courtkutchehry.com

**Company:** Sol Infotech Pvt. Ltd.

**Website:** www.courtkutchehry.com

**Printed For:**

**Date:** 29/10/2025

# Mahfooz Alam Vs State Of Bihar

## Civil Writ Jurisdiction Case No. 23655 Of 2018

**Court:** Patna High Court

**Date of Decision:** May 18, 2022

**Acts Referred:**
Bihar Service Code, 2005 â€" Rule 74

**Citation:** (2022) 05 PAT CK 0030

**Hon'ble Judges:** P. B. Bajanthri, J

**Bench:** Single Bench

**Advocate:** Priyank Deepak, Punit Kumar, Rajendra Kumar Giri, Md. Fazle Karim

**Final Decision:** Allowed

## Judgement

1.Heard learned counsels for the parties.

2. In the present petition, petitioner has prayed for following reliefs:-

Ã¢â‚¬Å"(i) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the office order dated 02/07/2018 issued by the Officer

on Special Duty (Establishment), GovernorÃ¢â‚¬â„¢s Secretariat, Bihar, Patna, by which the petitioner has been compulsorily retired from the services of

the GovernorÃ¢â‚¬â„¢s Secretariat, Bihar, Patna from the post of Lower Division Clerk in terms of the provisions contained under rule 74 of the Bihar

Service Code;

(ii) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the order as communicated by a letter dated 13/09/2018

issued by the concerned authorities under the GovernorÃ¢â‚¬â„¢s Secretariat, Bihar, Patna, by which the petitioner was informed that the review petition

preferred by him against the order of compulsory retirement passed against him by the aforesaid order dated 02/07/2018 had been rejected;

(iii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the

GovernorÃ¢â‚¬â„¢s Secretariat, Bihar, Patna to allow the petitioner to resume his duties in the capacity of Lower Division Clerk in the services of the

GovernorÃ¢â‚¬â„¢s Secretariat, Bihar, Patna, alongwith all the consequential benefits that he may be found to be entitled to upon reinstatement of the

service in the said capacity;

(iv) Any other relief/reliefs that the petitioner/petitioners may be found to be entitled to in the facts and circumstances of the present case.Ã¢â‚¬â€‹

3. Petitioner has been retired compulsorily while invoking Rule 74 of the Bihar Service Code and not as the measure of penalty. In order to ascertain

the reasons, on 23.03.2022 following order was passed:-

Ã¢â‚¬Å“Counsel for the Secretariat of Governor is hereby directed to get translation of proceedings drawn in retiring petitioner compulsorily

under Rule 74 of the Bihar Service Code before the next date of hearing and place it on record.

Re-list the matter on 20.04.2022.Ã¢â‚¬â€‹

4. Today, learned counsel for the respondent furnished office note maintained in the office of His Excellency Governor. At page 43/N dated

06.09.2017 till page 58/N dated 08.06.2018 there were certain allegations against the petitioner in respect of dereliction of duties, indiscipline etc., In

fact, superiors to the petitioner made various allegations against the petitioner in not obeying their orders from time to time. After recording page 43/N

to 58/N relating to allegations against the petitioner, abruptly official respondents commenced process of retiring the petitioner compulsorily while

invoking Rule 74 of Bihar Service Code from 27.06.2018, vide page 60/N. In the light of these material information one has to draw inference that the

official respondent while retiring petitioner compulsorily under Rule 74 of the Bihar Service Code have adopted short circuit method. In other words,

the petitioner should have been subjected to disciplinary proceedings with reference to page 43/N dated 06.09.2017 to page 58/N dated 08.06.2018

which are relating to various allegations against the petitioner. In order to circumvent disciplinary proceedings the concerned respondent invoked Rule

74 of the Bihar Service Code and get rid of petitionerÃ¢â‚¬â„¢s services.

5. In the light of these facts and circumstances, it is material evident that official respondents have initially taken a decision to initiate disciplinary

proceedings as is evident from the record. Thereafter, abruptly invoked Rule 74 of the Bihar Service Code in retiring the petitioner compulsorily. Thus,

petitioner has made out a prima facie case so as to interfere with the proceedings read with the compulsory retirement order dated 02.07.2018

(Annexure-10). Accordingly, order dated 02.07.2018 (Annexure-10) is set aside.

6. The concerned respondent is hereby directed to reinstate petitioner with all monetary benefits, reserving liberty to the official respondent to initiate

inquiry proceedings in the light of page 43/N dated 06.09.2017 to 58/N dated 08.06.2018 of the proceedings drawn by official respondent.

7. Petition stands allowed.