Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 31/08/2026

(1989) 05 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2321 of 1988

Panchanan Jha APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 25-05-1989

Acts Referred:

Bihar Service Code, 1952 — Rule 68, 70, 71, 74
Constitution of India, 1950 — Article 146, 154, 158(3), 217, 226
Executive Business Rules — Rule 10, 15, 16, 32, 5
Government of India Act, 1935 — Section 305
State Governors (Emoluments, Allowances and Privileges) Act, 1982 — Section 10, 11, 12, 13, 13(1)

Citation : (1992) 1 PLJR 314

Hon'ble Judges : Uday Sinha, J;Binod Kumar Ray, J

Bench : Division Bench

Advocate : T.K. Jha and M.K. Jha, for the Appellant; R.B. Mahto, J.N.P. Sinha, Mahesh Prasad and Rajeshwar Pd., for the Respondent

Final Decision : Allowed

Judgement

Uday Sinha, J.—This is an application under Articles 226 and 227 of the Constitution of India, for quashing Anntxure-7 dated 23rd March, 1988, issued by Additional Secretary to the Governor, State of Bihar (Respondent No. 3) compulsorily retiring the Petitioner with effect from 23rd March, 1988, the day the notification was issued. The petitions has also prayed for a writ of mandamus directing the State of Bihar and Secretary, Cabinet Secretariat and Coordination Department (Respondents 1 and 2) to accord permission to work as an Officer of the State of Bihar.

2. The Petitioner was initially appointed as stenographer Class II in the appointment department of the State Government. There after he was posted in the Relief and Rehabilitation Department of the State of Bihar in February, 1952. In October, 1957, he was transferred and posted in the same capacity in the Finance Department. Subsequently, he worked as stenographer Class I and in

that capacity worked till 29.5.1962. It appears that one Jamuna Prasad Kara, who was working at Personal Secretary (Hindi) to the Governor, reverted back to the Finance Department and ns stead the Petitioner Panchanan Jha was appointed to that post. The Petitioner was conformed as Personal Secretary (Hindi) to the Governor with effect from 10.2.1964, against the permanent post created in appointment Hutment G.O. No. III-G 1-1010/58/58A-9131 dated 30.7.58 (Annexure C). His lien in the Finance department was terminated. In June, 1968, the Petitioner was appointed to the Gazetted post of Senior Personal Assistant to the Governor with effect from 1st June, 1968, on substantive permanent past (Annexure-D) by office order dated 23rd July, 1970. The Petitioner, who was senior personal Assistant to the Governor, was allowed to draw Annual increment with effect from 1st June, 1970, raising his pay to rupees 625/- per month (Annexure E). In June, 1980, a notification was issued by the Joint Secretary, Cabinet Secretariat, that Panchanan Jha (the Petitioner) was being appointed by promotion to the post of Under Secretary in the Governor''s Secretariat, which post had been created by the State Government by Cabinet Secretariat order No. CS2/G/-10/80-1819 dated 30.5.1980. By the very same notification Brijnandan Prasad, Private Secretary, was also promoted to the post of Under Secretary, Governor''s Secretariat. In May 1985, the post of Deputy Secretary to the Governor fell vacant consequent upon the retirement of Shri Shiv Shankar Singh. The Petitioner, Panchanan Jha was promoted temporarily to that post to fill the gap. Notification to that effect was issued by Governors'' Secretariat by memo dated 13.9.1985, and the Petitioner assumed charge of that post. The Governors'' Secretariat requested the State Government to issue regular notification in regard to the appointment of Panchanan Jha as Deputy Secretary. The memorandum put up before the Cabinet of State of Bihar, annexure 3, shows that the promotion of the Petitioner had the recommendation of the Governors'' Secretariat. Item No. 6 which was approved by the Cabinet reads as follows:

eaf=eaMy lfpoky;

6 & Jh iapkuua >k] jkT;iky ds voj lfpo dk fnukad 13 & 9 & 85 ls mi lfpo ds in in 1375 & 2300 #- ds osrueku~ esa fu;fer izksUufr dk izLrko A ** ?6? Lohd`r

The cabinet approved the promotion of the Petitioner to the post of Deputy Secretary with effect from 13.9.1985, in the pay scale of Rs. 1375-2300. Paragraph 8 of the memorandum shows that the proposal and the memorandum had the approval of the Chief Minister. In May, 1987, the State Government issued notification appointing the Petitioner, by promotion, to the post of Deputy Secretary with effect from 13.9.1935, with posting in the Govenors'' Secretariat. In March, 1988, Mr. P. Venkatasubjah demitted office of Governor and was succeeded by Mr. Govind Narain Singh. It appears that shortly after his advent on the scene a storm blew up in the Raj Bhawan at Patna. Something unsavoury took place in the Raj Bhawan. The Petitioner in state of exasperation wrote to the Private Secretary to the Governor by annexure 5, dated 13.3.1988, that the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

Petitioner wanted to retire with effect from 1.4.1988. Only six days later, on 21.3.1988, he wrote to the Additional Secretary to the Governor Raj Bhawan, Patna withdrawing his request for voluntary retirement. He prayed that Cabinet Secretariat need not be informed about his request for voluntary retirement. He also prayed that he should be relieved from the Governor''s House to join as Private Secretary to Minister of State for Public Health and Engineering Department. Nothing has been brought to our notice indicating that the Governor or the State Government did not permit him to withdraw the resgination letter, annexure 6. On 23.3.1938, the Additional Secretary to the Governor issued the impugned annexure (annexure 7) compulsorily retiring the Petitioner which reads as follows:

Dated the 23rd March, 1988.

