
(2016) 12 PAT CK 0046

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.13737 of 2016

Arvind Kumar Khan

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 22-12-2016

Acts Referred:

Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 — Rule 14

Citation : (2017) 1 BBCJ 332 : (2017) 1 BLJud 280 : (2017) 1 PLJR 281

Hon'ble Judges : Mr. Jyoti Saran, J.

Bench : Single Bench

Advocate : Mr. Sanjay Pandey, Advocate, for the Respondent-BPSC; Mr. P.K. Shahi, Sr. Advocate with Mr. Vikas Kumar, Advocates, for the Petitioner; Mr. Anshuman Singh, AC to PAAG 1, for the Respondent-State

Final Decision : Allowed

Judgement

Mr. Jyoti Saran, J.(Oral) - Heard Mr. P.K. Shahi, learned senior counsel who appears along with Mr. Vikas Kumar, Advocate on record and Mr. Anshuman Singh, learned Assisting Counsel to Principal Additional Advocate General No.1 for the State and learned counsel for the Bihar Public Service Commission.

2. Amongst the other issues that has been raised in the present writ petition to question the order of compulsory retirement bearing Memo No.3362 dated 19.7.2016, a copy of which is impugned at Annexure-1 to the writ petition, it is the specific argument of Mr. Shahi, learned senior counsel appearing for the petitioner that the petitioner being a gazetted Government employee of the State Government, it is the State Government who is the appointing authority and also the authority competent to impose the punishment(s) envisaged under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as "the Rules"). He submits that the order impugned having been passed by the Principal Secretary, Department of Registration, Excise and Prohibition is a nullity.

3. Mr. Shahi has referred to the statements made in this regard at paragraph 39 of the writ petition to submit that specific issue has been raised by the petitioner as regarding the jurisdiction in the Principal Secretary to pass the impugned order and which is returned by an evasive reply given by the respondents in paragraph 17 of the counter affidavit that the petitioner not having raised his objection earlier, the ground has been waived of.

4. Having heard learned counsel for the parties and considering the legal issue raised, it would not detain this Court to hold that the order bearing Memo No.3362 dated 19.7.2016 impugned at Annexure-1 not being an order of the State Government, is a nullity and is accordingly quashed and set aside.

5. This order, however, would not preclude the authority concerned, if so advised, to proceed in the matter, but in accordance with law. It is clarified that this Court has not expressed any opinion on the merits of the case.

6. The writ petition is accordingly allowed.