Ram Ekbal Sharma vs State Of Bihar & Anr on 24 April, 1990

Equivalent citations: 1990 AIR 1368, 1990 SCR (2) 679, AIR 1990 SUPREME COURT 1368, 1990 (3) SCC 504, 1990 LAB IC 1188, (1993) 3 SCT 621, (1992) 6 SERVLR 673, (1991) 78 FJR 1, (1991) 1 LAB LN 56, (1991) 1 BLJ 144, (1990) 2 LABLJ 601, 1990 UJ(SC) 2 284, 1991 BLJR 1 271, (1990) 2 SERVLJ 98, (1990) 14 ATC 741, (1990) 2 APLJ 57, (1990) 2 PAT LJR 60, 1990 SCC (L&S) 491

Author: B.C. Ray

Bench: B.C. Ray

PETITIONER:
RAM EKBAL SHARMA

Vs.

RESPONDENT:
STATE OF BIHAR & ANR.

DATE OF JUDGMENT24/04/1990

BENCH:
RAY, B.C. (J)
BENCH:
RAY, B.C. (J)
REDDY, K. JAYACHANDRA (J)

CITATION:
1990 AIR 1368 1990 SCR (2) 679
1990 SCC (3) 504 1990 SCALE (1)12

ACT:
Bihar Service Code, 1979: Section 74(b)(ii)--Order of compulsory retirement--Couched in innocuous language--Validity Court--Whether could lift the veil, in appropriate cases to ascertain basis of order.
Constitution of India, 1950: Articles 14 and 311(2)--Order of compulsory retirement--Couched in innocuous language, but made by way of punishment----Whether violative of.

HEADNOTE:
The appellant, an officer of Bihar State, filed a writ petition before the High Court, challenging the order of compulsory retirement passed by the respondent State, under

Rule 74(b)(ii) of Bihar Service Code, 1979, contending that throughout his service of 30 years he had an exemplary service career and his integrity remained unquestionable and that neither any adverse remarks were communicated to him nor any departmental proceedings were initiated against him, nor any explanation called for from him. The High Court dismissed the writ petition by a laconic order.

In the appeal, by special leave, the appellant contended that though the order was couched in innocuous terms and made in compliance with the provisions of Rule 74(b)(ii) of Bihar Service Code on appellant's reaching the age of more than 50 years, and prima facie not appearing to cast any stigma, it was not made in public interest, but made by way of punishment for oblique purposes, in consideration of extraneous matter and purporting to removal from service on certain serious allegations of misconduct, casting a stigma, and hence the order was illegal, bad and in violation of audi alterem partem rule and Article 311(2) of the Constitution and was liable to be quashed.

On behalf of the respondent-State it was contended that the order had been made in public interest under Rule 74(b)(ii) and there was nothing to show from the order itself that it had been made by way of punishment, casting a stigma, the language of the order was innocuous, and the appellant could not delve into the secretariat files, to find out the basis of the order.

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Allowing the appeal, this Court,

HELD: 1.1 Even though the order of compulsory retirement is couched in innocuous language without making 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. [693F-G]

Shamsher Singh & Anr. v. State of Punjab, [1975] 1 SCR 894 and Anoop Jaiswal v. Government of India and Am'., AIR 1984 SC 636, relied on.

Shyam Lalv. The State of U. P. & Anr., [1955] 1 SCR 26; Baldev Raj Chadha v. Union of India and Ors., [1980] 4 SCC 321 and Union of India v. Col. J.N. Sinha and Anr., [1971] 1 SCR 791, referred to.

I.N. Saxsena v. The State of Madhya Pradesh, [1967] 2 SCR 496, distinguished.

1.2 The object of Rule 74(b)(ii) of the Bihar Service Code is to get rid of the government servant who has become dead wood. This order is made only to do away with service of only those employees who have lost their utility, become useless and whose further continuance in service is consid-

ered not to be in public interest. [655D]