Notification No. 89/GS Sri P. Jha, Deputy Secretary to the Governor of Bihar, Patna, is voluntarily retired with immediate effect.

By order of the Governor of Bihar.

Sd-(R.K. GUPTA) Addl. Secretary to the Governor.

Hence the present application for quashing annexure 7.

3. The stand of the Petitioner is that he was at all times an Officer of State of Bihar on deputation to Governor''s Secretariat. The Petitioner being an Officer of the State Government, the Governor had no jurisdiction to order compulsory retirement of the Petitioner on his own, without the aid and advice of the Council of Ministers. According to the Petitioner ha could have been retired only by the State Government and not by the Governor.

4. The stand of the State as well as of the Governor, although represented by separate counsel, is that the Petitioner having been appointed to a permanent post in the Raj Bhawan Secretariat, his lien with the State of Bihar was terminated. Thereafter, he worked as an Officer of the Raj Bhawan Secretariat and the State Government had nothing to do with him. The second stand of the Respondents also is that the Petitioner having offered to go on voluntary retirement he could not withdraw that offer unilaterally. Permission to withdraw the resignation not having been accorded, the Petitioner must be deemed to have retired voluntarily from 1.4.1988. The Respondents also contended that the Petitioner was guilty of misdemeanour and the order for compulsory retirement was well merited and in public interest. The impugned order in Anuexure-7 can not therefore, be quashed.

5. Respondents 1 and 2 have been represented by learned Government Advocate and-the Additional Secretary to the Governor has been represented by learned Advocate General, State of Bihar. It is not in controversy that the Petitioner was appointed by the State of Bihar as a stenographer. Every appointment in the Bihar Secretariat used to be done when the Petitioner was appointed-by the appointment department of the State of Bihar. He was initially i.e. in 1952, in the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

department of Relief and Rehabilitation. Subsequently he was transferred in the Finance department and posted as a stenographer. On-28.9.1962, lit Petitioner was sent on deputation to the Raj Bhawan. On his deputation to Raj Bhawan his lien in the Finance department would certainly come to an end. The question, however is whether he retained any lien with the State of Bihar or not.

6. Learned Government Advocate, in support port of his stand, has relied upon annexure B dated 7.8.1964, issued by the Finance Department, State of Bihar, where it has been stated, that, consequent upon the Petitioner having been confirmed in the post of personal Assistant (Hindi) to the Governor, the lien of Panchanan Jha, in the Finance Department was being terminated. Annexure C is an office order issued by the Secretary to the Governor dated 25.8.1964. In this office order, it has been stated that the Petitioner was being confirmed on the post of Personal Assistant is Governor (Hindi) with effect from 12.2.1964, against the Permanent post created in the appointment department G.G. No. III GI-1010/58/58A-9131 dated 30.7.1958. Copy of this order was forwarded to Under Secretary, Finance, for terminating the lien of the Petitioner in the Finance department consequent upon his conformation in the Raj Bhawan Secretariat. Annexure-D dated 22.6.1968, to the counter affidavit filed on behalf of the State is another notification in the name of the Governor of Bihar, issued by the Secretary to the Governor, in which it has been stated that the Petitioner was being appointed to the Gazetted-post of Senior Personal Assistant to the Governor in particular scale of Rs. 290-650. Annexure-E med 27.6.1959, is a notification issued by the Secretary to the Governor in regard to payment of cypher allowance of Rs. 45/- per month to B.K. Prasad, A.P. Governor (Hindi). Annexure E/1 is an office order dated 23rd July, 1970, permitting the Petitioner to draw annual increment with effect from 1st line, 1970, raising his pay to Rs. 625/- per month. Annexure F dated 9.8.1983, is a notification issued by the Under Secretary to Governor, Bihar, appointing the Petitioner to the post of Deputy Secretary with effect from 1.8.1982.

7. Those are the documents on which the Respondents relied for contending that the Petitioner was not an employee of the State of Bihar and, therefore, the Governor, in his individual judgment, was fully competent to terminate his services. Special reliance has been placed upon annexure 8 terminating the lien of the Petitioner from the post of stenographer class I in the Finance department. Prima facie Annexure B does provide a foothold for the Respondents to sustain their case. The documents (annexures B to E/1), however, should not be appreciated in isolation. They must be considered in the back drop of other documents filed by the Petitioner.

8. Annexure 1 issued by the Joint Secretary Govt, of Bihar, dated 2.6.1980, shows that the Petitioner was being appointed temporarily to the post of Under Secretary, a post which had been created by Cabinet Secretariat of the State Government by order No. CS 2/GI-1018/80-1819 dated 30.5.1985. This shows that the post Under Secretary has been created by the State Government. This

