

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1556 of 2019

Dr. Vinoy @ Dr. Vinoy Singh Son of late Gajendra Pratap Singh Resident of
A-54, P.C. Colony, P.S. Kankarbagh, Distt. Patna, Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna
3. The Principal, Department of Health (Medical Education), Government of Bihar, Patna
4. The Deputy Secretary, Department of Health (Medical Education) Govt. of Bihar, Patna
5. The Accountant General (A and E) Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan Dwivedi, Advocate Mr. Rajeev Ranjan, Advocate Mr. Chandan Kumar, Advocate
For the Respondent/s	:	Mr. Birju Prasad (GP-13) Mr. Ajit Anand, AC to G.P.13 Ms. Shweta Anand, AC to G.P.-13

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date : 18-02-2021

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

“प्रेषक : डा0 विनय
सहायक प्राध्यापक (सामान्य सर्जरी)
पटना मेडिकल कालेज, पटना।
सेवा में: सचिव
स्वास्थ्य चिकित्सा शिक्षा प0 क0 एवं दे0 पि0 विभाग
बिहार सरकार, पटना।
द्वारा: प्राचार्य,
पटना मेडिकल कालेज पटना।
विषय: सेवा निवृत्ति हेतु आवेदन।
पटना, दिनांक 28.04.06

महाशय,

मैंने अपने आवेदन दिनांक 31.10.05 द्वारा दिनांक 01.02.06 से स्वैच्छिक सेवा निवृत्ति तथा निवृत्ति तथा अंतराल अवधि (दिनांक 01.11.05 से 31.01.06) के असाधारण अवकाश की प्रार्थना की थी।

अभी तक मुझे ऐसी सूचना प्राप्त हुई है कि मेरी स्वैच्छिक सेवा निवृत्ति की प्रार्थना सरकार द्वारा स्वीकृत की गई है अथवा नहीं।

इस क्रम में मैं पुनः विनम्रतापूर्वक निवेदन करना चाहूंगा कि व्यक्तिगत पारिवारिक परिस्थितियों के चलते मुझे सेवा करने में कठिनाई है।

अतः पुनः अनुरोध है कि सरकार को यदि मेरी स्वैच्छिक सेवा निवृत्ति की प्रार्थना को स्वीकार करने में कोई तकनीकी कठिनाई आ रही है तो सरकार मुझे सेवा निवृत्त करने की कृपा करे।

प्राचार्य पटना मेडिकल कालेज पटना से अनुरोध है कि मेरे आवेदन को स्वीकृत करने हेतु सरकार को अपनी अनुशंसा संसुचित करने की कृपा करें।

इस आवेदन की एक अग्रिम प्रति सरकार को भी समर्पित की जा रही है।

विश्वासभाजन



ह0 अस्पष्ट
28.04.06
(विनय)

पत्राचार का पता
ए-54, पी0 सी0 कालोनी
कंकड़बाग, पटना - 800020”

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.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	19.02.2021
Transmission Date	