1.3 In the instant case, the appellant had an unblemished career, and undoubtedly by dint of merit and flawless service career, had been promoted to the post of Joint Director and ultimately to the post of General Manager. The counter-affidavit filed on behalf of the respondent-State has categorically stated that while passing the order of compulsory retirement the officers concerned were guided by the report dated September 19, 1987 which stated that the appellant was responsible for grave and serious financial irregularities resulting in financial loss to the State Government, without giving any opportunity of hearing and without intimating allegations to the appellant before forming the opinion. The memorandum in question has clearly stated that the order of compulsory retirement was made as the appellant's misconduct tarnished the image of the Government in the public. This categorical
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statement clearly proves that the basis of making the order is the report dated September 19, 1987. Therefore, the order of compulsory retirement cannot be defended on the mere plea that it has been made in accordance with the provisions of Rule 74(b)(ii) which prima facie does not make any imputation or does not cast any stigma on the career of the appellant. [657E, 689F-H, 690A, 693H, 694A]

In view of the clear and specific averments made by the respondent-State that the order has been made under Rule 74(b)(ii) as the appellant was found to have committed grave financial irregularities leading to financial loss to the State, the order cannot but be said to have been made by way of punishment. Such an order is in contravention of Article 311 of the Constitution and arbitrary as it violates principles of natural justice. It has not been made bona fide, but for collateral purposes and for extraneous consideration by way of punishment and is, therefore, illegal, unwarranted and liable to be quashed. [694A-B, C]

Accordingly the order of compulsory retirement is set aside and the respondents are directed to reinstate the appellant with full back wages. [694D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1995 of 1990.

From the Judgment and Order dated 23.11.1988 of the Patna High Court in C.W.J.C. No. 8457 of 1988. A.K. Sen. Shankar Ghosh and M.P. Jha for the Appellant. G.S. Misra for the Respondents.

The Judgment of the Court was delivered by J. This appeal on special leave is directed against the judgment and order dated November 23, 1988 passed in C.W.J.C. No. 8457 of 1988 by the High

Court, Patna dismiss- ing the writ petition moved by the appellant assailing the order of his compulsory retirement from service by notifica- tion dated October 26, 1988 issued by the Government of Bihar compulsorily retiring him from service with effect from the date of issue of the notification.

The salient facts giving rise to this appeal are that the appellant was initially appointed on December 9, 1957 to the post of Industrial Expansion Officer and he was con- firmed to the said post on May 15, 1958. The appellant was promoted to the post of Planning-cum Evaluation officer, a Gazetted post, on December 19, 1973 because of his excellent service career. The appellant was further promoted to the next higher post of Industrial Economist by notification dated September 24, 1983 with effect from December 19, 1978 in the scale of Rs.1350-2000. Because of excellent character role and merit of the appellant, he was promoted to the next higher post of Joint Director in his original scale of pay of Rs.1350-2000 with 20 per cent personal pay for holding such higher post which he held from September 24, 1983 to March 31, 1984. From April 1, 1984 the appellant was provided with the higher post of General Manager under the respondent-State in its Industries Department.

The respondent-State issued a notification on September 16, 1988 promoting a large number of juniors to the higher scale of Rs.1575-2300 without considering the case of the appellant.

Being aggrieved the appellant filed one representation against his supersession which was made without considering the case of the appellant. The representation was filed on October 7, 1988. In the said representation the appellant brought to the notice of the respondent State that the serv- ice record of the appellant throughout remained excellent, integrity beyond doubt and the appellant was never communi- cated with any punishment in his service career. While the appellant was awaiting for a decision, the respondent State issued the impugned notification dated October 26, 1988 compulsorily retiring the appellant from the post of General Manager, District Industries Centre, Deoghar under the provisions of Rule 74(b)(ii) of the Bihar Service Code.

The appellant claimed that the aforesaid order of com- pulsory retirement has been issued by the respondent-State on the basis of a memorandum dated October 6, 1988 though in the garb of Rule 74(b)(ii) of the Bihar Service Code, but in fact this has been made as a measure of punishment. Being aggrieved and dissatisfied by the order of compul- sory retirement passed against him by the respondents, the appellant preferred a writ petition being C.W.J.C. No. 8457 of 1988 before the High Court, Patna questioning the im- pugned order on the grounds inter alia that the appellant throughout his 30 years had an exemplary service career and his integrity remained unquestionable, that the appellant was never communicated with any adverse remarks nor any departmental proceeding was ever initiated against the appellant, nor any explanation was ever called for. The High Court without at all considering and appreci- ating the contentions dismissed the writ application by a laconic order.

Feeling aggrieved by the said order the instant appeal on special leave has been filed.