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

also shows that the Petitioner had been appointed Under Secretary by the State Government. The notification, annexure 1 was issued by Cabinet Secretariat of the State Government. By Annexure 2 dated 28.9.1983 Lashmanji Sahay, Under Secretary to the Governor of Bihar, wrote to Deputy Secretary, Cabinet Secretariat, Govt. of Bihar, for issuing notification in regard to the confirmation of Panchanan Jha Pursuant to annexure 2, the request from the Governor, to Bihar Government, the Chief Minister concurred in the appointment. The question of substantive appointment of the Petitioner, Panchanan Jha to the post of Deputy Secretary to the Governor was placed before the Cabinet of the Bihar Government. The memorandum-annexure 3 dated 4.5.1987, shows that the Petitioner had been appointed Deputy Secretary to the Governor, on the recommendation of the Governor. Item No. 6 which was agenda of the cabinet meeting shows that the Cabinet accepted the proposal to confirm Panchanan Jha to the post Deputy Secretary in the pay scale or Rs. 1375-2300 with effect from 13.9.1985. In pursuance of the decision of the Cabinet of the Bihar Government, the Joint Secretary, Cabinet Secretariat, Govt, of Bihar, issued notification CS2-G-1025/85 dated 8.5.1987. By the notification CS2-G-1025/85 dated 8.5.1987. By this notification the State Government promoted the Petitioner as Deputy Secretary to Governor. The relevant portions of the notification read as follows:

fcgkj ljdkj] eaf=eaMy lfpoky; A vf/klwpuk

iVuk & 15] fnukad ebZ] 1987 bZ-

la[;k & lh- ,l- 2 @ th & 1025 @ 85 & Jh iapkuu >k] voj lfpo jkT;iky lfpoky; dks fnukad 13 & 9 & 85 ls mi lfpo ds in ij izksUufr nh tkrh gS rFkk jkT;iky lfpoky; esa inLFkkfir fd;k tkrk gS

fcgkj jkT;iky ds vkns''k l ? fueZysUnq pVthZa ? ljdkj ds la;qDr lfpo A

It will thus be seen that the Petitioner was appointed Under Secretary by the State Government. He was appointed Under Secretary by the State Government. The notifications in regard to his appointment were issued by the State Government. The Governor did not confirm the Petitioner but recommended to the State Government that he be confirmed and notification to that effect be issued. These clearly show that despite the issuance of annexure B the Petitioner was always treated by the State Government and by the Governor as a permanent employee of the State Government. If the Petitioner was out and out a Raj Bhawan employee it is difficult to appreciate why the State Government issued notification appointing the Petitioner Deputy Secretary and why the Cabinet of the Bihar Government considered and approved the substantive appointment of the Petitioner. These clearly show that so long as the Petitioner was attached to the Governor, he always had his links with the Government of Bihar.

9. Annexures 1 to 4 clearly establish the conclusion to which I have arrived in regard to the status of the Petitioner.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

10. The reconciliation can be arrived at in the manner that while the Petitioner''s lien in the Finance department had been terminated his lieu with the State of Bihar still subsisted. That must be held to be so for the reason that the Petitioner had been appointed by the appointment department and prior to his posting in the Finance department, he had been postal, in the department of Relief and Rehabilitation. Thus, the Petitioner''s lien in the Finance department may have been terminated by annexure B. His lien with the State of Bihar however still subsisted-may be, in the department of Relief and Rehabilitation or in the appointment department.

11. Learned Government Advocate submitted that after the issuance of annexure B laminating the lien of the Petitioner in the Finance Department, the State Government had nothing to do with the Petitioner. He, therefore, contended that annexures 1 to 4 had all been issued by the State Government without jurisdiction. This stand of learned Government Advocate is clearly untenable. It is untenable firstly for the reason that that is not the stand of the State Government in the counter affidavit where the factual and legal position has been set out. What is the stand of a party a clearly a question of fact. That stand may be based upon interpretation of the law but the existence of a particular stand is a question fact. It should be advanced clearly and cogently. In the counter affidavit filed by the State Government, there is no averment that annexures 1 to 4 were issued without jurisdiction and that they were void on that score. It is undoubtedly that the Petitioner was on the staff of the Raj Bhawan establishment with from 10.2.1964 and his lien in the Finance Department was purported to have been terminated by Government order dated 7.8.1964 but there is no averment that annexures were issued without jurisdiction.

12. I have some difficulty in appreciating the submission urged by learned Government advocate. In one breath he contended that the Petitioner was a civil servant and was covered by Bihar Service Code while he was employed in the Raj Bhawan and in the other breath contended that the Petitioner?s lien having been terminated in the Finance department there was no link left between the Petitioner and the State Government. Learned Government Advocate was categoric in his submission that the Petitioner was a civil servant working as Deputy Secretary in the Raj Bhawan. Learned Government Advocate also stated categorically that the question of employment and non-employment in the Raj in is an affair of the State Government. The Governer''s Secretariat is part of Government. The employees in that Secretariat are for assisting the Governor in discharge of Governor''s functions. The Governor being the head of the executive in the State every employee of the Raj Bhawan must be deemed to be an employee of the State Government. Learned Government Advocate also stated that the Petitioner''s services had been placed at the disposal of the Governor but he would be drawing salary from the consolidated fund of the State Government. Having conceded thus far learned Government Advocate submitted that annexure 3 and 4 were misconceived since the Petitioner''s lien had already been terminated. Learned Government Advocate went to the extent of stating that the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

deliberation of the Bihar Cabinet of the Council of Ministers was redundant and that the Council of Ministers had no jurisdiction to consider the matter mentioned in annexure 3. In my view, the submission of learned Government Advocate that the Petitioner continued to remain as State Civil servant has substance but I fail to appreciate how his lien could be terminated for all times. He was still a State employee. Learned Government Advocate having conceded that the Petitioner was an employee of the State Government even while serving in the Raj Bhawan, the submission that he had been divested of the privilege of a civil servant would be contradictory. The submission urged on behalf of the State Government is, therefore, rejected as being fallacious.

