

IN THE HIGH COURT OF JUDICATURE AT PATNA

The Principal Secretary to the Hon'ble Governor Raj Bhawan & Anr.

Versus

Mehfooz Alam & Anr.

Letters Patent Appeal Number 459 of 2022

21st Day of November, 2024

(Hon'ble The Chief Justice & Hon'ble Mr. Justice Mr. Partha Sarthy)

Issue for Consideration

Whether an Order passed in Civil Writ Jurisdiction Case Number 23655 of 2018 is correct or not?

Headnotes

Bihar Service Code, 2005—Rule 74—compulsorily retirement—respondent number 1 (writ petitioner) was working as a daily wage employee in the Governor's Secretariat and his service was regularised as Lower Division Clerk— respondent number 1 (writ petitioner) while working in the capacity of a Lower Division Clerk in the Governor's Secretariat was served with a letter making allegations against him of negligence in duty, not complying with the directions of the higher authorities etc.—departmental proceeding was initiated against him—during pendency of departmental proceeding, respondent number 1 (writ petitioner) was compulsorily retired from service.

Held: compulsorily retiring the writ petitioner from service mentioning about dereliction of duty, disobedience of the directions of the higher authorities etc.—order impugned in the writ application was punitive as also stigmatic—the learned Single Judge rightly set aside the order impugned with direction to reinstate the writ petitioner with all monetary benefits—no merit in the appeal—appeal dismissed.

(Paras 12 to 14)

Case Law Cited

Rajasthan State Road Transport Corp. & Ors. vs. Babu Lal Jangir, 2014 (1) PLJR 394 (SC)—Referred To.

List of Acts

Bihar Service Code, 2005, Bihar Government Servants (Classification, Control and Appeal) Rules, 2005

List of Keywords

stigma, compulsorily retirement, dereliction of duty, disobedience of the directions of the higher authorities.

Case Arising From

From Civil Writ Jurisdiction Case Number 23655 of 2018.

Appearances for Parties

For the Appellants: Mr. Janardan Prasad Singh, Sr. Advocate, Mr. Rajendra Kumar Giri, Advocate.

For the Respondents: Mr. Prabhat Kr. Verma (AAG-3) Mr. Sanjay Kumar Ghosarvey, AC to AAG-3.

Headnotes prepared by: Abhas Chandra

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No. 459 of 2022
In
Civil Writ Jurisdiction Case No.23655 of 2018

- 1. The Principal Secretary to the Hon’ble Governor Raj Bhawan, Patna.
- 2. The Officer on Special Duty (Establishment), Governor’s Secretariat, Raj Bhawan, Patna.

... .. Appellant/s

Versus

- 1. Mehfooz Alam Son of Mahmood Alam, resident of Quarter No. 111, Raj Bhawan, Raj Bhawan Campus, Patna, Bihar.
- 2. The State of Bihar through the Chief Secretary, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Janardan Prasad Singh, Sr. Advocate
		Mr. Rajendra Kumar Giri, Advocate
For the Respondent/s	:	Mr. Prabhat Kr. Verma (AAG-3)
		Mr. Sanjay Kumar Ghosarvey, AC to AAG-3

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 21-11-2024

- 1. Heard learned Senior Counsel for the appellants and learned Counsel for the respondents.
- 2. The instant appeal has been preferred against the judgment dated 18.5.2022 whereby the learned Single Judge was pleased to allow CWJC no.23655 of 2018 filed by the writ petitioner-respondent no.1.



3. The case of the writ petitioner in brief is that he was working as a daily wage employee in the Governor's Secretariat, Bihar at Patna when on 27.11.1991, he was made a Class-III employee. His service was regularised as Lower Division Clerk on 3.1.2008 and he was working in the said capacity in the Governor's Secretariat when by the order impugned dated 2.7.2018, purportedly passed under Rule 74 of the Bihar Service Code, the writ petitioner was compulsorily retired from service.

4. Challenging the said order in CWJC no.23655 of 2018, the writ application having been allowed, the instant appeal has been preferred by the writ respondent nos. 2 and 3.

5. Learned Senior Counsel for the writ respondents-appellants submitted that there is no illegality in the order passed under Rule 74 of the Bihar Service Code compulsorily retiring the writ petitioner and the learned Single Judge has erred in interfering with the same. It is submitted that perusal of the said order would show that the same had been passed against the writ petitioner, a Lower Division Clerk, on the ground that it was not in public or administrative interest that he be continued in service. As such, the writ petitioner who was appointed on 3.1.2008, was aged more than 50 years, was



compulsorily retired under Rule 74 of the Bihar Service Code. Learned Counsel has placed reliance on the judgment in the case **Rajasthan State Road Transport Corp. & Ors. vs. Babu Lal Jangir [2014 (1) PLJR 394 (SC)]** to submit that the order of compulsory retirement being neither punitive nor stigmatic, the scope of judicial review is very limited.