The only crucial question that fails for consideration in this Court is whether the impugned order of compulsory retirement from service has been made by the Appointing Authority in public interest in

accordance with Rule 74(b)(ii) of Bihar Service Code, 1979 or for any oblique motive as an extraneous consideration or by way of punish- ment casting stigma on the service career of the appellant even though the impugned order was couched in innocuous language.

The relevant Rule 74(b) reads as follows:

> "Rule 74(b)(i): Notwithstanding anything contained in the preceding subrule 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 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.
>
> Provided further that in case of officers and servants of the Patna High Court (including those of Circuit Bench at Ranchi), under the rule marking authority of the Chief Justice, no such officers and servants under suspension shall retire from service except with the specific approval of the Chief Justice.
>
> Rule 74(b)(ii): The appointing authority concerned may, after giving a Government servant at least three months' previous notice in writing, or an amount equal to three months' pay and allowances 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 there- after to be specified in the notice."

On a plain reading of the said Rule it appears that the appointing authority has been conferred power to retire a government servant from service in public interest after giving three months' prior notice in writing or an amount equal to three months' pay and allowances in lieu of such notice on the date on which such government servant com- pletes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice. The impugned notification was made on October 26, 1988 by the Government of Bihar intimating the appellant that as he had completed the age of more than 50 years, and in the opinion of the Government of Bihar, in public inter- est he is compulsorily retired from service with effect from the date of issue of this notification. He will be paid salary of three months with allowances in lieu of three months' notice under Rule 74(b)(ii) of Bihar Service Code. It has been contended on behalf of the appellant that though the impugned order is couched in innocuous terms and it is made in compliance with the provisions of Rule 74(b)(ii) of Bihar Service Code on appellant's reaching the age of more than 50 years and it does not prima facie appear to cast any stigma on the service career of the appellant yet it has been made by way of punishment casting stigma on the appellant's service career and as such the impugned order is illegal, bad and the same has been made in viola- tion of audi alterem partem rule as well as Article 311(2) of the Constitution. It has been further submitted in this connection that the power to retire the appellant compulso- rily from service has not been made in public interest under Rule 74(b)(ii) of Bihar Service Code but on the basis of the fact finding report given

by the Deputy Development Commis- sioner, Dumka by his letter dated September 19, 1987 regarding grave financial irregularities committed by the appellant in consideration of which a memorandum was pre- pared by the Additional Commissioner-cum-Special Secretary, Shri T. Nand Kumar on October 6, 1988 recommending to the respondent-State to compulsorily retire the appellant from service under Rule 74(b)(ii) of Bihar Code. It has also been contended that the basis of the order was made with oblique purposes in consideration of extraneous matter and the impugned order purports to removal from service on certain serious allega- tions of misconduct and consequently it casts a stigma on the service career of the appellant. Such order of compulso- ry retirement from service though appears to be innocuous, has been made by way of punishment and as such it is liable to be set aside and quashed.

It has, on the other hand, been urged on behalf of the respondent-State that the impugned order has been made under Rule 74(b)(ii) of Bihar Service Code in public interest and there is nothing to show from the order itself that it has been made by way of punishment and it casts a stigma on the service career of the appellant. The language of the order is innocuous. The appellant cannot delve into the secretari- at files to find out the basis of the order. Some decisions have been cited at the bar in support of this submission. Rule 74(b)(ii) of the Bihar Service Code confers power on the Appointing Authority to compulsorily retire a govern- ment servant on his attaining 50 years of age or after completing 30 years of qualifying service in public inter- est. The object of this rule is to get rid of the government servant who has become dead wood. This order is made only to do away with service of only those employees who have lost their utility, become useless and whose further continuance in service is considered not to be in public interest. In the instant case the appellant has an unblemished career and undoubtedly by dint of his merit and flawless service career he had been promoted to the post of Joint Director in 1983 and subsequently on 1st April, 1984 he was promoted to the higher post of General Manager under the respondent State in its Industries Department. The appellant has specifically pleaded in paragraph K of this appeal that he came to know that the impugned order of compulsory retirement has been issued by the respondent State on the basis of a memorandum dated October 6, 1988. It has been further pleaded that the appellant came to know from the memorandum that the impugned order of compulsory retirement dated October 26, 1988 has been issued by the respondent-State though in the garb of Rule 74(b)(ii) of the Bihar Service Code, but in fact the same has been issued as a measure of punishment. This fact will be evident from the memorandum dated 6th October, 1988 wherein the State has alleged that six items of charges have been proved against the petitioner (appellant). The State Government has also accepted that there is no question of going into the formality of departmental proceeding but has decided to retire the petitioner compulsorily under Rules 74(b)(ii) of the Bihar Service Code. Paragraphs 2 to 4 of the Memorandum dated 6th October, 1988 make it clear that the impugned order dated October 26, 1988 of compulsory retirement, has been issued as a measure' of punishment. It is further submitted that the order passed on October 26, 1988 was without giving any notice or any show cause to the petitioner.

