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**Court :** Patna

**Decided On :** Apr-28-2014

**Judge :** The Honourable Chief Justice Mr. R.M. Doshit & Ashwani Kumar Singh

**Appeal No. :** Civil Writ Jurisdiction Case No. 1427 of 2011

**Appellant :** Narad Panday

**Respondent :** The State of Bihar and Others

**Judgement :**

This Petition under Article 226 of the Constitution is filed by one Narad Pandey, an officer in Judicial Service of the State of Bihar, against the Government Notification dated 16th December 2010 issued in exercise of power conferred by Rule 74(b)(ii) of the Bihar Service Code. Under the said Notification, the petitioner has been compulsorily retired in public interest. In lieu of notice, the petitioner was ordered to be paid three months pay and allowances.

The petitioner was appointed as a Munsif in Bihar Civil Service (Judicial Branch) in 1989 after due selection by the Bihar Public Service Commission. From 1989 till 2010, the petitioner continued to serve in the cadre of Munsif. The case of the petitioner for compulsory retirement in public interest was taken up by the High Court in 2009, the petitioner having crossed the age of 50 years and having reached the age of 53 years. Pursuant to the recommendation made by the High

Court, the petitioner was retired from service in public interest.

Learned counsel Mr. Ashok Kumar Singh has appeared for the petitioner. Mr. Singh has taken us through the records. He has submitted that the petitioner did earn certain adverse entries. However, said entries were later on, on representation made by the petitioner, expunged. All throughout his service, barring a few remarks of being poor, the petitioner had earned good remarks. There was nothing adverse to the petitioner through the entire service period. In absence of any adverse entry against the petitioner and in the light of good service record, the High Court in its administrative capacity could not have retired the petitioner compulsorily in public interest. He has submitted that there is nothing on the record to suggest that the petitioner had outlived his utility and that he could not have been continued in service any more. Mr. Singh has also submitted that the High Court being in capacity of guardian has a duty to protect its officers, the petitioner, therefore, could not have been compulsorily retired in public interest. He has next submitted that Rule 74(b) (ii) of the Bihar Service Code requires a government servant to be retired compulsorily in public interest after giving three months notice or on payment of three months pay and allowances in lieu of notice. Neither the petitioner was given three months notice; nor he has been paid pay and allowances for three months in lieu of notice. The impugned Notification of compulsory retirement is, therefore, vitiated. In support of his submission, Mr. Singh has relied upon the judgments in the matters of Anil Kumar and others Vs. The State of Bihar and Ors {1996(2) PLJR 193}; Rana Abhai Singh Vs. The Honble High Court of Judicature at Patna and Ors {2006(3) PLJR 400}; Registrar General, High Court of Gujarat and Anr. Vs. Jayshree Chamanlal Buddhbhatti {2014(1) PLJR 169 (SC)} and Nand Kumar Verma Vs. State of Jharkhand and Ors. {2012(3) SCC 580}.

Mr. Piyush Lall has appeared for the High Court. He has contested the petition. Mr. Lall has taken us through the service record of the petitioner and how the matter had been processed by the High Court from time to time. In support of his submissions, he has relied upon the judgment of the Honble Supreme Court in the matters of Rajendra Singh Verma (Dead) through L.R.S. and Ors Vs. Lieutenant Governor (NCT of Delhi) and Ors {(2011) 10 SCC 1}; Raj Kumar Vs. Union of India

and others {AIR 1975 SC 1116}; Union of India and Ors. Vs. Arun Kumar Roy {AIR 1986 SC 737}; Bachi Ram Vs. Union of India and Ors. {AIR 1986 SC 999} and of this Court in the matters of Vijoy Narain Jha Vs. The State of Bihar and Ors. {2000 (1) PLJR 1016} of Krishna Mohan Srivastava Vs. High Court of Judicature at Patna and ors {2003 (4) PLJR 530}.

Learned advocate Mr. Subhash Prasad Singh has appeared for the Government of Bihar. Mr. Subhash Prasad Singh has submitted that the Government of Bihar has issued impugned Notification in consonance with Rule 74(b)(ii) of the Bihar Service Code. The Notification was also forwarded to the Accountant General for necessary sanction for payment of three months pay and allowances in lieu of notice. It was then the duty of the Accountant General to sanction the necessary payment.

