

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.19771 of 2012**

=====

Dr. Anita Verma W/O Dr. Amar Verma Associate Professor, Department  
Of Pharmacology, Darbhanga Medical College Hospital, Darbhanga, At  
Present Residing At 68 Doctors Colony, R.I.M.S. Bariyatu, P.S.- Bariyatu,  
District- Ranchi (Jharkhand)

.... .... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary Old Secretariat, Patna
2. Principal Secretary Health Medical Education & Family Welfare  
Department, Govt. Of Bihar, Vikash Bhawan, Patna
3. The Additional Secretary Health Medical Education & Family Welfare,  
Govt. Of Bihar, Vikash Bhawan, Patna
4. Principal, Darbhanga Medical Collector Hospital, Darbhanga
5. Deputy Secretary, Home (Special) Department, Govt. Of Bihar, Old  
Secretariat, Patna
6. The State Of Jharkhand through the Chief Secretary, Project Building,  
Ranchi
7. Principal Secretary Health Medical Education & Family Welfare  
Department, Ranchi, Jharkhand

.... .... Respondent/s

=====

**Appearance :**

For the Petitioner/s : Mr. Mukul Prasad, Advocate.

For the Respondent/s : Mr. J.S. Arora, SC 6

=====

**CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA**  
**ORAL JUDGMENT**

4      18-02-2015      Heard learned counsel for the parties as with regard to  
the following relief prayed in this writ application:-

"(i) For the issuance of a writ in the nature of  
mandamus or any other appropriate writ commanding  
the respondents to accept the joining of the petitioner  
with effect from dated 14.03.2008 tendered to the  
Principal Darbhanga Medical College Hospital,  
Darbhanga, vide Annexure-15 of the present writ  
petition, who has forwarded the same to the Secretary  
Health Department, Bihar Patna vide forwarding letter  
no. 1901 dated 14.03.2008 vide Annexure-15/1 of the  
present writ petition.



(ii). For the issuance of a writ in the nature of mandamus or any other appropriate writ commanding the respondents to relieve the petitioner immediately for giving joining in the State of Jharkhand in view of the notification No. 9531 issued by the Deputy Secretary Home (Special) Department Govt. of Bihar dated 16.09.2008 allotting the petitioner Jharkhand Cadre vide Annexure-18 of the present writ petition.

(iii) For the issuance of an appropriate writ in the nature of certiorari or writs and direction or directions for quashing the order dated 23.11.2011 as contained in Annexure-19 and for commanding upon the respondents for conversion with regularisation of the leave/Medical leave/Special leave to the petitioner as per rule from 10.11.2004 to 16.04.2008 and due payments may be made for the period mentioned."

2. Learned counsel for the petitioner at the outset has submitted that the petitioner is now virtually in a catch 22 situation because neither the State of Bihar is accepting the prayer of the petitioner for allowing the voluntary retirement benefit nor the State of Jharkhand is accepting the joining of the petitioner after her mutual transfer was allowed as against one Dr. Raman Kumar Verma, who while working in State of Jharkhand, was allocated the State of Bihar against the post held by the petitioner.

3. Considering all these aspects, this Court passed a

detailed order on 11.12.2013 which for the sake of clarity and convenience is quoted hereinbelow:

*Heard learned counsel for the parties at some length in respect of the following reliefs prayed in this writ application:-*

*"(I) For the issuance of a writ in the nature of mandamus or any other appropriate writ commanding the respondents to accept the joining of the petitioner with effect from dated 14.03.2008 tendered to the Principal Darbhanga Medical College, Hospital, Darbhanga vide Annexure-15 of the present writ petition, who has forwarded the same to the Secretary Health Department, Bihar Patna vide forwarding letter no. 1901 dated 14.03.2008 vide Annexure-15/1 of the present writ petition.*

