

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20954 of 2018

Rajesh Kumar, S/o Ishwar Prasad Sinha, R/o at and PO- Gopalbad, P.S.-
Sarmera, Distt- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary to Hon'ble His Excellency the Governor, Governor's Secretariat, Bihar, Patna.
3. Joint Secretary, Governor's Secretariat, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. D. K. Sinha, Sr. Advocate
Mr. Abhinay Raj, Advocate
Mr. Alexander Ashok, Advocate
Ms. Akansha Malviya, Advocate

For the State : Md. Raisul Haque -SC10

For Resp Nos. 2 and 3 : Mr. Rana Vikram Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 29-01-2024

Heard learned Sr. Counsel for the petitioner, learned counsel for the State and learned counsel for the Governor's Secretariat, Bihar, Patna.

2. Learned Sr. counsel for the petitioner submits that the present writ petition has been filed for quashing of the order contained in Memo No. 574 dated 13.04.2018, communicated



by respondent No.3 by which the petitioner has been made compulsorily retired.

3. Learned Sr. Counsel for the petitioner further submits that the petitioner was initially appointed on a daily wage basis followed by a procedure of regular appointment vide order No. Estb.88/90-3193/GS(3) dated 27.11.1991. Subsequently, vide order dated 05.06.1995 issued under the signature of respondent No.2, namely, the Principal Secretary, Governor's Secretariat, Bihar, Patna, the petitioner was appointed on the regular vacant post of Personal Assistant. The services of the petitioner were confirmed w.e.f. 05.06.1998 vide Memo No. Estb.15/95-1244/GS(3) dated 16.05.2000. He further submits that in the year 2004, he was promoted to the post of Sr. Personal Assistant, vide Governor's Secretariat Office Order No. Estb.88/90-3322/GS(3), dated 09.12.2004 and, thereafter, vide Memo No. 2437 dated 07.05.2007, the petitioner was designated as Private Secretary. The petitioner was suspended vide Memo No. 515 dated 03.04.2018 on the basis of an allegation that he leaked certain confidential documents from the office of the Governor's Secretariat. Subsequently, vide Memo No. 574 dated 13.04.2018, he was terminated from the service under Rule 74 of the Bihar Service Code, 1952 granting



three months' salary and benefits as well as making him entitled for pension, gratuity, and other retiral benefits in accordance with law. Learned Sr. Counsel for the petitioner further submits that the impugned order contained in Annexure-7 has been passed in complete violation of law due to the reason that the said letter by which the petitioner has been compulsorily retired is basically a stigma on him without initiation of any departmental proceeding which is in gross violation of the constitution.

4. Learned Sr. Counsel for the petitioner has relied upon the decision of this Court rendered on 28.08.2023 in the case of *Shyam Sundar Sharma Vs. the State of Bihar and Ors.* in CWJC No. 407/2021; *Mahfooz Alam Vs. the State of Bihar & Ors.* decided on 18.05.2022 in CWJC No. 23655/2018 as well as the decision of the Division Bench rendered on 18.11.2008 in the case of *the Bihar State Road Transport Corporation Vs. Vidya Nand Sharma and Ors. reported in 2009(2) PLJR 559* (L.P.A. No. 180/2006). Learned Sr. Counsel for the petitioner has also relied on a judgment rendered by this Court on 12.10.2023 in the case of *Satish Kumar Singh vs. the State of Bihar and Ors.* along with other analogous cases.

5. Learned Sr. Counsel for the petitioner further



submits that it is the consistent finding in all the cases cited above that abrupt invoking Rule 74 of the Bihar Service Code, 1952 in retiring the petitioner compulsorily is basically bad and, therefore, in all the decisions, this Hon'ble Court has set aside the order of compulsory retirement and, therefore, in this background, Annexure-7 which is an order contained in Memo No. 574, dated 13.04.2018 may be set aside and a direction may be issued to reinstate the petitioner in service.

6. Learned counsel appearing on behalf of the Governor's Secretariat submits that the petitioner was in service of the Governor's Secretariat for the last about 27 years as he started his service in 1991 and the order of compulsory retirement has been passed in the year 2018. Counsel further submits that there is absolutely no stigma has been accepted against the petitioner and his compulsory retirement from the service has been made completely in public and administrative interest. He has been retired compulsorily, granting salary for three months' and in addition to that direction for payment of pension, gratuity, and other service benefits were also directed to be made to the petitioner in accordance with the law.

