
(2001) 12 PAT CK 0056
In the Patna High Court
Case No : C.W.J.C. No. 11042 of 2000

Dr. Pratima Roy @ Pratima Roy

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:

Bihar Pension Rules, 1950 — Rule 74
Constitution of India, 1950 — Article 309

Citation : (2002) 4 PLJR 129

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—Heard Counsel for the Petitioner, Mr. Uday Pratap Singh No. 1 and Mr. J.D. Singh, O.P.I appearing for the State.

2. The Petitioner was a member of the Bihar Health Services and at the material time she was posted as medical officer against a leave reserve post in the office of the Civil Surgeon, Bettiah, West Champaran. On 16.4.1998 after completion of thirty years of service, she made an application seeking voluntary retirement in terms of Rule 74(b) of the Bihar Service Code. In her application the Petitioner stated that her old mother-in-law needed looking after and she herself suffered from some ailment of bones and, therefore, she desired to take voluntary retirement. It is significant to note that in her application the Petitioner did not mention any date with effect from which she might be allowed to go on voluntary retirement but only asked for approval on her request.

3. The matter lay at that stage for more than a year and even before the Petitioner got any response to her application dt. 16.4.1998 she made another application on 18.5.1999 withdrawing her request for voluntary retirement. In her application dt. 11.5.1999 she stated that her mother-in-law had passed away and her own ailment was much better; and in the changed circumstances she recalled her earlier application for voluntary retirement.

4. Evidently, the later application for recall of her request for voluntary retirement was disregarded and by notification dt. 21.7.2000 she was retired from service "voluntarily" with effect from the date of the notification.

5. The writ petition has been filed challenging the notification dt. 21.7.2000 by which the Petitioner has been practically removed from service purportedly on the basis of her own application for voluntary retirement.

6. On behalf of the State it is not denied that the Petitioner had submitted another application on 18.5.1999 recalling the request for V.R. made by her earlier. It is, however, stated that the recall application was disregarded because it was not submitted within three months from the date of the application for voluntary retirement. According to the State, any application for recall of the request for voluntary retirement can only be entertained if it were made within three months from the date of application for voluntary retirement.

7. The provision for voluntary retirement is contained in Rule 74(b) of the Bihar Service Code the relevant portion of which is extracted below:

(b)(i) Notwithstanding anything contained in the preceding sub-Rule a Government servant may after going at 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:

Provided that no Government servant under suspension shall retire from service except with the specific approval of the State Government:

Provided further x x x

(ii) x x x

(iii) x x x

Needless here to say that the Service Code contains rules framed under Article 309 of the Constitution and these rules, therefore, have legislative sanction.

8. It appears that the State Government by memo No. PC2/9/8/78/6190b dt. 27.4.1979 issued certain government decisions, being explanatory and supplemental to Rule 74 of the Bihar Service Code. At paragraph 6 the memo contained the following decisions:

Further, in para 15 of this memo it was stated that in the light of the decisions contained therein amendments will be made in the Bihar Service Code and the Pension Rules. Nothing was brought to my notice to indicate that any amendments in the light of that memo were, in fact, incorporated in the Service Code and a Division Bench of this Court as late as in the year 1992 treated the aforequoted decision simply as government instruction non-statutory in nature.

9. In support of the stand of the government reliance is placed on the aforequoted government decision as contained in para 6 of the memo dt.

27.4.1979.

10. It is now to be seen how far the Respondent authorities can be said to have acted fairly and reasonably in disregarding the Petitioner's request for recall of her application for voluntary retirement on the basis of the government decision and for the reason that the recall application was made beyond a period of three months from the date of the application for voluntary retirement.

11. It is to be noted that under Rule 74(b) a government servant is required to give at least three months' previous notice for taking voluntary retirement. It is, therefore, inherent in the provision that the government should also take a decision on the employees request shortly after the expiry of the three months period. Seen in that light the government decision stipulating that the request for recall of an application for voluntary retirement should be made within the notice period appears quite unexceptionable and reasonable. But in the case in hand the government has hardly acted in the manner expected of it or as envisaged under the rules. It is seen above that the application for voluntary retirement was made on 16.4.1998 and for more than a year there was absolutely no response from the government. Then on 18.5.1999 another application was made recalling the earlier application for voluntary retirement, the government decision finally came as late as on 21.7.2000 that is to say, after twenty seven months from the date of the application for voluntary retirement. In these circumstances, it is quite unreasonable for the government to insist that the application for recall must have been made within three months from the date of the application for voluntary retirement. If the stand of the government were to be accepted, it would mean that the government itself is under no restraint or obligation to consider an employee's request within a reasonable time and to take a decision on the request fairly and justly but all the restraints would apply to individual government servants.

12. In a case like the one in hand the government can rely upon a non-statutory government decision for denying the request of a government servant only in case the government itself has acted fairly, justly and reasonably. In the facts and circumstances of this case, this Court comes to the finding that though the government decision in itself may be quite reasonable, legitimate and valid but in the facts of this case it is not open to the government to rely upon that decision to deny the Petitioner the right to recall her earlier application for voluntary retirement. In this view I find support from an earlier Division Bench decision of this Court in Panchanan Jha Vs. The State of Bihar and Others, . I accordingly, set aside the impugned notification dt. 21.7.2000 and direct the Petitioner to be reinstated in service with full back wages.

13. In the result, this writ petition is allowed but with no order as to costs.