

IN THE HIGH COURT OF JUDICATURE AT PATNA

Shyam Sundar Sharma

Versus

The State of Bihar & Ors.

(Civil Writ Jurisdiction Case No.407 of 2021)

29 August 2023

[Hon’ble Mr. Justice Madhuresh Prasad]

Issue for Consideration

Whether the compulsory retirement of the petitioner under Rule 74 of the Bihar Service Code, 1952, was legally sustainable.

Headnotes

The impugned notification is apparently punitive in nature, leaves the petitioner with stigma and beyond the scope of Rule 74 of the Bihar Service Code. (Para 8)

Petition is allowed. (Para 10)

Case Law Cited

Mahfooz Alam v. The State of Bihar & Ors., **CWJC No. 23655 of 2018**; Bihar State Road Transport Corporation v. Vidya Nand Sharma, **2009 (2) PLJR 559**

List of Acts

Bihar Service Code, 1952

List of Keywords

Compulsory Retirement; Rule 74;Stigmatic Order;Punitive Action;Public Interest;Misconduct;Natural Justice;Bihar Service Code

Case Arising From

Notification dated 18.06.2020 issued by the Building Construction Department, Bihar, compulsorily retiring the petitioner from service under Rule 74 of the Bihar Service Code, 1952.

Appearances for Parties

For the Petitioner: Mr. Prabhu Nath Pathak, Advocate

For the State: Mr. Ashok Kumar Dubey, AC to AAG-XI

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.407 of 2021

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Shyam Sundar Sharma Son of Late Janeshwar Sharma Resident of Village-
Chatar, P.S.- Kako, District- Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Building Construction Department, Bihar, Patna.
3. The Additional Secretary, Building Construction Department, Bihar, Patna.
4. The Secretary, Bihar Public Service Commission, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhu Nath Pathak, Advocate
For the State	:	Mr. Ashok Kumar Dubey, AC to AAG-XI

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 29-08-2023

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The petitioner is aggrieved by the notification dated
18.6.2020 (Annexure-1) issued by the Additional Secretary,
Building Construction Department, Bihar, Patna (Respondent
No 3) whereby invoking powers under Rule 74 of the Bihar
Service Code, 1952, the petitioner has been compulsorily
retired from service. The relevant extract of the order showing
consideration preceding the order is as follows:-

“(3) भवन निर्माण विभाग, बिहार, पटना के अंतर्गत
50 (पचास) वर्ष से अधिक आयु वाले अत्यधिक खराब
कार्य-कलाप/प्रदर्शन वाले अभियंत्रण संवर्ग के कार्यरत



पदाधिकारियों/कर्मचारियों यथा कार्यपालक अभियंता, सहायक अभियंता एवं कनीय अभियंता को बिहार सेवा संहिता के नियम-74 के तहत अनिवार्य सेवानिवृत्ति प्रदान किये जाने के बिन्दु पर विभागीय प्रधान सचिव की अध्यक्षता में दिनांक-03.06.2020 एवं 04.06.2020 को बैठक सम्पन्न हुई। उक्त बैठक में विभाग के प्रशासनिक पदाधिकारियों के साथ-साथ अभियंत्रण संवर्ग के वरीय पदाधिकारी शामिल थे। बैठक में नियंत्री पदाधिकारी से प्राप्त प्रतिवेदन, विभागीय आंतरिक निगरानी स्वच्छता प्रतिवेदन तथा अन्य उपलब्ध अभिलेखों के आधार पर विचारोपरान्त अत्यधिक खराब कार्य-कलाप/प्रदर्शन वाले वैसे कुल छः (06) अभियंताओं को चिन्हित किया गया, जिनकी कार्य दक्षता या आचार ऐसा नहीं है, जिससे उन्हें सेवा में बनाये रखना लोकहित में उचित है। चिन्हित किये गये उक्त अभियंताओं को पूर्व में भी औपचारिक एवं अनौपचारिक रूप से कार्य-कलाप में सुधार, पदीय दायित्वों के समुचित निर्वहन हेतु बार-बार सचेत किये जाने एवं उच्चाधिकारियों के आदेशों का अक्षरशः पालन हेतु निदेश दिये जाने के बावजूद भी उनके कार्य-कलाप तथा पदीय दायित्व निर्वहन में अपेक्षित सुधार परिलक्षित नहीं हो पाया है। साथ ही इनके द्वारा वरीय पदाधिकारियों एवं सरकार के निदेश की लगातार अवहेलना की गयी है। तद्आलोक में सर्वसम्मति से बिहार सेवा संहिता के नियम-74 के तहत उन्हें अनिवार्य सेवानिवृत्ति प्रदान किये जाने की अनुशंसा की गयी।”

