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**(2015) 05 JH CK 0037**

**In the Jharkhand High Court**

**Case No : Writ Petition (S) No. 1070 of 2009**

Ram Lagan Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

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**Date of Decision : 15-05-2015**

**Acts Referred:**

Constitution of India, 1950 — Article 311, 311(2)

**Citation : (2015) 4 AJR 27 : (2015) 3 JLJR 268**

**Hon'ble Judges : Aparesh Kumar Singh, J**

**Bench : Single Bench**

**Advocate : Samavesh Bhanj Deo and Binod Kumar, for the Appellant; Ravi Kumar, J.C. to S.C.II, Advocates for the Respondent**

**Final Decision : Partly Allowed**

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## **Judgement**

Aparesh Kumar Singh, J.—Heard learned counsel for the parties.

2. The petitioner has been compulsorily retired by impugned order dated 18th August, 2008 bearing letter No. 2308 issued by Divisional Forest Officer, East Forest Division, Ranchi under the provisions of Rule 74(a)(b) (iii) in public interest by giving him three months' notice. The provisions of law quoted in the impugned order has been later on clarified by way of office Corrigendum/order No. 146 dated 30th March, 2009, Annexure-A to the supplementary counter affidavit of respondents by stating that it should be meant as Rule 74(a)(b)(ii). Though counsel for petitioner submits that the modified order was never served upon the petitioner but the same would not be of much consequence as, if there is a power conferred upon the authority in law, mere non-mentioning or wrong mentioning of the provisions would not vitiate the order, if it is otherwise supported by the provision of law. However, that is not the sole issue to be examined in the present writ application, as the main question involved herein is whether the impugned order is an order of compulsory retirement invoking Rule 74(a)(b)(ii) simplicitor passed in public interest treating the petitioner as a dead wood after 30 years of service or it is in the nature of a punishment carrying

stigma without actually holding such in a proper departmental inquiry. To appreciate that it is better to translate the contents of the impugned order itself which is self explanatory. The impugned order in the first paragraph categorically states that the petitioner on 10th April, 2008 had entered into the office of Chief Conservator of Forest-cum-Project Director Jharkhand-cum-Forest Management Project, Ranchi and used unparliamentary language. Earlier also he had done the same act by entering into the residential premises of Conservator of Forest State Trading Circle, Ranchi, without his permission and abused him as well as threatened him. It further states that there have been number of occasions when the petitioner has indulged in such unbecoming behaviour with senior officers and employees of the Forest Department by entering into Government offices during working hours and causing interruption in official discharge of duty. It further states that for the aforesaid misconduct petitioner had been asked to furnish show cause on several occasions but his conduct has not improved. The impugned order further states that on 11th June, 2008 also the petitioner had entered into the office of Principal Chief Conservator of Forest, Jharkhand without his permission and had acted in an indisciplined way by using unparliamentary language with him, which is a matter of serious nature. After recording all these serious allegations in respect of petitioner, the impugned order of compulsory retirement has been passed in public interest by giving him three months' notice under the provision of Rule 74(a)(b)(iii), as it is absolutely necessary. The compulsory retirement is to take effect from 30th November, 2008. Counsel for petitioner states that the petitioner's date of birth is 5th January, 1956 as such he would reach the age of superannuation in January, 2016.

3. The respondents, in their counter affidavit, have sought to support the impugned order on the ground that the petitioner had been issued several show cause notices for his previous misconduct. Several complaints have been made about his behaviour by a number of senior officers of Forest Department. Annexure-B Series are string of documents starting from 1996 onwards till the issuance of impugned order in 2008. Communication at Annexure-B Series show that several such officers like the Conservator of Forest, Regional Circle, Ranchi, Range Officer, Khunti, Divisional Forest Officer, Ranchi East, Forest Division and the Conservator of Forest, State Trading Circle, Ranchi as well as Chief Conservator of Forest-cum- Project Director, Jharkhand, Ranchi have complained against conduct of the petitioner on different occasions. A proceeding also appears to have been initiated against him in the year 1999. However, it is not clear whether any punishment was imposed upon him or not. Counsel for respondents submits that he was however placed under suspension in the year 2004. Respondents also relied upon a letter dated 26th May, 2008 bearing No. 1342 enclosed to their counter affidavits to support their contentions that the impugned order has been passed after due show cause to the petitioner in respect of allegations of entering into the office of Chief Conservator of Forest on 10th April, 2008.

4. Counsel for petitioner however submits by making reference to para 9 of the

rejoinder that no such show cause was served upon him.

5. Be that as it may, if the documents enclosed to the counter affidavit are to be believed the conduct of the petitioner appears to have been errant and indisciplined at various points of time in service which aggrieved his superior officers and others. However, it is also apparent that the petitioner was never punished with any major penalty for such serious misconduct.

6. On the instant occasion, as the impugned order records the petitioner indulged in acts of serious misconduct by entering into office of Chief Conservator of Forest on 10th April, 2008 and again repeated such act with the Principal Chief Conservator of Forest, Jharkhand on 11th June, 2008. If the conduct of the petitioner was serious enough he definitely warranted to be proceeded against for such misconduct in order to enable the competent authority/disciplinary authority to take an informed decision on the basis of inquiry where such charges were required to be proved in accordance with law. However, as it appears from the face of letter dated 18th August, 2008 impugned herein, the order of compulsory retirement is not simplicitor in nature invoking Rule 74(a)(b)(ii) of Jharkhand Service Code, but it is hedged and coupled with serious allegations which are in the nature of stigma. The employer or the disciplinary authority does not have any fetters to proceed against such an employee whose behaviour is found delinquent over allegations of serious misconduct but the requirement of Article 311(2) has to be complied with.

