

(2014) 08 JH CK 0061
In the Jharkhand High Court
Case No : L.P.A. No. 80 of 2008

Kishori Mohan Ojha

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Citation : (2014) 4 AJR 185 : (2014) 4 JLJR 33

Hon'ble Judges : R. Banumathi, C.J.; Amitav Kumar Gupta, J

Bench : Division Bench

Advocate : Ashutosh Kr. Singh, J.C. to Anil Kumar, Advocate and Venkateshwar Gopal, Advocate for the Appellant; Bharti Kumari, J.C. to Sr. S.C.-I, Advocate for the Respondent

Judgement

Amitav Kumar Gupta, J:

1. The instant Letters Patent Appeal has arisen out of the order dated 28.01.2008 passed in W.P. (S) No. 2344 of 2007 whereby the learned Single Judge dismissed the writ, of the appellant/petitioner, for acceptance of voluntary retirement.

2. Appellant/petitioner filed the aforesaid writ stating that he was appointed as Medical Officer vide Notification No. 841(2) dated 04.08.1983 and pursuant to the notification he joined on 24.08.1983 as Jail Doctor under the Home Department. That he worked at various places and was transferred as Medical Officer to Sadar Hospital, Chaibasa. That he sent an application for casual leave from 09.10.2001 to 11.10.2001 and the Civil Surgeon, Chaibasa, vide Memo No. 1584 dated 16.10.2001 accorded approval to the said application. Thereafter the appellant submitted an application for extension of his casual leave up to 11th November, 2011. That from time to time the appellant sent applications to the Superintendent, Sadar Hospital, Chaibasa for extending the period of casual leave and he continued to remain on leave.

That he was suffering from Bronchical Asthma as such he applied for voluntary

retirement on 19.10.2004. That he was surprised to know after receipt of letter No. 117(8) dated 24.03.2006 issued by the Respondent No. 3, Deputy Secretary, Department of Health, that a departmental proceeding had been initiated against him vide Circular No. 166(8) dated 29.09.2005 and by the said letter he was directed to submit the reply to the second show-cause.

It is stated that he again submitted an application dated 28.07.2006 to Respondent No. 2, Secretary, Department of Health, to accept his voluntary retirement from service as he had completed the minimum mandatory years of service required for voluntary retirement. It is stated that no order was passed on his application which amounts to illegal and arbitrary action on the part of the respondent. That the departmental proceeding and order dated 24.03.2006 directing the appellant to submit his show-cause on the basis of ex-parte departmental enquiry is illegal.

On the above grounds the aforesaid writ was filed by the appellant-petitioner.

3. Learned counsel for the appellant has contended that the learned Single Judge should have considered the fact that the applications by the appellant/petitioner for extension of leave was neither rejected by the respondents nor any communication regarding the decision was sent by the respondents, as such, the appellant was under the impression that his application for extension of leave has been allowed by the respondents. That the learned Single Judge failed to appreciate that the entire departmental proceeding was initiated in an ex-parte manner without service of notice to the appellant and the entire action of the respondent is in violation of the provisions of Civil Services Classification Rules and Service Code and is violative of the principles of natural justice. That the petitioner had completed the mandatory minimum years of service and the respondents should have accepted his application for voluntary retirement which has not been considered and appreciated by the learned Single Judge.

4. On behalf of the State/respondents it is argued that the appellant was absent from his duty since October, 2001 and his absence was reported by the Chief Medical Officer, Chaibasa, to the Department by letter No. 1805 dated 24.09.2005. That consequence to the order passed in W.P. (PIL) No. 740 of 2003 and the Contempt Case No. 940 of 2004, departmental proceeding was started against those doctors who remained absent from duty for many years and the appellant was found to be absent from October, 2001. The conducting Officer of the Departmental Proceeding found the charges to be true as the appellant did not produce any document to justify his absence and only produced proof of sending application under certificate of posting which was not considered as proof.

That the department issued the second show-cause notice for dismissal of the appellant from service and the approval sought by the Department was accorded by the Chief Minister, Government of Jharkhand on 13.12.2006 and the consent for dismissal was granted by Public Service Commission by Memo No. 642 dated

23.05.2008. The Cabinet approved and confirmed dismissal order on 16.10.2008 accordingly the Department after getting due approval sent the dismissal order to the Accountant General vide letter No. 224(4) dated 26.11.2008.

That the State Service Code prescribes that for minimum 20 years of regular service for acceptance of application for voluntary retirement but the appellant/petitioner had not completed the mandatory minimum required period of service hence his voluntary retirement application was not accepted. It is urged that the present appeal is not maintainable.

5. On perusal of the documents it is admitted fact that the appellant was appointed as Medical Officer by notification No. 2/M1-2-41/82 Khand-841 (2) dated 04.08.1983 issued by the Department of Health and he joined on the post of Jail Doctor in Department of Home (Jail) on 24.08.1983 as per Annexure-1 and 2. That he applied for casual leave to the Civil Surgeon and he was granted casual leave from 09.10.2001 to 11.10.2001 (Annexure-3). No application whatsoever has been brought on record by the appellant to show that he had made applications from time to time for extension of his leave. In the absence of any such material, it has to be treated as unauthorised absence. The departmental proceeding rightly resulted in imposing punishment of dismissal from service.

6. Learned counsel for the respondents has drawn our attention to Rule 74 of Jharkhand Service Code which stipulates that for voluntary retirement, minimum 20 years of regular service is mandatory. It is evident that the appellant was appointed on 04.08.1983 and his 20 years of service would have been completed on 03.08.2003 but the appellant remained absent from October, 2001 and he has not produced any document to justify his absence since October, 2001. Thus he has not completed the required 20 years of regular service in terms of Rule 74 of the Code making him eligible to seek for Voluntary Retirement. Accordingly, the learned Single Judge has correctly passed the order impugned in the present appeal and we do not find any merit in the appeal to interfere with the order of the learned Single Judge. In the result, the appeal stands dismissed.