*(II) For the issuance of a writ in the nature of mandamus or any other appropriate writ commanding the respondents to relieve the petitioner immediately for giving joining in the State of Jharkhand in view of the notification no. 9531 issued by the Deputy Secretary Home (Special) Department Govt. of Bihar dated 16.09.2008 allotting the petitioner Jharkhand Cadre vide Annexure-18 of the present writ petition.*

*(III) For the issuance of an appropriate writ in the nature of certiorari or writ and direction or directions for quashing the order dated 23.11.2011 as contained in Annexure-19 and for commanding upon the respondents for conversion with regularization of the leave/Medical leave/Special leave to the petitioner as per rule from 10.11.2004 to 16.04.2008 and due payments may be made for the period mentioned."*

*2. The counter affidavit, which has been filed in this case by Respondent no. 2 to say the least is wholly unsatisfactory as it does not answer the real issue inasmuch as if the petitioner was unauthorisedly absent from duty for a period nearly four years i.e. 10.11.2004 to 16.04.2008, there could have been a disciplinary proceeding for this misconduct. Nothing however to this effect, in the counter affidavit, has been explained as to how the Government could sit over the matter for a period of three and half years before passing an innocuous order on 23.11.2011 refusing to accept the joining of the petitioner as also simultaneously rejecting the request of the petitioner for her voluntary retirement from service. As a matter of fact, if the order of the Government of Bihar dated 16.09.2008 is taken into account, the petitioner had already been allocated the State of Jharkhand by way of mutual transfer in place of one Dr. Raman Kishore Verma and therefore if the same has not been rescinded/modified/recalled the Respondents would be also required to explain as to why the petitioner even now cannot be relieved for joining in the State of Jharkhand.*

*3. The Respondent no. 2 infact ought to have explained as with regard to the claim of the petitioner of her voluntary retirement at least from prospective effect inasmuch as now the petitioner has completed a service of more than 25 years and if she does not want to continue in Government service, what*

*difficulty the State Government can have in at least allowing the claim of voluntary retirement.*

*4. All these aspects, therefore, have to be explained in the supplementary counter affidavit, which must be filed by Respondent no. 2 within a period of four weeks.*

*5. In the meantime, Mr. Satyabrat Verma, learned counsel for the State of Jharkhand may also obtain instruction and file his supplementary counter affidavit as to whether the petitioner's service would be acceptable to the government of Jharkhand if the petitioner is relieved by the State of Bihar pursuant to the order dated 16.9.2008 and whether Dr. Raman Kishore Verma has been relieved by State of Jharkhand and joined in State of Bihar.*

*6. Put up this case accordingly after four weeks under the same heading as a tied up matter.*

*7. Let a copy of this order to be given to both learned counsel for the State of Bihar and State of Jharkhand.*

4. Pursuant thereto both the State of Jharkhand and State of Bihar have filed supplementary counter affidavits. From perusal of such supplementary counter affidavit of State of Jharkhand becomes clear that the petitioner was continuing in the service of State of Bihar till 26.2.2014.

5. Let it be noted that in supplementary counter affidavit filed on behalf of the respondent no. 2 (State of Bihar) it has been explained that the petitioner has been relieved on 26.02.2014 to join in the State of Jharkhand and to that extent paragraph no. 5 of the supplementary counter affidavit of Respondent no. 2, being relevant is quoted hereinbelow:

*"5. That at the outset it is humbly submitted that petitioner, in pursuance to the notification of the Home (Special) Department, Government of Bihar, Patna vide Memo No. 9531 dated 16.09.2008 has been relieved for joining in the Health Department, State of Jharkhand by a notification issued vide Memo No. 153(17) dated 26.02.2014 under the signature of Joint Secretary, Health Department, Government of Bihar."*

6. On the other hand in the supplementary counter affidavit of State of Jharkhand the acceptance of joining of the petitioner on being relieved by the State of Bihar has also been accepted in the following words:-

"6. That answering Respondent submits that the State of Jharkhand has no objection in accepting the services of the Dr. Anita Verma in accordance with law, if she comes to join the State of Jharkhand after being relieved from the State of Bihar.