3. It is submitted by the petitioner's counsel that the petitioner was never served with any charge memo or show cause. The second submission is that as per the Govt. Resolution dated 23-07-2020 as contained in Annexure-5 of rejoinder to



the counter affidavit on behalf of the petitioner, the petitioner's entire service performance was to be considered and the adverse entry in the ACR, if any, is also required to be taken into consideration. The third submission is that the petitioner has not been served with notice nor, he has been paid three months of salary in lieu of notice. The petitioner's counsel has relied upon decision of this Court in the case of *Mahfooz Alam vs. The State of Bihar & Ors. in CWJC No 23655 of 2018* as well as decision of the Division Bench in the case of *Bihar State Road Transport Corporation vs. Vidya Nand Sharma* reported in *2009 (2) PLJR 559 : 2009(1) BLJud 155*. The submission is that if the order is beyond the scope of Rule 74 of the Bihar Service Code, the same is not sustainable.

4. The learned counsel for the State, on the other hand, submits that consideration which is manifest from the notification is containing the reasons as required in term of Rule 74 of the Bihar Service Code. The relevant extract of which is being reproduced herein:

“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.]”

5. It is submitted that the petitioner's case is not similar to the case of **Mahfooz Alam** (supra). This court in the case of **Mahfooz Alam** (supra) had taken notice of the fact that



the petitioner therein had been visited with a proposal to initiate proceedings and to get over the rigours of a duly constituted proceedings, the authorities had resorted to power under Rule 74 of the Bihar Service Code. Under such circumstances, the Court found resort to Rule 74 of the Bihar Service Code to be not in accordance with law. Decision of the Division Bench is also not applicable in the petitioner's case, as in the said judgment the order/notification of compulsory retirement itself contained a stigma, which has been taken note of in para 13 of the decision passed by the Division Bench.

6. The Court on consideration of rival submissions finds that the impugned order dated 18-06-2020, purporting to be under Rule 74 of the Bihar Service Code contains statements of the petitioner's indictment for misconduct/s. Relevant extract of impugned notification reads as follows:-

"...विचारोपरान्त अत्यधिक खराब कार्य-कलाप / प्रदर्शन वाले वैसे कुल छः(06) अभियंताओं को चिन्हित किया गया, जिनकी कार्य दक्षता या आचार ऐसा नहीं है, जिससे उन्हें सेवा में बनाये रखना लोकहित में उचित है। चिन्हित किये गये उक्त अभियंताओं को पूर्व में भी औपचारिक एवं अनौपचारिक रूप से कार्य-कलाप में सुधार, पदीय दायित्वों के समुचित निर्वहन हेतु बार-बार सचेत किये जाने एवं उच्चाधिकारियों के आदेशों का अक्षरशः पालन हेतु निदेश दिये जाने के बावजूद



भी उनके कार्य-कलाप तथा पदीय दायित्व निर्वहन में अपेक्षित सुधार परिलक्षित नहीं हो पाया है। साथ ही इनके द्वारा वरीय पदाधिकारियों एवं सरकार के निदेश की लगातार अवहेलना की गयी है।...”

7. The impugned notification as is, apparent from bare reading of the same is not based on consideration in terms of Rule 74 of the Bihar Service Code. The same casts aspersions, and alleges misconduct, which is clearly beyond the purview of Rule 74 (a) of the Bihar Service Code, quoted above.

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.



10. Accordingly, writ petition is allowed.

(Madhuresh Prasad, J)

Raj kishore/-

AFR/NAFR	AFR
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