

(2018) 06 PAT CK 0043

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 19658 Of 2014

Dr. Prem Prakash Gupta

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 19-06-2018

Acts Referred:

Bihar Service Code, 1979 — Rule 74(b)(i)

Citation : (2018) 3 PLJR 768

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Kumar Kaushik, J.P. Sharma, Arvind Kumar

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and the respondent State.
2. The writ petition has been filed seeking quashing of the order dated 05.07.2014 whereby and where under the petitioner's voluntary retirement has been rejected.
3. Brief facts giving rise to the instant writ petition are that the petitioner claims to fulfill the requisite qualifying service prescribed in Rule 74 (b) (i) of the Bihar Service Code (hereinafter referred to as "the Code") as amended from time to time and submitted his three months notice under the said Rule for voluntary retirement. The petitioner had submitted the notice on 09.03.2010. When the same was not being acted upon, the petitioner approached this Court by filing his earlier writ petition bearing C.W.J.C. No. 12999 of 2012 which was disposed off by order dated 30.07.2012. Since the petitioner fulfilled the requisite criteria as prescribed under Rule 74 (b) (i) of the Code, this Court had allowed the respondent authorities

opportunity to examine petitioner's claim on the limited issues whether subsequent upon giving notice on 09.03.2010 the petitioner had discharged his duties or not. Also to examine petitioner's claim on the limited issues whether there are any departmental proceedings/suspension against the

petitioner which may stand in the way of consideration of his claim under Rule 74 (b) (i) of the Code on the basis of his notice dated 09.03.2010. For

such limited consideration, the issue was left to be decided by the authorities. The respondent authorities have thereafter come up with a plea that

since the petitioner has been absent from 01.08.2006 and has not been working. Thus, it is submitted that period of absence being three and a half

years, the petitioner cannot be permitted to add the same as qualifying service for the purpose of voluntary retirement.

4. Petitioner's counsel submits that he had not been discharging his duties during the said period as he has been suffering from major illness. It is on

account of this illness, which is an orthopedic condition that the petitioner has given his application for voluntary retirement as he was not capable to

discharge his duty as a government servant. He submits that even if the said period of three and a half years is not considered for the length of

qualifying service as required under Rule 74 (b) (i) of the Code then also he would still be entitled to a benefit of Rule 74 (b) (i) of the Code as the

same has been amended under the Government's decision dated 12.02.1973 which has altered the qualifying service for availing of the voluntary

retirement from the period of 30 to 20 years and even if the three and a half years are excluded, the petitioner has qualifying service of 20 years.

5. He submits that even inspite of not having performed the duties for the said period of about three and a half years, there is no valid justification for

rejecting his claim made under Rule 74 (b) (i) of the Code for voluntary retirement.

6. It is further submitted that since the issue stands concluded in the writ proceedings arising out of C.W.J.C. No. 12999 of 2012, there is no scope for

the respondents to look into the issue as the only issue which was left for to see was whether he has discharged his duty after 09.03.2010 or whether

during that period any departmental proceedings/suspension was existed against the petitioner. Admittedly on these two issues the respondents have

not found anything adverse to the petitioner's claim.

7. This Court finds that the submissions made by the petitioner are correct in view of the order passed on the petitioner's earlier writ petition with reference to Rule 74(b)(i) of the Code. It would be apposite to reproduce the order dated 30.07.2012 passed on the petitioner's earlier writ petition bearing C.W.J.C. No. 12999 of 2012 :

“The relief sought in the application is for a direction to accept his request for voluntary retirement dated 9.3.2010. Learned counsel for the

petitioner submits that the requirement for thirty years of qualifying service prescribed in Rule-74(b)(i) of the Bihar Service Code has been amended

on 17.4.1979 by notification P.C. 2-9- 8/78/61 90F by 20 years. The petitioner has completed over 27 years of service. There was no departmental

proceedings pending against him and neither he was under suspension. The law stands settled that if the request for voluntary retirement was not

rejected otherwise, it was deemed to have been accepted on expiry of three months under the aforesaid rule. The petitioner has not been discharging

duties thereafter and therefore his request for voluntary retirement should be deemed to have been accepted with effect from 10.6.2010.

