

(2021) 02 PAT CK 0261

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1556 Of 2019

Dr. Vinoy @ Dr. Vinoy Singh

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 18-02-2021

Acts Referred:

Bihar Service Code, 1979 — Rule 74(b)
Constitution Of India, 1950 — Article 226

Citation : (2021) 02 PAT CK 0261

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Advocate : Prabhat Ranjan Dwivedi, Rajeev Ranjan, Chandan Kumar, Birju Prasad, Ajit Anand, Shweta Anand

Final Decision : Allowed

Judgement

1. In this application under Article 226 of the Constitution of India the petitioner has challenged the decisions of the respondent-authorities vide order

contained in Annexure-5 whereby the written prayer of the petitioner for voluntary retirement was treated as an application of resignation. The

challenge is on the ground that the impugned order suffers from arbitrariness and is violative of the legal right of the petitioner.

2. The petitioner joined in State Health Services on 07.09.1987. On 31.10.2005 the petitioner filed an application to the Secretary, Government of

Bihar, Health Department, stating therein that due to certain personal and family reasons the petitioner is not in a position to discharge his official duty

with responsibility. Hence, he may be permitted to retire voluntarily with effect from 01.02.2006. Since, the petitioner had not completed 20 years of

service for retiral benefit. Hence, the petitioner made further prayer in the said application that the intervening period between 01.11.2005 to

31.01.2006 be treated as period spent on extra-ordinary leave. The application was forwarded through the Principal of Patna Medical College and an

advance copy was sent to the Secretary, Department of Health (Medical Education), Government of Bihar. The application of the petitioner dated

31.10.2005 is at Annexure-1. Thereafter, the petitioner again sent letter dated 28.04.2006 to the Secretary concerned drawing attention of the

Secretary towards his earlier letter dated 31.10.2005 and further stated that if the department has any technical objection in allowing the prayer of

voluntary retirement, the petitioner be permitted to retire from the service.

3. The technical difficulty in allowing voluntary retirement was that the petitioner had not completed 30 years of qualifying service or attained 50 years

of age on the date of application for voluntary retirement as required by Rule 74(b) of the Bihar Service Code.

4. However, the authorities did not pass any order on the aforesaid petition; rather initiated a departmental proceeding against the petitioner vide

resolution dated 04.11.2006 on the ground that the petitioner was absent from duty without any permission of the authority and was reportedly

engaged in services of some other State. After completion of the inquiry the petitioner was exonerated in the disciplinary proceeding on 02.01.2013.

By the same order, the petitioner was sanctioned extra-ordinary leave for the period of his absence adopting the policy of "no pay for no work".

As such, the petitioner was in active and continuous service till the order dated 02.01.2013.

5. Learned counsel for the petitioner submits that respondent No.3 treated the application of the petitioner dated 31.10.2005 as an application of

resignation without any rhyme or reason or any such averment in the application. Therefore, act of respondent No.3 suffers from arbitrariness and

takes away the valuable legal right of the petitioner. As such, is not sustainable in law. On the date the order contained in Annexure-5 the petitioner

had already completed 50 years of age and 30 years of qualifying service. In the aforesaid circumstance, either the authorities should have accepted

the prayer of the petitioner or would have rejected the same in toto but they could not have treated the same as application of resignation. The

petitioner had clearly stated in his application dated 28.04.2006 that if there is any technical difficulty in accepting the prayer of voluntary retirement

the authority may make him to retire from the date of prayer and the consequence would follow. However, since there was no prayer for resignation, the authority could not have without hearing the petitioner treated the said application as application for resignation.

6. Mr. Birju Prasad, learned counsel appearing for State-respondents, has drawn attention of the Court towards order passed by the Principal of Patna

Medical College contained in Annexure-B dated 31.10.2005, whereby the Principal has rejected the prayer of the petitioner contained in letter dated

31.10.2005. Therefore, according to learned counsel his application was already rejected on the date of submission itself.

7. Since the Principal of Patna Medical College was not a competent authority to reject or allow the prayer of the petitioner for voluntary retirement.

Hence, order contained in Annexure-B is without jurisdiction.

8. It would be worth to reproduce the prayer of the petitioner as contained in letter dated 31.10.2005 at Annexure-1/Annexure-A and subsequent

reminder dated 28.04.2006 at Annexure-2/Annexure-D :

Annexure-1

From: Dr. Vinoy

Asst Prof (Gen Surg).

Patna Medical College, Patna

To

Secretary

Dept of Health (Medical Education),

Government of Bihar; Vikas Bhavan,

Patna-800 001

Through: Proper Channel

Subject: Permission for voluntary retirement from service and sanction of retirement benefits.

Respected Madam

Most respectfully, I beg to state that:

1. I am serving Govt. of Bihar since 07.09.1987 (service history attached).

2. Lately, due to certain personal & family reasons, I am finding it extremely difficult to discharge my job responsibilities.

3. Therefore, kindly permit to voluntarily retire from service with effect from 01.02.2006.

4. Kindly also sanction extraordinary leave for the intervening period- 01.11.05 to 31.01.2006

I shall remain ever grateful for these kind acts.

Yours obediently,

(Vinoy)

Asst Prof (Gen Surg),

Patna Medical College, Patna??

31.10.2005

Annexure-2

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9. It is evident that the authorities did not take any decision on the prayer of the petitioner for voluntary retirement made in the year 2006 till 2013 and

in 2013 the petitioner was fulfilling the conditions for voluntary retirement as per Rule 74(b) of the Bihar Service Code, the petitioner had already

completed 50 years of his age for qualifying to make prayer for voluntary retirement. In the circumstance, the authority could have accepted the

prayer of the petitioner or could have rejected the same but they could not have treated the same as an application of resignation.

10. Hence, that portion of the impugned notification dated 02.01.2013 contained in Annexure-5 stands hereby quashed whereby the prayer of the

petitioner was treated as prayer for resignation with retrospective effect. It is directed that the respondents shall treat the prayer of the petitioner as

prayer for voluntarily retirement and that would be effective from the date of order contained in Annexure-5, i.e., 02.01.2013, and not from any other

retrospective date. The petitioner shall be entitled for all the retiral benefits according to law. The respondent authorities shall ensure payment of

retiral benefit to the petitioner within three months.

11. Accordingly, this application stands allowed.