13. Learned Government Advocate appearing on behalf of the State of Bihar alternatively contended that the Petitioner, having resigned from the post of Deputy Secretary to Governor, cannot be permitted to contend that he was in the service of Raj Bhawan or of the State Government. Reliance was placed upon annexure 5 dated 15.3.1988 by which the Petitioner offered to go on voluntary retirement with effect from 1.4.1988.

14. I regret I am unable to find any force in this submission. Annexure 6 shows that only six days after he had offered to go on voluntary retirement, the Petitioner withdrew his request to go on voluntary retirement i.e. on 21.3.1988. He requested the Additional Secretery to the Governor to request the Cabinet Secretariat not to issue orders of voluntary retirement. Learned Government Advocate submitted that the prayer for withdrawal of the retirement request cannot be a unilateral affair and that unless the Governor permitted, the withdrawal request had no sanctity.

15. In my view this submission has only got to be stated to be rejected. A similar situation arose in Union of India v. Gopal Chandra Mishra 1978 S.C. 694 where Satish Chandra, J. of the Allahabad High Court had written to the President of India on 7.5.1977, that he was resigning from the office of Judge of the High Court of Judicature at Allahabad. The resignation was to take effect from 1.8.1977. Before the date mentioned in the letter of Justice Chandra, he withdrew his letter of resignation by writing to the President of India on 15.3.1977. Question arose whether Justice Chandra''s resignation must be taken as effective and that the withdrawal of the resignation was of no consequence. On 1.8.1977, Gopal Chandra Mishra, an advocate of the Allahabad High Court filed an application under Article 226 of the Constitution contending that the resignation dated 7th May, 1977, which had been duly i communicated to the President of India, was final and irrevocable and Mr. Chandra ceased to be Judge of Allahabad High Court with effect from 7th May, 1977, or at any rate from 1st August, 1977. A Special Bench of five Judges allowed the application by majority of 3 against 2. The High Court held that a resignation once tendered to the President in terms of proviso A to Article 217 of the Constitution was irrevocable and that the subsequent letter withdrawing the resignation was inconsequential. The Union of India as well as Chandra. J (as he then was) filed appeal against

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

the judgment to the Supreme Court. The Supreme Court held that where a Judge had prescribed a particular date from which his resignation would be effective and if the Judge withdraws his resignation before that date comes to pass, the resignation will not take effect as the act of resigning office is not complete before the fixed date. The authority of the Supreme Court in the above case must apply to the present case as well. Every civil servant is entitled to resign and demit office but if he withdraws his resignation before it has been accepted or has taken effect, it would be open to the civil servant to withdraw it, and set the resignation at naught The Petitioner having withdrawn his resignation before the fixed date, did not debar himself from withdrawing his offer of resignation.

16. Learned Government Advocate, in support of his submission that while it is opal to a civil servant to resign from office, the withdrawal of resignation is not unilateral Reliance was placed upon State Government decision in relation to Rule 74 of the Bihar Service Code. The decision relates to voluntary retirement by civil servant. Paragraph of that decision in Malhotra''s Bihar Service Code at page 39 (Part I) reads as follows:

??? ,SfPNd rkSj ls lsok fuo`Rr gksus dh lwpuk fu;qfDr inkf/kdkjh dh lgefr ls okil Hkh yh tk ldrh gS c''krsZ fd okil Hkh yh tk ldrh gS c''krsZa fd bl okilh dk vuqjks/k lwpuk dh frfFk lekIr gksus ds iwoZ fd;k tk;sA

From the above it was contended that the resignation may be withdrawn with the permission of the joining authority provided that request for withdrawal is made prior to the expiry date fixed for resignation. On the basic of the above, learned Government Advocate contended that no permission to withdraw having been granted, the Petitioner''s resignation must be deemed to have been effective on the day the letter was sent by the Petitioner to the Governor.

17. I regret, the proposition enunciated by learned Government Advocate is ill founded. The note quoted above clothes the officer with right to withdraw his resignation if he withdraws it before the appointed date. If the Hoer withdraws his resignation before the fixed date, It would be obligatory for the appointing authority to treat the resignation as withdrawn.

18. I regret the submission is entirely untenable. The substantive rule in terms of Article 309 of the Constitution is Rule 74 of the Service Code. The submission urged on behalf of the Petitioner must be rejected on the contents of the rule itself. Rule 74(b)(i)(ii) and (iii), so far as are relevant read as follows:

(i) Notwithstanding anything contained in the preceding sub-rule a Government servant may, after giving at least i 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.

(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

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

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.

(iii) A Government servant who retire voluntarily is required to retire in public interest under this rules on attaining the age of 50 years, or completing qualifying service of 30 years, shall be entitled to retiring pension and deaths-cum-retirement gratuity.

From the above it follows that just as the late Government is free to require any Government servant to retire from Government service after attaining the age of fifty years after giving three month''s notice, the civil servant also in his turn is free to proceed on voluntary retirement after giving three month''s notice. That is appreciable. If Government has right to throw out any of its employee the employee also has the right to throw out, or walk out from, Government service. The passage in the Government decision quoted above, it only an enabling provision. It cannot cut down the substantive right of civil servant to walk out when he likes. No permission need be required for retracing his proposed step to retire. In my view, the decision of the Supreme Court in the case of Satish Chandra, J. is a complete answer to the submission urged on behalf of learned Government Advocate that no permission having been granted to withdraw, his resignation, the resignation must be deemed to have become effective. In my view there is no substance in this submission and is rejected accordingly.