It has been stated in para 4 to 7 of the counter-affidavit as under:

> (4) That it is not at all necessary to draw departmental proceeding against the petitioner (appellant) before effect-

ing his compulsory retirement from government service. Since his retirement under Rule 74(b)(ii) of the Bihar Service Code does not amount to dismissal or removal from government service within the meaning of clause (2) of Article 311 of the-Constitution, it is, therefore, not necessary to obtain the advice of the Bihar Public Service Commission (Limita- tion of Functions) Regulation, 1956.

(5) That it is relevant to state that while the petitioner (appellant) was General Manager, District Industries Centre, Dumka and Deoghar during the year 1985 onwards till his compulsory retirement, an enquiry into the serious charges of corruption, omission and commission of financial and administrative lapses and foul play against him had been conducted respectively by Deputy Development Commissioner, Dumka, Deputy Commissioner, Dumka and Additional Director of Industries, Bihar, Patna.

The above charges were proved such as:

(i) The charge of registration of bogus unit had clearly been established;

(ii) Allegations of recommendations and sanction of capital subsidy on D.G. sets to bogus units have been proved;

(iii) Where there were no D.G. sets and the unit was bogus, subsidy had been sanctioned against the departmental in- structions;

(iv) Seed money had been sanctioned to non-existent units and payments made in violation of Government orders;

(v) Registration had been done for restricted items;

(vi) Subsidy on D.G. sets had been sanctioned and payments made to units located outside his jurisdiction; and

(vii) Appointment of persons had been made on ad hoc basis beyond his delegated powers in gross violation of Government rules.

(6) That in the above mentioned cases registration; recom-

mendations and payments had been made by the petitioner (appellant) after making personal inspections of the units which facts are sufficient to prove that he had commited the said irregularities knowingly for his personal gains and thereby the State Government had suffered a heavy loss. This misconduct on his part had tarnished the image of the Gov- ernment in the public. It is, therefore, his so-called exemplary service record which has no co-relation with his compulsory retirement as stated in the aforesaid paragraph. (7) That contention of the petitioner (appellant) as stated in para (viii) of the special leave petition that the memo- randum which have formed the basis of causing the compulsory retirement of the petitioner (appellant), is absolutely wrong and without any substance. It is relevant to state that the memorandum being confidential papers of the re-

spondent-State Government cannot be termed as the Order of compulsory retirement and which order does not contain any word from which a stigma may be inferred."

It has been further averred in para 8 of the said affi- davit that on a perusal of the order of compulsory retire- ment of the petitioner (appellant), it is sufficiently clear that no stigma has been attached to the petitioner nor there is any word in the said Order from which a stigma may be inferred. The Supreme Court has held in the case of I.N. Saxsena v. The State of Madhya Pradesh, [967] 2 SCR 496 that where an order requiting a Government servant to retire compulsorily contains express words from which a stigma can be inferred that order will amount to removal within the meaning of Article 311. But where there are no express words in the order itself which would throw any stigma on the Government order, we cannot delve into Secretariat files to discover whether some kind of stigma can be inferred on such research.

In para 9 it has been stated that it is, therefore, as per the decision of the Supreme Court in the said case, the Court cannot look into the background resulting in the passing of the order of compulsory retirement in order to discover whether some kind of stigma can be inferred and accordingly in the instant case the memorandum is totally irrelevant for the consideration by the Court and in view of the same the appeal of the appellant can be dismissed. A supplementary affidavit has been filed on behalf of the appellant sworn by Suhird Kumar, son of the appellant. In para 3 of the said affidavit it has been submitted that the memorandum is prepared on the basis of two enquiry reports done by the different officers without there being any notice or getting any other version and this sort of memorandum cannot be said to be a fair memorandum in the eyes of law and so any action taken by the State Government on the basis of the said Memorandum is bad and violative of Article 14 and 16 of the Constitution of India. It is thus, clear and evident from the counter-affidavit filed on behalf of the State Government referred to herein- before that the basis of the impugned order of compulsory retirement from service of the appellant is not in public interest as stated in the order of compulsory retirement dated October 26, 1988. The impugned order, in fact, has been passed on the basis of the memorandum dated October 6, 1988 which is also based on the Report given by the Deputy Development Commissioner, Dumka by his letter dated Septem- ber 19, 1987 without asking any explanation from the appel- lant and without giving him any opportunity to defend his case before the Deputy Development Commissioner. It is, therefore, wrong to say that the basis of the order is not the said memorandum as well as the report of the Deputy Development Commissioner which clearly evinces that the impugned order of compulsory retirement is a mere camouflage being couched in innocuous terms and in fact the same has been made by way of punishment.