7. That it is submitted that the Dr. Raman Kishore Verma although has been allotted the State of Jharkhand after bifurcation of the State, but he has not joined the State of Jharkhand till date.

8. That it is submitted that Dr. Raman Kishore Verma and Dr. Anita Verma both are working in the State of Bihar itself till date and none of them has joined in State of Jharkhand."

7. As with regard to her absence from duty for the period 10.11.2004 to 17.03.2008, the respondent State of Bihar has made a request to the Secretary of the Health and Family Welfare Department, Government of Jharkhand to initiate a departmental proceeding because the petitioner's services has now gone under the control of State of Jharkhand. This aspect has been explained in para-6 of the supplementary counter affidavit of Respondent no. 2, which for the sake of clarity and convenience,

is also quoted hereinbelow:

*"6. That it is further humbly submitted that the Health Department, Government of Bihar by a letter issued vide Memo No. 158(17) dated 26.02.2014 has also requested the Secretary, Health and Family Welfare Department, Government of Jharkhand, Ranchi to initiate departmental proceeding against the petitioner against the period of unauthorized absentia from duty from 10.11.2004 to 17.03.2008."*

8. The petitioner, as noted above has two fold grievance, namely, with regard to sanction of the leave for the period 10.11.2004 to 16.04.2008, for which period she is said to have been unauthorisedly absent from duty as well as allowing voluntary retirement to her.

9. In view of the above stand of Respondent no. 2 the grievance of the petitioner raised in this writ application gets partially redressed inasmuch as the fate and future of the petitioner for her misconduct of remaining unauthorized absent can be decided only after concluding of the departmental proceeding to be initiated by the State of Jharkhand.

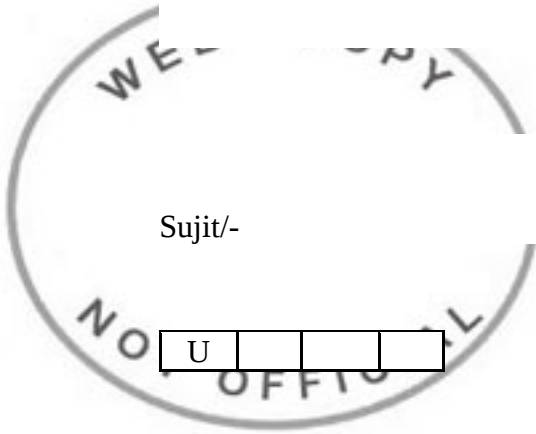
10. The petitioner, as per her own relief, has now been allowed to join in the State of Jharkhand and, therefore, her prayer for voluntarily retirement has become infructuous. The petitioner's prayer for voluntarily retirement, therefore, even in the State of Jharkhand can be allowed only after the departmental proceeding against her is brought to an end because under Rule 74

of the Bihar Service Code, if there be a departmental proceeding, the person concerned cannot claim voluntary retirement as a matter of right.

11. This Court, however, must take note of the stand taken by the State of Jharkhand in supplementary counter affidavit wherein it has been stated that as a matter of fact, Dr. Raman Kishore Verma, despite having allocated initially to the State of Jharkhand, had never joined the State of Jharkhand and, therefore, the question of relieving Dr. Verma from State of Jharkhand to State of Bihar will never arise.

12. This Court is literally amazed that if the petitioner was allowed mutual transfer on the basis of Dr. Raman Kishore Verma working in the State of Jharkhand had reverted back to the State of Bihar because in that case alone, the petitioner could be given the State of Jharkhand. Thus, the issue of mutual transfer must be now decided afresh by the Home (Special) Department, the author of the Annexure-18, the Notification dated 16.09.2008, and if upon such reconsideration, it is found that the mutual transfer of the petitioner, namely, Dr. Anita Verma and Dr. Raman Kishore Verma, was itself not fit to be acted upon, an appropriate order may be passed for repatriating the services of both the persons in accordance with law.

13. With the aforementioned observation and direction,  
this writ application is disposed of.



**(Mihir Kumar Jha, J)**