In course of hearing of this Petition, the Accountant General was called upon to appear before this Court. Learned advocate Mr. Madhuresh Prasad appeared for the Accountant General. The Accountant General has filed a counter affidavit. According to the Accountant General, the petitioner, being a Judicial Magistrate, the payment of salary was required to be sanctioned by the Finance Department. The upshot of the submission is that neither the State Government; nor the Accountant General made the payment of salary for three months in lieu of notice. The said amount of pay and allowances in lieu of notice has now been paid in February 2014 only when the petition was taken up for hearing and the learned advocate Mr. Ashok Singh asserted that the petitioner had not yet been paid salary in lieu of notice.

We shall discuss the effect of failure of the State Government in making payment of salary in lieu of notice little later. First we shall examine whether the decision of the High Court to retire the petitioner compulsorily in public interest was justiciable.

We have perused the counter affidavits made by the High Court and the particulars of the service record of the petitioner brought on the record. At the outset, we may mention that the confidential record of the petitioner does not give out a rosy picture.

The overall gradation of the petitioner over the years is a mixed bundle. At times, he had been reported to be a good, industrious officer. In the beginning of his career in early 1990s, he was reported to be an industrious and competent officer having satisfactory conduct. In the later years, he was reported to be an officer of average merit, intermittently reported to be good officer. Over the years as many as 14 complaints were processed against him, all touching to his integrity. Many of the complaints were closed summarily. Some were closed after preliminary enquiry and one after receiving the report of the Enquiry Officer. On several occasions, adverse entries were recorded in his confidential record which, pursuant to his representation, came to be expunged. However, the one which remained on his confidential record was the one touching to his integrity recorded by the learned Inspecting Judge on 10th July 2004. The said entry, œhe is an extremely unsatisfactory judicial officer? also has a chequered history. At first, the said entry, pursuant to his representation made by the petitioner, came to be expunged on 6th August 2007 by the Standing Committee. The said decision of the Standing Committee was recalled by Full Court decision after giving opportunity of representation to the petitioner. The said order of recall dated 21st April 2009 was the subject matter of challenge in C.W.J.C. No.8161 of 2009. The said petition has since been withdrawn by the writ petitioner on 17th February 2014. In view of the withdrawal of the challenge to the said adverse entry dated 10th July 2004 made in the confidential record of the petitioner remains undisturbed.

Now, if we take comprehensive view of the entire service record of the petitioner, the nature of the adverse entry made in his confidential record and the tenor of the allegations made against him time and again; we would say that even if the petitioner had not outlived his utility, his presence in the State judiciary was not conducive to the high standards required to be maintained in the judiciary. In our opinion, the decision of the High Court to compulsorily retire the petitioner in public interest in exercise of power conferred by Rule 74(b) (ii) of the Bihar Service Code was entirely justified.

The reliance upon the judgment of this Court in the matter of Anil Kumar and Ors (supra) and the judgment of the Honble Supreme Court in the matter of Nand

Kumar Verma (supra), in view of withdrawal of C.W.J.C. No. 8161 of 2009, is of no consequence. Similarly, the judgment in the matter of Jayshree Chamanlal Buddhbhatti (supra) has no application to the facts of the present case. In the said matter, the judicial officer Jayshree Buddhbhatti was still on probation and her service was terminated for certain allegations made against her. The Honble Court held that the officer was entitled to protection under Article 311(2) of the Constitution.

The scope and ambit of Rule 74(b) (ii) of the Bihar Service Code and the power of the High Court thereunder in respect of the judicial officers in the Government of Bihar has been succinctly discussed by the Honble Supreme Court in the matter of Rajendra Singh Verma (supra). The principles laid down by the Honble Supreme Court shall apply to the facts of the present case with full force. In the matter of Rajendra Singh Verma (supra), the Honble Court has emphasized on constant vigil by the High Court over sub-ordinate judiciary and repeated scrutiny of service record to weed out corrupt/incompetent officers.

This brings us to the last and the crucial issue. It is now clear that although the High Court had recommended compulsory retirement in public interest and payment of three months pay and allowances in lieu of notice, though the State Government had issued Notification to that effect, the petitioner was not paid three months pay and allowances in lieu of notice with the service of the Notification or soon thereafter.