6. In response, it is submitted by learned Counsel appearing for the writ petitioner-respondent no.1 that while working as a Class-III employee in the Governor's Secretariat, the writ petitioner was served with a letter dated 8.9.2017 levelling allegations against him and asking him to furnish his explanation with respect to the same. The writ petitioner submitted his reply on 18.9.2017. The writ respondents decided to proceed against him departmentally and memo of charges was served on him on 28.3.2018. The petitioner was asked to submit his reply which he did on 8.5.2018. The next date fixed by the Enquiry Officer was 24.5.2018 followed by 28.5.2018. It is submitted that all of a sudden, the impugned order dated 2.7.2018 was passed compulsorily retiring him from service of the Governor's Secretariat. It is submitted that in the order impugned imputations have been levelled against him. Further, a departmental proceeding had been initiated and the writ



respondents have illegally taken recourse to the provisions of Rule 74 of the Bihar Service Code to compulsorily retire him. Learned Counsel submits that the order impugned in the writ application being unsustainable, the learned Single Judge rightly interfered with the same and there being no merit in the appeal filed, the same be dismissed.

7. Heard learned Senior Counsel for the appellants and learned Counsel for the respondents. Perused the material on record including the records of the writ application.

8. The relevant facts in brief are that the writ petitioner while working in the capacity of a Lower Division Clerk in the Governor's Secretariat, Bihar at Patna was served with a letter dated 8.9.2017 making allegations against him of negligence in duty, not complying with the directions of the higher authorities etc. He was asked to reply within one week as to why a disciplinary proceeding be not initiated. He submitted his reply on 18.9.2017 denying the allegations. He was thereafter served with a charge-sheet along with an office order contained in memo dated 28.3.2018. The order stated that an enquiry was being conducted against him under Rule 16 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'CCA



Rules'). It was decided to proceed against him departmentally for which charge-sheet enclosed with the said order was being served. The said order contained three enclosures by way of charge-sheet. The first part contained the personal details of the service of the writ petitioner, the second part contained the three charges levelled against him along with the evidence in support of them and the third part the summary of the charges levelled. The writ petitioner was asked to submit his point-wise explanation which he submitted before the Enquiry Officer on 6.4.2018. The Conducting Officer fixed the date in the departmental proceeding as 13.4.2018 at 11:00 a.m. followed by 8.5.2018, 24.5.2018 and 28.5.2018.

9. On perusal of the records it transpired that thereafter the writ respondents came out with an office order, impugned in the writ application, contained in Memo no.894 dated 2.7.2018 issued under the signature of the Officer on Special Duty (Establishment), Governor's Secretariat, Bihar compulsorily retiring the writ petitioner from service.

10. On perusal of the said order it transpires that the same is said to have been passed under Rule 74 of the Bihar Service Code. The order further mentions that on account of dereliction of duty with respect to the work allotted at the



Governor's Secretariat where the writ petitioner was posted as also negligence and disobedience of the directions of the higher authorities, the writ petitioner was asked for an explanation and not finding his reply to be satisfactory, a departmental proceeding had been initiated.

11. It may be important to note here that as stated above, Departmental Proceeding Case no.2 of 2018 was already initiated against the writ petitioner under the CCA Rules wherein he has already filed his reply to the charge-sheet. Further, the order impugned in the writ application of compulsory retirement imputes allegations against him, which in the departmental proceeding initiated may also have led to imposition of punishment. It transpires that the proceeding was abandoned midway and the impugned order was passed compulsorily retiring him from service. The order, on bare perusal, cannot be said to have been passed on the subjective satisfaction by the authorities ie the appellants herein, and a decision arrived at on the basis of his service that he is not fit to be continued, especially when specific allegations are levelled and imputation of misconduct made in the order passed.

12. So far as the judgment in the case of **Rajasthan State Road Transport Corp.** (*supra*) is concerned, it was held



by the Hon'ble Supreme Court that what is to be examined is the overall performance on the basis of entire service record to come to the conclusion as to whether the concerned employee has become a deadwood and it is in public interest to retire him compulsorily. It further held that the order of compulsory retirement was neither punitive nor stigmatic and was based on the subjective satisfaction of the employer.

13. As seen above, so far as the facts of the instant case is concerned, besides the order impugned in the writ application compulsorily retiring the writ petitioner from service mentioning about dereliction of duty, disobedience of the directions of the higher authorities etc., it was on these charges that a departmental proceeding had already been initiated against him wherein the writ petitioner had also filed his reply. These allegations also having been given in the order of compulsory retirement, the order impugned in the writ application was clearly punitive as also stigmatic. The said order was not sustainable and on being challenged in the writ application has rightly been set aside by the learned Single Judge with a direction to reinstate the writ petitioner with all monetary benefits.

14. The Court finds no merit in the instant appeal and



the same is dismissed; reserving liberty to complete the enquiry initiated; as has been permitted by the learned Single Judge.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	25.11.2024
Transmission Date	N/A