In support of the impugned order it has been vehemently urged on behalf of the respondent-State that the order of compulsory retirement dated October 26, 1988 does not show prima facie that it has been made by way of punishment. The Order as it is, speaks of compulsory retirement of the appellant from service in accordance with the provisions of Rule 74(b)(ii) of the Bihar Service Code. It has been con- tended further' that this order being couched in innocuous terms cannot be questioned and the appellant cannot delve into the secre-

tariat filed to find out the basis of the order and to challenge the same on that basis. Reference has been made in this connection to the case of 1. N. Saksena v. The State of Madhya Pradesh, (supra).

In that case, the State of Madhya Pradesh issued a memorandum on February 28, 1963 raising the age of retirement of its employees from 55 to 58 years. Clause 5 of the memorandum, however, said that the appoint- ing Authority may require a Government servant to retire after he attained the age of 55 years on three months' notice without giving any reasons. The clause further said that this power was normally to be used to weed out unsuit- able employees. The appellant who was a District and Ses- sions Judge in the service of the State Government would normally have retired at the age of 55 years in August, 1963. In September, 1963, however, Government communicated to. him an order that he was to retire on December 31, 1963 under Rule 56 of the Fundamental Rules applicable to the State of Madhya Pradesh. This order was challenged by the appellant by writ petition before the High Court of Madhya Pradesh. It was rejected. Thereafter, the appellant came with a certificate, to this court. It has been held by this Court in that case that:

> "Where there are no express words in the order of compulsory retirement itself which would throw a stigma on the Govern- ment servant, the Court would not delve into Secretariat files to discover whether some kind of stigma could be inferred on such research. Since in the present case there are no words of stigma in the order compulsorily retiring the appellant, there was no removal requiring action under Art. 311 of the Constitution."

This decision does not, in any way, apply to this case for the simple reason that in the affidavit-in-counter filed by the respondent State it has been categorically stated that while passing the impugned order of compulsory retirement the officers concerned were guided by the report dated September 19, 1987 submitted by the Deputy Development Commissioner, Dumka who stated in his report that the appel- lant was responsible for the grave and serious financial irregularities resulting in financial loss to the State Government, without giving any opportunity of hearing and without intimating the allegations to the appellant before forming his opinion. The said report was taken into consid- eration and memorandum in question was issued on October 26, 1988 by the Additional Secretary, Industries Department, Government of Bihar wherein it has been clearly stated that the impugned order of compulsory retirement was made as the said mis-

conduct on the part of the appellant tarnished the image of the Government in the public. This categorical statement made in the affidavit-in-counter clearly proves that the basis of making the order of compulsory retirement of the appellant from the service is the aforesaid report of the Deputy Development Commissioner, Dumka referred to hereinbe- fore. In such circumstances, it is futile to argue that the order of compulsory retirement being couched in an innocuous language without causing any stigma is unassailable. It is pertinent to mention in this connection the case of Shyam Lal v. The State of U.P. & Anr., [1955] 1 SCR 26 wherein it has been held by the Constitution Bench that:

> "A compulsory retirement under the Civil Services (Classifi- cation, Control and Appeal) Rules, does not amount to dis- missal or removal within the meaning of Article 311 of the Constitution and therefore, does not fall within the provi- sions of the said Article."

> "There is no such element of charge or imputation in the case of compulsory retirement. The two requirements for compulsory retirement are that the officer has completed 25 years' service and that it is in the public interest to dispense with his further services. It is true that this power of compulsory retirement may be used when the authori- ty exercising this power cannot substantiate the misconduct which may be the real cause for taking the action but what is important to note is that the directions in the last sentence in Note 1 to Article 465-A make it abundantly clear that an imputation or charge is not in terms made a condi- tion for the exercise of the power. In other words, a com- pulsory retirement has no stigma or implication of misbeha- viour or incapacity."