7. Learned counsel for the Governor's Secretariat submits that the judgments which the petitioner relying are not



applicable in the case of the present petitioner, due to the reason that in all those cases, a decision to initiate the departmental proceeding was taken and after taking decision of the departmental proceeding, subsequently, without assigning any reason the government has decided to take action under Rule 74 of the Bihar Service Code, 1952 to make them compulsory retired. He further submits that the case of *Mahfooz Alam (supra)* is related to an employee of the Governor's Secretariat itself against whom it was decided by the officials initially took decision to initiate departmental proceedings as has been observed in paragraph 5 of the said judgment and, thereafter abruptly invoked Rule 74 of the Bihar Service Code, 1952 in retiring the petitioner compulsorily. It is due to this reason, this Hon'ble Court entertained and set aside the decision of compulsory retirement of the Mahfooz Alam (supra) whereas in the present case, it is not the situation. At no level, it has been decided by the officials of the Governor's Secretariat to initiate the departmental proceeding against him. As such, learned counsel for the Governor's Secretariat submits that the present writ is not maintainable and fit to be dismissed.

8. In response thereof, learned Sr. Counsel for the petitioner relied on the fourth paragraph of the order impugned



dated 13.04.2018 (Annexure), which is extracted as under:-

“अतः सरकारी कार्य की गोपनीयता भंग करने तथा राज्यपाल सचिवालय की गरिमा को ठेस पहुँचाने तथा बिहार सरकारी सेवक आचार नियमावली के प्रावधानों का उल्लंघन करने आदि के आरोप के मद्देनजर श्री राजेश कुमार, प्रधान सचिव के आप्त सचिव को इस सचिवालय के कार्यालय आदेश संख्या-स्था०-04/2018-515/रा०स० (III), दिनांक- 03.04.2018 से निलंबित किया गया था।”

9. Learned Sr. Counsel for the petitioner further submits that there is specific allegation present in the ordersheet in the form of stigma and since it is in the form of stigma, then it is necessary to conclude it by virtue of the departmental proceeding and then to take action.

10. In response of the said allegation, counsel for the respondent Governor's Secretariat submits that by reading the said quoted paragraph made above, it appears that it is the fact of the case which has been inserted in the ordersheet and the decision has been taken from next paragraph, which is quoted as under :-

“उक्त घटना की गंभीरता के दृष्टिगत श्री राजेश कुमार, प्रधान सचिव के आप्त सचिव (निलंबित) का आचार लोकहित एवं प्रशासनिक हित में ऐसा नहीं है कि इन्हें सेवा में बनाए रखना न्याय हो। उक्त पृष्ठभूमि में श्री राजेश कुमार (निलंबित) को बिहार सेवा संहिता के नियम 74 के तहत तीन माह के वेतन तथा भत्ते के समतुल्य राशि का भुगतान का आदेश



प्रदान करते हुए सरकारी सेवा से तत्काल प्रभाव से अनिवार्य सेवा निवृत्त किया जाता है।

अनिवार्य सेवा निवृत्ति के उपरांत इन्हें पेंशन, उपादान एवं अन्य सेवा निवृत्ति लाभ की राशि का भुगतान नियमानुसार किया जाएगा।”

11. Quoting the last two paragraphs, learned counsel for the Governor’s Secretariat submits that the operative part of this ordersheet is absolutely without stigma and it is a case of removal simplicitor by way of compulsory retirement on the ground of public and administrative interest and therefore, the plea taken by the petitioner is not acceptable.

12. In the present facts and circumstances and in the light of the submissions made as well as perusal of the documents available on record, it transpire to this Court that with a view to decide the issue involved in the present writ petition, it is necessary to quote Rule 74 of the Bihar Service Code, 1952, as under :-

“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 :]

2[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.]

3[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.]

¹(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.]”

13. This Court feels it necessary to quote the relevant paragraph nos. 8 and 9 of the judgment rendered in the case of Shyam Sundar Sharma (supra), as under :

“8. The notification, therefore, leaves the petitioner with stigma, and is apparently, as a consequence of the various alleged acts of omission and commission, as per the impugned order, extracted above. The impugned notification, therefore, is apparently punitive in nature, and beyond the scope of Rule 74 of the Bihar Service Code. The decision of the Division Bench in the case of Vidya Nand Sharma (supra) supports such conclusion of this Court in the instant writ proceedings. The impugned notification, in the above noted facts and circumstances, and the settled legal position based on decision of the Division Bench, noted above, is clearly unsustainable in the eyes of law.