19. In view of the categorical stand of learned Government Advocate that the Petitioner was a Government servant at all times bound by all privileges and liabilities under the Bihar Service Code, the submission that the Petitioner''s lien had been terminated from the Finance department is if no consequence. Rule 68 of the Bihar Service Code lays down that a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold lien previously acquired to any other post. Rule 70 provides for suspension of lien. It reads as follows:

(a) The lien of Government servant on permanent post which he holds substantively shall be suspended if he is appointed in a substantive capacity:

(1) to a ternure post, OF

(2) to a permanent post outside the cadre on which he is borne, or

(3) Provisionally, to a post on which another Government servant would hold a lien had his Hen not been suspended under this rule.

(b) State Government may, at this option, suspend the lien of a Government servant on a permanent post which he holds substantively if he is deputed out of India or transferred to foreign service, or, in circumstances not covered by Clause (a) of this rule is transferred, whether in a substantive or officiating capacity, to a post in another cadre, and if any of these cases there is reason to believe that he

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

will remain absent from the post on which he holds a lien for a period of not less than three years.

(c) Notwithstanding anything contained in Clause (a) or (b) of this rule a Government servant''s lien on a tenure post may in no circumstances be suspended. If he is appointed substantively to another permanent post, his lien on the tenure post be terminated.

(d) If a Government servant''s lien on a post is suspended, under Clause (a) or (b) of this rule, the post may be filled substantively, and the Government servant appointed to hold it substantively shall acquire a lien on it, provided that the arrangements shall be reversed as soon as the suspended lien revives.

(e) A Government servant''s lien which has been suspended under Clause (a) of this rule shall revive as soon as he ceases to hold a lien on a post of the nature specified in Sub-clauses (1), (2) or (3) of that clause.

(f) Government servant''s lien which has been suspended under Clause (b) of this rule, shall revive as soon as he ceases to be on deputation out of India, or on foreign service or to hold a post in another cadre, provided that if there is reason to believe that he will, on return from leave, continue to be on deputation out of India, or on foreign service, or to hold a post in another cadre and the total period of absence on duty will not fall short of three years or that he will hold substantively a post of the nature specified in Sub-Clauses (1), (2) or (3) of Clause (a).

From the above, it will be seen that the lien of a person holding a substantive appointment will remain suspended so long as he is on a permanent post outside the cadre on which he is borne. In this case, the Petitioner belonged to the service of Bihar Government and had a lien on substantive post in the Finance Department. From there, he was transferal on deputation to Raj Bhawan where he was appointed on substantive post. Since he had gone outside the parent cadre his lien there in must be deemed to have been suspended, not terminated. The submission urged on behalf of the State Government by learned Government Advocate is untenable.

20. Learned Advocate General appearing on behalf of the Governor adopted a different posture. It was contended by him that the Raj Bhawan is a separate establishment, separate from Government. With this as the starting point, he submitted that the Petitioner lien from Finance department had been terminated. It was submitted that the Petitioner having taken substantive appointment in THE Governor''s secretariat, he could not (sic) backs upon the lien in the State Service. This submission has two facets: is the first is that the Raj Bhawan Secretariat is a separate establishment, separate from Government, the second facet is that the Petitioner''s lien with the State Government had been terminated.

21. Let us examine the above submissions of learned Advocate General. Could the Petitioner''s lien be terminated. Rule 71 of the Bihar Service Code reads as

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

follows:

(a) A government servant''s lien on a post may in no circumstances be terminated even With his consent, if the result will be to leave him without a lien, or a suspended lien upon a permanent post.

(b) In a case covered by Sub-clause (2) of Clause (a) of Rule 70, the suspended lien may not, except on the written request of the Government servant concerned, be terminated while the Government servant remains in Government of service.

From the above, it will be seen that a Government servant''s lien cannot be terminated even with his consent. According to learned Advocate General, the Petitioner''s lien in the Finance department was terminated and, therefore, he had no right to come back to State service. In this case, there is nothing before us to show that the Petitioner had asked for termination of his lien with the State Government. Even if it is assumed for the sake of argument that the Petitioner having accepted a substantive appointment in the Raj Bhawan must be deemed to have asked for termination of his lien in the State Service, the Petitioner Spay not have the right to come back to Finance department but he certainly had the right to revert to Bihar Government services in any department. Further the provisions of Rule 74 certainly would come to the aid of the Petitioner even for his return in the Finance department. I have held earlier that the Petitioner''s deputation to a permanent post in the Governor Secretariate would amount to suspension of his lien in the Finance department. Consequently his lien was revived and the whole process reversed in terms of Rule 70(d) entitling the Petitioner to return back to Finance department. The injunction of Rule 71(a) is par and positive. Even if the Petitioner had wed for termination of his lien, it could not have been terminated in terms of that rule. The Petitioner''s lien with the State Government must be deemed to have been suspended not terminated. This disposes of the submission of learned Advocate General that the Petitioner had ceased to be State Government employee and the Governor could order compulsory retirement of the Petitioner.

