted there.

Let the matter be placed before the Standing Committee for appropriate decision in this regard."

31. These observations were placed before the Standing Committee on 15.10.2020 and the Officer was placed under suspension. Though the disciplinary proceedings were initiated against the petitioner with respect to his conduct in the JJB Patna, his case also came up for consideration for continuance before the Committee constituted for the said purpose; which was not as a result of the misconduct alleged against him. It was in that circumstance that the order of



suspension and inquiry was kept in abeyance and pursuant to the decision taken to compulsorily retire the employee, he was so compulsorily retired.

32. We would also refer to *Gujarat Steel Tubes Ltd. V. Mazdoor Sabha (1980) 2 SCC 593* from which after quoting from *Shamser Singh v. State of Punjab (1974) 2 SCC 831*, it was held so:-

“53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is



dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.”

“54. On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here.”

33. We are satisfied that here, paragraph 54 applies, since even without the specific allegation, the petitioner’s case would have been taken up for consideration of his continuance. It was only on the recommendation made by the special committee constituted that the Standing Committee, kept the inquiry pending and proceeded to recommend compulsory retirement, to the Full Court. There were in all 16 persons so recommended and two of them were relieved from the rigor, of which one was on the premise that an inquiry should be conducted. However here the Full Court was of the opinion that, given the overall assessment, the officer should be shown the door; non stigmatic & non punitive, not motivated by the allegation of misconduct, thus making it, a termination



simpliciter.

34. We have already held that the order is not punitive and Rule 74(ii) specifically provides for compulsory retirement of an employee in public interest after completion of 30 years of qualifying service, attaining 50 years of age or on any date thereafter to be specified in the notice. Simultaneous to the inquiry, the petitioners case came up for consideration for continuance; which in the case of judicial officers is mandatory. The special Committee constituted looked into the various parameters and independently found the petitioner to be liable to be severed from service after an overall consideration. The decision taken was not confined to the petitioner and it involved 15 others. The stage at which the inquiry was, in that context, is irrelevant and though the complaint on which the inquiry was initiated would also have weighed with the Committee, the Officer's track record was not above board. It was based on the Committee's recommendation that the Standing Committee decided to keep the inquiry in abeyance.

35. The proviso to Rule 74(b)(i) does not apply to compulsory retirements on the ground of the Government finding the employee to be unsuitable for continuance. Rule 74(b)(i) is with respect to the compulsory retirement of a



government servant on his request. The proviso indicates that no government servant, under suspension shall retire from service except with the specific approval of the State Government. The said proviso applies only when a government servant against whom proceedings are pending, applies for compulsory retirement; more as an absolution from the disciplinary proceedings. If the compulsory retirement application is allowed, then the Government would not be able to further proceed in the matter. It is only in this circumstance that the proviso enables the Government to look into the allegations raised and decide whether the inquiry is to be completed or the government servant permitted to compulsorily retire on his request. In fact, the second proviso enables such compulsory retirement on request of the officers and servants of the Patna High Court only with the specific approval of the Chief Justice; the Chief Justice having stepped into the shoes of the Government, insofar as the officers and servants of the Patna High Court. The said proviso is not at all applicable to the petitioner against whom though a disciplinary proceeding was initiated, the compulsory retirement was not on his request, but on the finding of unsuitability.

36. The learned Senior Counsel also has a prayer that



the petitioner would not be entitled to pension, which is a necessary requirement under Rule 74 for any compulsorily retired personnel. It has to be noticed that an order of compulsory retirement does not affect the service of the retired employee and he would be entitled to all the retirement benefits and the rigor is only in so far as the person compulsorily retired not being allowed to continue till his normal date of superannuation. The reference, in so far as the pensionary benefits, not being affected by an order of compulsory retirement under Rule 74 and his entitlement to retiring pension and death-cum-retirement gratuity is only on the condition of his having completed the minimum pensionable service. The petitioner is disentitled from pension not because of the order of compulsory retirement but for the reason that at the time of his compulsory retirement, he did not have the minimum qualifying service. It cannot be the position that a person who does not have minimum qualifying service, enabling pension on retirement, cannot be considered for compulsory retirement under Rule 74, despite he being found unsuitable for continuance and is liable to be compulsorily retired in public interest.

37. The petitioner also has a contention that he was



not paid three-month notice pay and was only receiving 50% of the salary during his suspension period. The suspension of the petitioner was kept in abeyance and he was compulsorily retired. Hence, he is entitled to the notice pay during the three months period as stipulated under Rule 74(b)(ii). The petitioner, if not paid the entire salary and allowances of the notice period, would be entitled to be disbursed the entire salary and allowances in lieu of the three-month notice period.

38. In so far as the suspension period, consideration of how it could be treated, could only arise after the disciplinary proceeding was concluded. The disciplinary proceeding was not proceeded with due to the compulsory retirement order. The High Court had given up the inquiry and decided to compulsorily retire the judicial officer, which is not punitive in nature. In the above circumstances, the petitioner is entitled to the entire salary due, during the period of suspension. The petitioner shall be paid the balance of the salary due during the suspension period and the amounts due for the three-month notice period after deducting any subsistence allowance paid for the aforesaid period.

39. The writ petition is dismissed with the aforesaid directions.



40. Interlocutory applications, if any, shall also stand disposed of.

(K. Vinod Chandran, CJ)

Rajiv Roy, J: I agree.

(Rajiv Roy, J)

P.K.P./Sujit

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| Uploading Date | 18.01.2024 |
| Transmission Date | |