9. The impugned notification dated 18-06-2020 (Annexure- 1) is, therefore, quashed.”

14. Similarly, paragraph no. 5 of the judgment rendered in the case of Mahfooz Alam (supra) is quoted as



under :-

“5. In the light of these facts and circumstances, it is material evident that official respondents have initially taken a decision to initiate disciplinary proceedings as is evident from the record. Thereafter, abruptly invoked Rule 74 of the Bihar Service Code in retiring the petitioner compulsorily. Thus, petitioner has made out a prima facie case so as to interfere with the proceedings read with the compulsory retirement order dated 02.07.2018 (Annexure-10). Accordingly, order dated 02.07.2018 (Annexure-10) is set aside.”

15. Again it is relevant to quote relevant paragraph 6 and 7 rendered in the case of **Satish Kumar Singh (supra)**, as under :-

“6. In the light of the observations made by the Co- ordinate Bench of this Hon’ble Court, that the observation quoted above is basically stigma casted upon consequence of various alleged acts of omission and commission and therefore this Court is of this view that the impugned notification is punitive in nature because the scope of Rule 74 of the Bihar Service Code, 1952, is absolutely different as mentioned in the notification.

7. This Court is also of the view that parity should be maintained and therefore, in the light of the reasons above, all the writ petitions are hereby allowed and the impugned notification containing Memo No. 3604(Bh) dated 18.06.2020



issued by the Additional Secretary, Building Construction Department, Bihar, Patna (annexed as Annexure-1) is hereby quashed for all the four petitioners of the present writ petitioners mentioned above.”

16. At last, it is further necessary to quote paragraph 14, 15 of the judgment rendered by a Division Bench of this Court in the case of ***Bihar State Road Transport Corporation (supra)***, as under :-

“14. Rule 74(b)(ii) of the Bihar Service Code having been made applicable to the Corporation employees, empowers the Corporation to retire its employee compulsorily in public interest on fulfillment of conditions mentioned therein. In the entire order of compulsory retirement, no statement is recorded that the petitioner is being compulsorily retired in public interest. We assume in favour of the Corporation that it was not necessary so to do but then there must be material which may establish public interest. Save and except a bald statement in the counter affidavit that several opportunities have been given to the petitioner to improve his efficiency and obey the order of the higher authorities, no material whatsoever has been produced in support thereof. Even the statement that several opportunities have been given to the petitioner to improve the efficiency and obey the order of the higher authorities, is founded on a letter written by the Divisional Manager to the Chief of Administration and there is nothing on record to show that any communication or office memo to that effect was issued to the petitioner.



The copy of the letter dated 30th April, 2004 has also not been placed on record. In this view of the matter, the statement recorded in the impugned order dated 25th May, 2004 has to be given plain meaning and plainly read, it leads to only one conclusion and that conclusion is that the statement is stigmatic and it casts aspersion on the conduct of the petitioner.

15. We, thus, find that the single judge has considered the matter in right perspective justifying no interference in the appeal.”

17. It is also relevant to quote Clause 3 of the Bihar Government Servant's Conduct Rules, 1976, as under :-

“3. General. -

(1) Every Government servant shall at all times-

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a Government servant.

(2) Every Government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority.

(3) No Government servant shall, in the performance of his official duties or in the exercise of power conferred on him, act otherwise than in his best Judgement except when he is acting under the direction of his official superior and shall; where he



is acting under such direction, obtain the direction in writing wherever practicable, and where it is not practicable to obtain the direction in writing he shall obtain written confirmation of the direction as soon thereafter as possible.

Explanation.-*Nothing in sub-rule (3) of Rule 3 shall be construed as empowering a Government servant to evade his responsibilities by seeking instructions from, or approval of, a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities.*

.....”

18. Upon going through the bare provisions and particularly, the impugned order's last three paragraphs, this Court is of the firm view that in the last two paragraphs of the order impugned which are the operative part of the order, there is absolutely no stigma has been accepted and the decision has been taken by the respondent authorities completely in the light of the public and administrative interest. So far as the earlier part of the order impugned is concerned, it is nothing but a replica of the facts and hence, this Court reached the conclusion that those rules mentioned above shall not help the petitioner in any manner and the decision of the authority contained in Memo No. 574 dated 13.04.2018 (as contained in Annexure -P/7) has



been passed completely in accordance with the law. As such,
this Court is not inclined to interfere with the said order.

19. Accordingly, the present writ petition stands
dismissed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	02/02/2024
Transmission Date	NA

