

(2011) 03 PAT CK 0108
In the Patna High Court
Case No : LPA No. 2036 of 2010

The State of Bihar and Others

APPELLANT

Vs

Shah Waliullah Tarique

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Bihar Service Code, 1952 — Rule 74

Citation : (2011) 59 BLJR 2671 : (2011) 2 PLJR 1094

Hon'ble Judges : Samarendra Pratap Singh, J;S.K. Katriar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Mr. Vinay Kirti Singh, learned Standing Counsel No. 5 for the Appellants, and Mr. Behzad Akhtar for the Respondent. This appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna raises a grievance with respect to the order dated 24.11.2009, passed by a learned Single Judge of this Court in C.W.J.C. No. 14756 of 2009* (Shah Waliullah Tarique v. The State of Bihar and Ors.), whereby the writ petition has been allowed and the prayer of the writ Petitioner (Respondent herein), to withdraw his application for voluntary retirement in terms of Rule 74(b)(i) of the Bihar Service Code (hereinafter referred to as "the Code"), may be deemed to have been withdrawn on account of the conduct of the parties, has been upheld.

2. A brief statement of facts essential for the disposal of this appeal may be indicated. The Respondent was, at the relevant point of time, serving Government of Bihar as assistant translator in Urdu. By order dated 31.12.2002, he was transferred from Mehsi Prakhanda to Sitamarhi Collectorate. By order dated 30.6.2008, he was transferred from Sitamarhi Collectorate to Patahi Prakhanda which was not to his liking. He, therefore, made attempts to be posted either at Sitamarhi or at Muzaffarpur allegedly on health grounds. It appears that the Respondent authorities did not accede to his request. Consequently, the Respondent submitted his letter dated 3.7.2008, stating therein that, in view of

the aforesaid circumstances, he may be allowed to take voluntary retirement in terms of Rule 74(b)(i) of the Code. Before he could receive a formal communication from the State Government about his letter seeking voluntary retirement, he joined Patahi Prakhand on 4.5.2009. He thereafter came to know about the impugned order dated 25.8.2009, whereby the application for voluntary retirement was accepted, leading to the writ petition. The same (writ petition) has been allowed on the ground that the letter for voluntary retirement was based on his grievance caused by the refusal on the part of the authorities to post him at a place of his choice on medical grounds. Learned Single Judge has proceeded to observe that, in view of his fresh thinking, he had joined the Patahi prakhand and, therefore, the very basis of his application for voluntary retirement came to an end. The writ petition has been allowed, and the impugned order dated 25.8.2009, has been set aside on the ground that the Respondent's application for voluntary retirement automatically stood withdrawn because of conduct of the parties.

3. We have perused the materials on record and considered the submissions of learned Counsel for the parties. We entirely agree with the grievance raised by the learned Standing Counsel that the learned Single Judge did not allow any opportunity to the Appellants to file counter affidavit. It appears from the record of the writ proceeding that the writ petition was lodged in this Court on 5.11.2009, and it was for the first time laid before the learned Single Judge on 20.11.2009, on which date the brief order is recorded "Order reserved". The writ petition was allowed by order dated 24.11.2009. It is, therefore, evident on the face of the record of the writ proceeding that the learned Single Judge did not afford the minimum opportunity to the State of Bihar to place on record their counter affidavit. Justice hurried is justice buried.

4. Learned Standing Counsel is further right in his submission that the learned Single Judge has made contradictory observations in his order which go to the root of the matter. While interpreting Rule 74(b)(i) of the Code, the learned Single Judge has observed as follows:

This provision has been interpreted by Courts to mean that a formal acceptance of the request of the Government servant was not necessary and it stood accepted on expiry of three months automatically, an option available either to the employee or the master, or the specified date.

These observations would mean that once an application for voluntary retirement has been submitted, the same shall be deemed to have been accepted by the State Government on expiry of the period, and the employer and employee relationship automatically ceases. We are unable to agree with this statement of law. On a plain reading of Rule 74(b)(i) of the Code, it appears to us that the emphasis is on the position that the Government servant must give at least three months previous notice. This can not bind the State Government to accept it within a period of three months. We can quite conceive of a situation where the State Government finds the services of the Government servant to be of high

order and, therefore, unable to release him. The State Government may need some time to redress his grievances and persuade him to continue in public interest. It is equally a possible situation that the Government servant may be a suspect, and the application for voluntary retirement may be" an attempt to escape the action of the State Government. In such a situation, the State Government is free to examine the record and antecedents of the Government servant whether or not the application for voluntary retirement is fit to be accepted.

5. The aforesaid observations are contrary to the observations made in the later part of the order and is reproduced hereinbelow:

It is apparent that when the Petitioner joined the transferred post considered inhospitable and for which reason he had requested permission to be allowed voluntary retirement, there remained no request to consider for acceptance. The request stood withdrawn by conduct. The Respondents waived consideration of the request by acceptance of his joining at the transferred place.

According to the earlier observations made by the learned Single Judge, once the application for voluntary retirement had taken effect on expiry of the period of three months, the question of the same remaining alive as per the second part of the observations of the learned Single Judge does not arise at all.

6. Learned Single Judge has also relied on the judgment of the Supreme Court in the case of Shambhu Murari Sinha Vs. Project and Development India Ltd. and Another, , to allow the writ petition. A fundamental difference between the reported judgment and present case is that there the Government servant had submitted a written application withdrawing his application for voluntary retirement before the same was accepted by the State Government. There has been no such request by the present Respondent in the instant case. It is all inference by the learned Single Judge which, in our opinion, is not well-founded and impermissible in law. In the facts and circumstances of this case, the impugned order dated 25.8.2009, issued by the authorities accepting the Respondent's letter for voluntary retirement is fit to be upheld.

7. It is of importance to state that the State Government, being the employer, is the pay master. Therefore, the employee can not dictate their terms of transfer and posting. If that were permitted, functioning of the State would become very difficult. These observations should not be taken to mean that we are supporting arbitrary action. In the present case, we do not find any arbitrary action on the part of the authorities. On the contrary, a self-built approach on the part of the Government servant is discernible desiring tailor-made terms and conditions of employment which can not be countenanced.

8. In the result, this appeal is allowed, and the writ petition is dismissed. The impugned order dated 25.8.2009, issued by the authorities, is hereby upheld.