Learned advocate Mr. Piyush Lall has made an effort to persuade this Court to hold that the requirement of payment of three months pay and allowances in lieu of notice is not mandatory. In case such amount is not paid, the petitioner has right to claim the same but failure to pay the amount does not vitiate the order of compulsory retirement. The reliance on the judgments in the matters of Union of India and Ors Vs. Arun Kumar Roy (supra) and of Raj Kumar Vs. Union of India and Ors. (supra) is uncalled for. Both the aforesaid matters arose from the Central Civil Services (Temporary Service) rules 1965 and the amended Rule 5(1) thereof. The said Rule operates in entirely different factual matrix. The said decisions cannot apply to the compulsory retirement in public interest.

We do not agree with the judgment of this Court in the matter of Krishna Mohan Srivastava Vs. High Court of Judicature at Patna and ors (supra) insofar as this Court has held that the requirement of payment of three months pay and allowances in lieu of notice is not mandatory but confers a right to claim such amount.

The matter has been discussed by the Honble Supreme Court and the High Courts time and again. A Division Bench of this Court has also, in the matter of Rana Abhai Singh Vs. Honble High Court Judicature at Patna (supra), held the said provision to be mandatory. Failure to pay the amount in lieu of notice would necessarily vitiate the order of compulsory retirement.

We do not propose to say that the said provision requires payment of three months pay and allowances in lieu of notice simultaneously with the order of the compulsory retirement. But the endeavour should be to pay such amount with the service of the order. Such amount shall be paid, if not with the order of compulsory retirement, within a reasonable time. What should be the reasonable time shall again depend upon the facts of each case but surely the State Government cannot be allowed to overlook its responsibility to pay the amount of three months pay and allowances in lieu of notice.

In the present case, the State Government was alive of its duty to pay such amount as it is reflected in the Notification of compulsory retirement issued on 16th December 2010, but neglected to issue necessary direction to appropriate authority. Before us, the State Government has taken a stand that the State Government had issued required direction to the Accountant General. However, the Accountant General did not issue the required authority letter. According to the Accountant General, the petitioner being a Judicial Magistrate at the bottom of the hierarchy in the State of Bihar, it was the Finance Department (Entitlement Cell) which is authorized to issue necessary sanction.

Be that as it may, we are not called upon to resolve the issue of authority of the Accountant General or the Government in Finance Department. The fact remains that the petitioner was not paid the amount of three months pay and allowances in lieu of notice until February 2014. It is quite strange that although the petitioner

has raised a specific plea in paragraph 38 of the memo of the writ petition, the State Government did not bother to mend its ways or rectify its mistake. Indifference and apathy of the State Government could not have been more clear. Although the High Court had taken the decision to compulsorily retire the writ petitioner in public interest as early as on 21st November 2009; though the said decision was communicated to the State Government immediately within one week thereafter, the State Government did not issue necessary Notification for more than a year until 16th December 2010. Once again, the State Government neglected payment of three months pay and allowances in lieu of notice for more than three years. Curiously, the petitioner also remained silent, probably knowing fully well the consequences of failure to pay three months pay and allowances in lieu of notice. Though the petitioner has raised the issue in the writ petition, he never approached the State Government for recovery of the said amount.

Be that as it may, the law must take its own course. The Notification dated 16th December 2010 issued by the State Government in exercise of power conferred by Rule 74(b)(ii) of the Bihar Service Code retiring the petitioner compulsorily in public interest is vitiated and is quashed and set aside.

The State Government is directed to issue Notification under Rule 74(b)(ii) of the Bihar Service Code compulsorily retiring the petitioner in public interest afresh as early as possible preferably within two months from today. The State Government will ensure that the petitioner is paid three months pay and allowances admissible as on the date of Notification in lieu of notice. The period from 16th December 2010 till the issuance of the Notification afresh, the petitioner will be deemed to have been continued in service as Munsif/Judicial Magistrate-1st Class. For the purpose of pay fixation as on the date of Notification to be issued hereafter, the petitioner will be entitled to notional increments. The terminal dues of the petitioner will be recomputed on the basis of the last pay on the date of the Notification.

Having regard to the fact that the petitioner is a professional, years away from the age of superannuation, the petitioner will not be entitled to actual amount of salary for the period from 16th December 2010 till the Notification of compulsory retirement is issued afresh. The amount of pension paid to the petitioner for the

said period and the amount of three months pay and allowances paid in the month of February 2014 will not be recovered from the petitioner.

Petition stands allowed in the above terms. The parties will bear their own cost.

Copy of this judgment will be furnished to the learned advocates appearing for the parties.

Registry will send copy of this judgment and order to the respondent nos. 2 and 3 forthwith.

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