22. Let us now examine whether the Raj Bhawan establishment is separate from the State Government and whether the employees of Raj Bhawan are employees of the State Government. In support of his proposition learned Advocate General drew our attention to the provisions of Article 158(3) which provides that a Governor shall be entitled to use an official residence and shall be entitled to such emoluments, allowance and privileges as may be determined by law and until provision in that behalf is so made, the emoluments, allowances and privileges as is specified in Schedule II will be available to the Governor. Article 158(3) provides for the emoluments, allowances and privileges of Governor but it makes no provision for any establishment separate from the State Government. Schedule II part A in relation to the President of India and Governor of the States contains only four clauses. It does not provide for any service independent of the State Governors (Emoluments, Allowances and Privileges) Act, 1982. Section 3

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

provides for the emoluments to which a Governor would be entitled. Section 4 deals with payment of leave allowances of the Governor without payment of rent. Section 6 provides for household establishment provided to the Governor and lays down that subject to any rules, no charge shall fall on a Governor personally in respect of pay, allowances or pension, or other emoluments paid to or facilities provided for the household establishment provided to the Governor. Section 7 deals with medical treatment facility. Section 8 deals with rent or hire free conveyance to the Governor. Section 9 deals with the travelling allowance payable to the Governor on assuming office or on demitting office. Section 10 provides for furnishing allowance and allowance of maintenance of official residence. Section 11 lays down other privileges & allowances to which the Governor may be entitled. Section 12 provides that the President may sanction increase in allowance or expenses by special Order. Section 13 is a rule making power of the President. These are the provisions under the Governors (Emoluments, Allowances and Privileges) Act, 1982. It will be appreciated that neither the Constitution creates any service or cadre for the Raj Bhawan nor does Governors (Emoluments, Allowances and Privileges) Act, 1982, create any service distinct from State Service. Under Government of India Act. 1935, Section 305 provided that a Governor could have his own secretarial staff to be appointed in his discretion. That position was got altered after independence and the Governors discretion in that matter was dropped.

23. Juxtaposed to this situation may be considered some other provisions in the Constitution, where independant cadres/services have been created. Our constitution is based on the theory of separation of powers. It contemplates that the State, in the abstract, consists of three wings, the Legislature, the Executive and the Judiciary. It is easy to appreciate the field of operation of the Legislature and the Judiciary. What is left thereafter is the field of the executive. The construction contemplates independence of the three wings of the State. It does not, however, contemplate independent President or independent Governor. The President and the Governor clearly form part of the Executive. Article 53 lays down that the Executive power of the Union shall be vested in the President and shall be exercised by him cither directly or through officers subordinate to him in accordance with the Constitution. Article 154 provides that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through Officers subordinate to him in accordance with the Constitution. It is thus axiomatic that the President of India and Governors are part of the Executive of the State, may the head of the Executive. Article 98(1) provides for if secretariat for the Parliament which lays down that each house of Parliament shall have a separate secretariat and staff. Article 98(2) provides that the Parliament may by law regulate the recruitment and conditions of services of the person appointed to the secretarial staff by either house of Parliament. Article 98(3) provides for making of rules regulating tin recruitment and the conditions of service or persons appointed to the secretarial staff of the House of the People or the Council of States. Similarly, the Constitution has provided for

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

separate secretarial staff for each house of the Legislature of State with rules relating to recruitment and condition of service as prescribed by the House of the Parliament or House of the State. Article 146 of the Constitution provides that Officers and servants of the Supreme Court shall be appointed by the Chief Justice of India or such other Judge or of officer of the Court as he may direct. Their conditions of service shall be such as may be prescribed by rules made by the Chief Justice of India or some other Judge or officers of the Court authorised by the Chief Justice.

24. Let us now analyse the nature of the establishment of the Raj Bhawan. I have stated earlier that the conditions of Governor''s office and the emoluments of his office have described in Article 158(3) of the Constitution. Part A thereto lays down the emoluments Rs. 5500/- per mensem payable to a Governor. Clause 2 provides for allowances to the Governor. Clause 3 relates to the privileges. Article 158(3) provides that a Governor shall be entitled to such emoluments, allowances and privileges as may be determined by law and until Parliament has determined them schedule II shall govern the emoluments, allowances and privileges of the Governor. In 1982, the Parliament enacted the Governors (Emoluments, Allowances and Privileges) Act, 1982 (Act 43 of 1982), hereinafter called the Act. I have set out earlier the provisions of this Act. I would only state here that the Act does not empower the Governor to create his own cadre of employees. In fact, Section 11(2)(c) and (d) deal With only household establishment expenses and other office expenses of the Governor. The Section provides that subject to any rules the Governor shall be paid such amount as the President may determine. The Act thus does not empower the Governor to make any appointment except for his household establishment to create any cadre or to by down conditions of service. Section 13 of the Act is the rule making power of the Governor. Sub-section (1) provides that the President may make rules for the purpose of giving effect to the provisions of the Act. Section 13(2) provides that such rules may provide for all or any of the several matters enumerated therein. They include grant of leave to a Governor, the matters relating to the household establishment provided to the Governor, medical assistance, use of Motor vehicle, travelling allowance, allowances for regulating, furnishing and for maintenance of office residence and the privileges to which the Governor is entitled and the allowances and the expenses payable to a Governor. It will thus be seen that the Act does not empower the Governor to make any appointment. That power not having been vested in him it is axiomatic that the Governor has no power to dismiss or remove any secretarial staff which must include compulsory retirement of any officer of the Raj Bhawan.