7. In the instant case, the respondents appear to have adopted a short cut method by invoking Rule 74(a)(b)(ii) by compulsory retiring him purportedly in public interest by giving him three months' notice. However, if the order on the face of it is in the nature of a punishment and stigmatic in nature, the same cannot be saved on the ground that it has been passed under Rule 74(a)(b)(ii) of Jharkhand Service Code. The Hon'ble Supreme Court in the judgment rendered in the case of Ram Ekbal Sharma Vs. State of Bihar and another, AIR 1990 SC 1368 : (1990) LabIC 1188 : (1990) 2 LLJ 601 : (1990) 3 SCC 504 : (1990) 2 SCR 679 : (1990) 2 SLJ 98 : (1990) 2 UJ 284 while dealing with such a case of compulsory retirement has gone to the extent of stating that though the order of compulsory retirement may be innocuous on the face of it, the court is not precluded from lifting the veil to find out as to whether it is on the basis of allegation and is in the nature of punishment as in that case it would be stigmatic in nature. In the said case, though the order of compulsory retirement was innocuous on the face of it but the counter affidavit of the respondents justified the order on the ground that it was based upon the recommendation made in an inquiry against the said employee where serious instances of his misconduct were found. In such circumstances, the Hon'ble Supreme Court had held that the impugned order cannot but said to have been made by way of punishment. As such the order is in contravention of Article 311 of the Constitution of India as well as it is arbitrary as it violates the principle of nature justice and the same has not been made bonafide. The opinion of Hon'ble Supreme Court after survey

of decisions and precedents rendered on this point earlier, as contained at para 28 of the report is being quoted hereunder:-

"28. On a consideration of the above decisions the legal position that now emerges is that even though the order of compulsory retirement is couched in innocuous language without making any imputations against the government servant who is directed to be compulsorily retired from service, the court, if challenged, in appropriate cases can lift the veil to find out whether the order is based on any misconduct of the government servant concerned or the order has been made bona fide and not with any oblique or extraneous purposes. Mere form of the order in such cases cannot deter the court from delving into the basis of the order if the order in question is challenged by the concerned government servant as has been held by this Court in Anoop Jaiswal case. This being the position the respondent-State cannot defend the order of compulsory retirement of the appellant in the instant case on the mere plea that the order has been made in accordance with the provisions of Rule 74(b)(ii) of the Bihar Service Code which prima facie does not make any imputation or does not cast any stigma on the service career of the appellant. But in view of the clear and specific averments made by the respondent-State that the impugned order has been made to compulsorily retire the appellant from service under the aforesaid rule as the appellant was found to have committed grave financial irregularities leading to financial loss to the State, the impugned order cannot but be said to have been made by way of punishment. As such, such an order is in contravention of Article 311 of the Constitution of India as well as it is arbitrary as it violates principles of natural justice and the same has not been made bona fide."

8. Similar is the view expressed by Hon"ble Apex Court in the judgment in the case of State of Gujarat Vs. Umedbhai M. Patel, AIR 2001 SC 1109 : (2001) 89 FLR 173 : (2001) 3 JT 223 : (2001) 2 LLJ 1140 : (2001) 2 SCALE 261 : (2001) 3 SCC 314 : (2001) SCC(L&S) 576 : (2001) 2 SCR 170 : (2001) 1 UJ 664 : (2001) AIRSCW 862 : (2001) 2 Supreme 193 , relied upon by the learned counsel for petitioner. At para 11(vi) thereof it holds that the order of compulsory retirement shall not be passed as a short cut to avoid departmental inquiry when such course is more desirable. The opinion of Hon"ble Supreme Court at para 11 enumerating the principles relating to compulsory retirement is also being quoted hereunder:-

"11. The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure."

9. In the instant case, the respondents have not been able to justify by their averments made in the counter affidavit that the impugned order was passed on the appraisal of his annual confidential report recorded over a period of his service which rendered him as dead wood and his compulsory retirement was in the public interest. All attempts appears to have made to justify the impugned order on the ground that the petitioner was recalcitrant employee a knight errand. Having examined the order impugned herein on the aforesaid well settled principles of law, it can be safely concluded that the same is not in the nature of a compulsory retirement simplicitor under Rules 74(a)(b)(ii), rather it is in the nature of punishment on the basis of serious allegations which are evident on the face of it. The impugned order therefore cannot survive the test of legal scrutiny and it is accordingly quashed. The petitioner shall be reinstated in service, without any back wages. However, this Court at the same time being conscious of seriousness of allegations/charges made against the petitioner makes it clear that it would be open to the respondent to proceed against the petitioner on such grounds of alleged misbehaviour in accordance with law after due observance of principle of nature justice and the procedure laid down for conduct of disciplinary inquiry to arrive at informed decision on the same. It is however observed that observations made hereinabove are only for the purposes of testing the legality and correctness of the order of compulsory retirement and shall not in any way be to the prejudice of the petitioner in any such departmental enquiry.

10. The writ petition is accordingly allowed in the manner and to the extent hereinabove.