It has been further held that:

> "A compulsory retirement does not amount to dismissal or removal and, therefore, does not attract the provisions of Article 311 of the Constitution.
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> In Baldev Raj Chadha v. Union of India and Ors., [1980] 4 SCC 32 1 it was held that:
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> "The whole purpose of Fundamental Rule 56(j) is to weed out the worthless without the punitive extremes covered by Article 311 of the Constitution. But under the guise of 'public interest' if unlimited direction is regarded accept- able for making an order of premature retirement, it will be the surest menace to public interest and must fail for unreasonableness, arbitrariness and disguised dismissal. The exercise of power must be bona fide and promote public interest."

It has also been observed that:

> "An officer in continuous service for 14 years crossing the efficiency bar and reaching the maximum salary in the scale and with no adverse entries at least for five years immedi- ately before the compulsory retirement cannot be compulsori- ly retired on the score that long years ago, his performance had been poor, although his superiors had allowed him to cross the efficiency bar without qualms."

In the case of Union of India v. Col. J.N. Sinha and Anr., [1971] 1 SCR 791 it has been observed by this Court that:

> "Fundamental Rule 56(i) does not in terms require that any opportunity should be given to the concerned Government servant to show cause against his compulsory retirement. It says that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. If that authority bona fide forms that opinion the correctness of that opinion cannot be challenged before courts, though it is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision."

In Shamsher Singh & Anr. v. State of Punjab, [1975] 1 SCR 814 the appellant Shamsher Singh was a Subordinate Judge on probation. His services were terminated by the Government of Punjab in the name of Governor of Punjab by an order which did not give any reasons for the termination. It has been held that:

> "No abstract proposition can be laid down that where the services of probationer are terminated without saying any-
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> thing more in the order of termination that it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of mis- conduct or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportu- nity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution."

In that case the appellant was asked to show cause why his services should not be terminated and there were four grounds. One was that the appellant's behaviour towards the Bar and the litigant public was highly objectionable, de- rogatory, non-cooperative and unbecoming of a judicial officer. The second was that the appellant would leave his office early. The third was the complaint of Om Prakash, Agriculture Inspector that the appellant abused his position by proclaiming that he would get Om Prakash involved in a case if he did not cooperate with Mangal Singh, a friend of the appellant and Block Development officer, Sultanpur. The fourth was the complaint of Prem Sagar that the appellant did not give full opportunity to Prem Sagar to lead evi- dence. Prem Sagar also complained that the decreeholder made an application for execution of the decree against Prem Sagar and the appellant without obtaining office report incorporated some additions in the original judgment and warrant of possession. The appellant showed cause stating that he was not provided with an opportunity to work under the same superior officer for at least six months so that independent opinion could k., formed about his knowledge, work and conduct. Thereafter, the appellant received a letter from the Deputy Secretary to the Government addressed to the Registrar, Punjab and Haryana High Court that the services of the appellant had been terminated. It has been held that in the facts and circumstances of the case it is clear that the order of the termination of the appellant, Shamsher Singh was one of punishment. The authorities were to find out the suitability of the appellant. The order of termination is in infraction of Rule 9 which makes it incum- bent upon the authority that the services of a probationer can be terminated on specific fault or on account of unsat- isfactory record implying unsuitability. The order of termi- nation was, therefore, set aside.

This judgment has been followed in the case of Anoop Jaiswal v. Government of India and Anr., AIR 1984 SC 636. It has been observed that:

> "It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of em- ployment is in reality a cloak for an order of punishment, the

> Court would not be debarred, merely because of the form of the order, in giving effect to the fights conferred by law upon the employee."

It has also been observed that:

> "Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclu- sion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Art. 3 11(2) of the Constitution."

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 serv- ant 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 miscon- duct 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's 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. In the premises aforesaid we hold that the impugned order has not been made bona fide but for collateral pur- poses and on extraneous consideration by way of punishment. The impugned order is, therefore, illegal and unwanted and so it is liable to be quashed and set aside. We, therefore, allow the appeal and set aside the impugned order. We fur- ther direct the respondents to reinstate the appellant in service forthwith with full back wages. The respondents will pay costs to the appellant.

N.P.V. Appeal allowed.