25. The question then arises who are these officers attached to the Raj Bhawan and what is their status. Rule 5 of the Rules of Executive Business, prescribes that the business of the Government shall be transacted in the departments specified in the First Schedule and shall be distributed between those departments as laid down therein. Rule 6 lays down, that the Governor shall, on the advise of the Chief Minister, allot amongst Ministers the business of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

Government by assigning one or more department to the charge of a Minister. The Schedule enumerates the different departments of the Government. Mark the word departments of the Government. The first amongst them is Cabinet Secretariat and Coordination department. The schedule thereafter contains a list showing a classification and distribution of business between departments of secretariat. Item 8 therein reads as under:

8. Administrative matters relating to the Governors secretariat.

From these it is obvious that the Governor secretariat also is a charge of the State Government. The Cabinet secretariat and Coordination department are concerned with the Governors Secretariat. In my view, therefore, it is, obvious that the Governor has no independent status, in any business relating to the Government house. He has to act upon the aid and advice of the council of Ministers. That must be so as the Governor Secretariat is one of the charges of the department of Cabinet Secretariat,

26. Let us probe the matter a little deeper. Rule 32 of the Rules of Executive Business provides a list, of cases which shall be submitted to the Chief Minister through the Chief Secretary of the department concerned after consideration of the Minister incharge but before issue of orders. In terms of Clause 32(A)(12) all cases pertaining to the Governor''s personal establishment and Raj Bhawan matters must be placed before the Chief Minister by the Chief Secretary. Can it then be said that the Governor has an independent status and independent establishment with rights to appoint and dismiss/remove? I have considerable difficulty in acceding to this submission. Rule 10 of the Rules of Executive Business lays down that subject to the orders of the Chief Minister under Rule 15 all cases referred to in third schedule to the Rules shall be brought before the Council in accordance with the provisions of the rules contained in part II. Rule 15 provides that all cases referred to in the third Schedule shall be submitted to the Chief Minister for bringing it up for consideration at a meeting of the Council under Rule 16 or, in cases of extreme emergency, the order of the Chief Minister shall be obtained for authorising action in anticipation of the approval of the council. Item 28 in Schedule III reads as follows:

Proposals relating to dismissal, removal or compulsory retirement of any office; who has been appointed by the Government and the maximum pay of the post which he holds exceeds Rs. 1510.

All these show that the Governors'' secretariat is not an independent establishment. It is part of the executive. It is par of the State Government.

27. The matter in my view has now be come clear beyond controversy after the enactment of the Governors (Emoluments. Allowance and Privileges) Act, 1982. This Act came into force on 1st April, 1987. In exercise of the powers conferred by Section 13 of the said Act, Central Government has framed rules Governors (Allowance and Privilege) Rules, 1987. These rules also came into force on the Ist April, 1987 by G.S.R. 343(E) dated 30.3.1987. Rule 5 reads as follows:

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

Expenses of Governors Secretariat etc - In addition to the household establishment the Governor shall be entitled separate secretarial staff which shall be provided by the concerned State Government.

The State Government has to provide the secretarial staff for the Governor. Thus the household establishment is the personal affair of the Governor in terms of Section 11 but the secretarial staff is provided by the State Government. The secretarial staff are State Government servants. There should be no difficulty in approbating that the State Government having provided the secretarial staff those officers must, therefore, be held to be officers of the State Government. There can, therefor, be no question of the lien of those secretarial staff with the State Government being terminated. That would be against Rule 71 of the Service Code. The Governors (Emoluments, Allowances and Privileges) Rules, having come into force on Ist April 1987, the status of the Petitioner was that of a State Government employee, Before Independence Section 305 of the Government of India Act, 1935, had provide for the Governor having his own Secretarial Staff. That empowered the Governor to appoint his own Secretarial staff in his own discretion. He had also the discretion to determine the salary and allowance and other facilities to be provided to such staff. But when the Government of India Act, 1935 was adopted as from 15.8.1947 by the Indian Provisional Constitution Adaptation Order 1947 Section 305 of the said Act was modified. The Governors discretion in regard to the powers u/s 305 was cut down. Since then the staff of the Governor secretariat is sanctioned by the State Government according to the norms adopted by them in their own secretariat. The scales of pay, allowance and other conditions of service of a staff of the Governors secretariat are also determined by the State Government. A committee on rationalisation of expenses in Rashtrapati Bhawan and Raj Bhawan (Vol. I part I) recommended as follows:

The staff in the Governor''s Secretariat is sanctioned by the State Government according to the norms adopted by them for their own secretariat. The scales of pay, allowances and other conditions of service of the staff of the Governor''s secretariat ''ate also determined by the State Government. The Committee is of the view that the existing position may continue. The State Governments should, however, take into consideration all the work devolving on the Governor in his various capacities including that as Chancellor of the various Universties in the State, while determining the strength of the staff in the Governor''s secretariat and respect the wishes of the Governor. As regards the appointment of staff the Governor should have full discretion to select and appoint his private Secretary and personal Assistants only by deputation or otherwise and their terms should normally be co-terminus with that of the Governor. Selection of ADCS should be made by the Governor from police service or Defence Services. In the case of ex-cadre posts like that of Secretary, Deputy Secretary, in the Governor''s Secretariat, the Governor may select officers of his choice from the Cadre.

Having considered all aspect of the matters, I have not the least doubt that the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

secretarial staff of the Raj Bhawan are State Government employees as they are all drafted from the State Service. They are the State servants and are entitled to all rights and privileges under the Bihar Service Code. They are placed only on deputation at the Raj Bhawan. They do not cease to be servants of the State Government. The lien in the State service cannot be terminated until the officer is dismissed or removed from service. The order of termination of lien in the Finance department was contrary to the provisions of Rule 71 of the Bihar Service Code It must be read as being a case of suspended lien.