Let the respondents examine the grievances of the petitioner. If he has not discharged duties after 9.3.2010 and there are no departmental

proceeding/suspension, why he should not be deemed to have voluntarily retired with effect from 10.6.2010.

If the petitioner has been discharging duties after 10.6.2010, matters shall necessarily be different and the respondents will then be required to

consider issues appropriately from the date that he represents. The Court considers it proper to make this observation as there is no specific pleading

in the writ application with regard to the date when he has stopped discharge of duties. Let such appropriate and final orders be passed within a

maximum period of two months from the date of receipt/production of a copy of this order.”

8. It is only on the point of his absence from duty for the period noticed above that his claim has been rejected, and subsequently proceedings sought to be initiated against the petitioner under Resolution dated 27.02.2015.

9. The Resolution dated 27.02.2015 resolving to initiate a proceedings against the petitioner much after disposal of CWJC No. 12999 of 2012 on

30.07.2012 has been challenged by the petitioner by filing an Interlocutory

Application. The same is numbered as I.A. No. 2681 of 2018. The petitioner has contended that such proceedings cannot be conducted since by effect of Rule 74 (b) (i) the petitioner's application for voluntary retirement stood accepted and the only liberty granted to the respondents under order passed in C.W.J.C. No. 12999 of 2012 was to see whether the petitioner has discharged his duty after 09.03.2010 and whether during that period the departmental proceedings/suspension was pending against the petitioner. Admittedly the answer is in the negative in respect of these two issues as neither it is found that the petitioner has worked from 09.02.2010 to 10.06.2010 nor is there any assertion of the respondents that at the relevant point of time when he had made his application for voluntary retirement under Rule 74 (b) (i), no proceeding was pending against him and that he was never placed under suspension prior to 10.06.2010.

10. Since the petitioner's voluntary retirement under Rule 74 (b) (i) of the Code is by effect of law, the master and servant relationship had snapped.

The Resolution of the Government of Bihar dated 27.02.2015 purporting to initiate proceeding against the petitioner is therefore, without jurisdiction in as much as the petitioner has ceased to be a government servant.

11. Counsel for the petitioner has fairly submitted that the period in question (three and a half years) during which he has been absent on account of his illness i.e. from 01.08.2006 onwards he shall not be claiming any benefits in respect thereof. Thus, the petitioner is also not claiming, nor has he received salary in respect of period after 01.08.2006.

12. In view of such submission and having considered the background of the case in light of the order dated 30.07.2012 passed in C.W.J.C. No. 12999 of 2012, this Court would conclude that the order dated 05.07.2014 bearing no. 771 which is impugned in the instant writ petition is not justified in as much as the same is in excess of the limited liberty granted to the respondent State under the order passed on the petitioner's earlier writ petition.

The order passed on the petitioner's earlier writ petition was final and binding between the parties in as much as no appeal has been preferred by the respondents against the same. In view of such position they cannot be permitted to travel beyond the said order which this Court has passed considering the petitioner's claim for voluntary retirement to be otherwise in accordance with law and Rule 74 (b) (i) of the Code.

13. In view of such findings and in view of the submissions made by the counsel for the petitioner that petitioner shall not be claiming any benefits with respect to the period from 01.08.2006 onwards, since when he has been absent from service due to his illness, this Court would quash the resolution dated 27.02.2015.

14. The petitioner in light of the Rule 74(b) (i) of the Code and the decision passed on his earlier writ petition bearing C.W.J.C. No. 12999 of 2012 is deemed to have retired from service voluntarily.

15. In view of the fact that nothing adverse has been found against him in terms of the liberty granted by this Court under the said order, the subsequent grounds set up by the respondent State of Bihar that his claims are unsustainable, is violative of, and in excess of the liberty granted by this Court on the petitioner's earlier writ petition.

16. For the aforesaid reasons, the writ petition is allowed to the extent indicated hereinabove.