

(2021) 02 PAT CK 0386

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2656 Of 2020

Dr. Krishna Kumar Mallick

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 04-02-2021

Acts Referred:

Bihar Service Code, 1952 — Rule 74(b)(i)

Citation : (2021) 02 PAT CK 0386

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Ugranath Mallik, S.D. Yadav

Final Decision : Dismissed

Judgement

1. This writ petition has been filed by the petitioner for a direction to the respondents for fixation of pension and also for making payment of retiral dues i.e. pension, G.P.F., Group Insurance, Gratuity and leave encashment as well as other dues i.e. arrears of salary for the period during which he was kept waiting for posting.

2. The facts leading to the instant writ petition are somewhat chequered. The petitioner was initially appointed as Medical Officer in Bihar Health Service cadre and was posted at Primary Health Center, Durmi in Giridih district (now Jharkhand) on 15.03.1979. He absented from duty without leave from 1st July, 1993 to 19th December, 1997 and out of his own volition, proceeded to a foreign country Libya for contract job and stayed there for almost four and a half years without obtaining permission or sanction from the Health Department, Government of Bihar. Thus, he was on an unauthorized leave violating all the norms and service condition. He rendered his service for his own benefits without taking any consideration for his employer. Thus, as a matter of fact he had rendered his service only for 14 years from 1979 to June, 1993 and remained absent till 1997. He did not fulfill the minimum qualifying service of 20 years in order to receive pension even in case of voluntary retirement. He made an

application seeking voluntary retirement and his application was rejected.

3. Being aggrieved, he approached this Court under writ jurisdiction by filing CWJC No.4826 of 2005 praying therein for payment of his retiral dues and other consequential arrears as consequence of his voluntary retirement with effect from 31.03.2000. The said writ application was disposed of by this Court on 10.05.2011 with the following directions:-

"Thus, in my view, there is no escape from the fact that the petitioner would be deemed to have retired with effect from 1.4.2000 with all consequential benefits to be followed accordingly.

With the aforesaid observation and direction, the writ petition is allowed."

4. Being aggrieved by the aforesaid order dated 10.05.2011, the State of Bihar preferred an appeal before this Court vide LPA No.1943 of 2012, which was allowed by a Division Bench of this Court vide order dated 10.09.2013 taking into account the submissions and stands taken by the parties. The Division Bench set aside the order of the learned single Judge and dismissed the writ petition bearing CWJC No.4862 of 2005 observing as under:-

"We are, therefore, constrained to hold that the writ petitioner was absent without leave for the aforesaid period from 1st July 1993 to 19th December 1997. There is nothing on the record to suggest that the writ petitioner ever applied for regularization of the said absence. Unless, the said absence were regularized against admissible leave or as leave without pay, the said service cannot be treated as pensionable service. Further, unless regularized, the absence from service would amount to a break in service. In our opinion, in either case the writ petitioner was not entitled to the benefit of pension. If the aforesaid period of five years were treated as break in service, the writ petitioner would forfeit his right to pension for earlier service from 1979 to 1993. He, therefore, could not be said to have completed qualified service for pension on his retirement on 1st April 2000. Even in case, the said service from 1st July 1993 to 19th December 1997 were not treated as break in service, the five years he served under the Government of Libya cannot be treated as pensionable service under the Government of Bihar. In that case the total service rendered by the writ petitioner would be less than 20 years. The writ petitioner, therefore, did not qualify for voluntary retirement as envisaged by Rule 74(b)(i) of the Bihar Service Code. The writ petitioner, therefore, could not have proceeded on voluntary retirement on 1st April 2000 as he did.

Further, the State Government has categorically denied that the said application was received by it any time prior to the intimation dated 1st July 2000 sent by the writ petitioner. Nor has the writ petitioner brought anything on the record to prove that the voluntary retirement allegedly submitted by the writ petitioner was ever sent to the appointing authority.

Now that we have held that the writ petitioner was not entitled to take voluntary

retirement effectively on 1st April 2000, as a necessary consequence he should join the duty and the question of interim period requires to be considered by the State Government. However, in view of passage of time such a course of action will not be conducive to the administration. The writ petitioner cannot be called upon to join the duty now more than 13 years after he left the service voluntarily and unilaterally. He may also have reached the age of superannuation.

We, therefore, hold that the writ petitioner abandoned the service as early as in 1993 when he proceeded to join the service under the Government of Libya without obtaining prior leave and sanction of the State of Bihar. Once again, he abandoned the service on 1st April 2000 when he put the papers down unilaterally and voluntarily. We are, therefore, of the opinion that the writ petitioner is not entitled to the pension or other retiral dues claimed by him.

For the aforesaid reasons, we allow this Appeal. The impugned judgment and order dated 10th May 2011 passed by the learned single Judge in C.W.J.C. No. 4826 of 2005 is set aside. C.W.J.C. No. 4826 of 2005 is dismissed."

5. The petitioner has not challenged the aforesaid order passed by the Division Bench in LPA No.1943 of 2012. Thus, the order passed by this Court has attained finality.

6. It is surprising that when this Court has already conclusively held that the petitioner is not entitled to pension or other retiral dues claimed by him as to how the petitioner has filed the present writ petition with a prayer to direct the respondents for fixation of pension and also for making payment of retiral dues. Filing of the present writ petition is nothing but an abuse of the process of the Court.

7. Accordingly, the writ petition is dismissed with cost of Rs.25,000/- (rupees twenty-five thousand).