28. Since the Petitioner was State Government employee and the termination of the lien was illegal, the Petitioner must be deemed to be governed by the rules of the Bihar Service Code. He could be compulsorily retired; but only by the State Government, in terms of the Bihar Service Code. If the Governor was not satisfied with his performance he could send back the Petitioner to the parent cadre but the Governor on his own had no power to order compulsory retirement of the Petitioner. The State Government not having passed order for compulsory retirement, the Petitioner must be deemed to be in service at all times. The various annexures annexed by the Petitioner must be read and appreciated in that backdrop. Since the secretarial staff has to be provided by the State Government in that very context the notification in regard to appointment of the Petitioner to the post of under Secretary to the Governor was issued by the State Government. In that very back ground the Cabinet took a decision to promote the Petitioner to the post of Deputy Secretary (annexure 3). Annexure 4 also must be read in that very light. Annexure 10 establishes that the State Government sanctions the upgradation of one Non-gazetted permanent post of Personal Assistant, one post of Personal Assistant to Governor and one Gazetted post of Senior Personal Assistant to the Governor. This shows that the Governor is provided staff by the State Government. The Governor has no power lo appoint any One in the secretarial staff. The grant of cypher allowance to the Petitioner by the State Government also shows that the link between the Petitioner and the State Government had not been snapped. If the Petitioner''s lien in the State Government had been terminated, there could be no occasion, for the Central Government writing to Under Secretary, Government of Bihar, Cabinet Secretariat, in regard to emoluments of the Petitioner while he was on deputation to Government of India service as Private Secretary to A.P. Sharma, Union State Minister for Industry and Civil Supplies (See Annexures 12 and 13) If the Petitioner had become a permanent employee of the Raj Bhawan and his lien with the State Government had come to an end, the correspondence would have been with the Governor and not with the Under Secretary, Govt. of Bihar, in the Cabinet Secretariat. It was stated in annexures 14 and 15 that while the Petitioner was on deputation to Govt. of India as Secretary to Mr. A.P. Sharma, his lien on the post of private Secretary to Governor would remain effective. This order was issued by Govt, of Bihar, in the department of Cabinet Secretariat not by the Governor of Bihar. Annexure 15 dated 6.6.77, is a notification by the Under Secretary to Government of India. Therein it has been stated as follows:

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

The services of Sri Panchanan Jha are replaced at the disposal of the Govt. of Bihar after the expiry of the leave.

This once again shows clearly that the Petitioner lien with the Government of Bihar had not been terminated. Annexurc-17 dated 5th January, 1979, was also issued by Deputy Secretary to State Government by order of THE Governor of Bihar. These annexures completely repel the submission based on annexure C that the Petitioner''s lieu in the Finance Department, having been terminated, he be came an officer of the Governor secretariat out and out and that he had no link with the State Government. I have not the least (sic) that the Petitioner was a servant of the State Government at alt times. That being so, that Governor had no jurisdiction to order (sic) compulsory retirement. It is true that after having been placed on deputation by the State Government subsequent orders of promises and confirmation emanated from the Raj Bhavan but that did not deprive the Petitioner of his right and protection of a civil service under State of Bihar. His rights and liabilities will be governed by the Bihar Service Code. If the Governor was not satisfied with his performance the Governor could have sent him back to the State Government, but he had as jurisdiction to order compulsory retirement. I would once more like to emphasise that secretarial staff in the Governor secretarial has to be provided by the State Government. The Governor cannot make any appointment of his own. It is another matter that the State Government out of consideration and decorum may accept the Governor''s requests but in law the Governor has no power to appoint any secretarial staff.

29. Question now remains what would be the right of the Petitioner. He was given promotions in the Cabinet Secretariat but in order claim status the State Government rules (Sic) him as much as any other officer of the State Government. His position in the cadre must be determined according to the seniority rules of the State Government. Rule regarding the conditions of service under the Bihar Service Code will also be binding. Merely because he was Under Secretary or Deputy Secretary in the Raj Bhawan secretariat, he will not be entitled to claim any post in the Bihar Governed as of right but his position and status will have to be determined by the State Government in accordance with rules.

30. My conclusions are the Governor is titled to have his own household staff for such funds are provided by the State Government. The secretarial staff, however, is not recruited by the Governor and it is part of the State Government all the time. While the Governor may appoint or dismiss any member of the household staff, he can neither appoint nor remove from service any secretarial staff without the aid and advice of the Council of Ministers. That may be done only by the State Government. The instant case was not CASE of termination of lien but it was a case of suspended lien. The Governor had no power to order compulsory retirement. Consequently as a corollary thereto, the Petitioner must be deemed to be in State Service.

31. I have not gone into the question of the Petitioner''s conduct calling for

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-…

compulsory retirement as I have held that the Govenor had no authority to order compulsory retirement.

32. For all the reasons stated above, I am of the view that annexure 7 was a void document. It is quashed accordingly. The Petitioner p not have been compulsorily retired by the Governor. He must be deemed to be in Government service and must be accorded all the rights to which he was entitled within the Bihar Service Code. What will be his post and status is a matter which the State Government will accord in accordance with law. The application is, therefore, allowed with costs of Rs. 500/- (five hundred) payable by the Secretary to Governor debitable to the Funds provided for Raj Bhawan by the State Government.

Binod Kumar Roy, J.

33. I agree with the reasonings given by my learned brother as well as his conclusions. But before I part, I must notice that one of the contentions was raised and pressed on behalf of the Petitioner namely, malafide of the Governor in having passed the impugned order but in view of the fact that this writ petitione must succeed on pure questions of law, '' it is not necessary to consider the same.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/panchanan-jha-appellant-hash-the-...