IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6037 of 2011

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Ram Narain Ram, son of late Ram Dahin Ram, resident of village and P.O. Sonpa, P.S. Rajpur, District Buxar and at present near English Kabristan, Koirpurwa (Buxar), District Buxar

.... Petitioner

Versus

1. The Accountant General, Bihar, Patna
2. The Secretary, Human Resources Development Department, Bihar, Patna
3. The Director, Prathmik Siksha, Bihar, Patna
4. The District Education Superintendent, Buxar
5. The Secretary, Prathmik Siksha, Bihar, Patna
6. The Headmistress, Uchcha Madhya Vidyalaya Mahuari Block Chausa, District Buxar
7. The Block Education Officer, Chousa, District Buxar

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Nil Kamal, Adv.
For the Respondent/s : Mr. Anjani Kumar AAG6
For the Accountant General: Mr. Arun Kumar Arun, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

5 30-11-2015 Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads as follows:

> "To quash the impugned order of respondent no.1 whereby and whereunder respondent no.1 has been issued an order to the respondent no. 4 (the District Education Superintendent, Buxar) stating that petitioner has been submitted his registration and he is not entitle for pensonary benefits under Rule 101 of the Bihar Pension Rules vide order dated 15.5.2007 contained as Annexure 1 to this petition and further be pleased to quash the order of the respondent no.3 (the Director, Prathmik Siksha Bihar, Patna) dated 20.11.2008, stating

that the period of back service would not be counted for pensionary benefits for resigned employee under Rule 101 of the Bihar Pension Rules, 1950 and further be pleased to issue a writ of mandamus, commanding to the respondents to release the pensionary benefits and other benefits in favour of the petitioner and further be pleased to direct to the respondents to allow the due gratuity, provident fund, group insurance and other dues with cumulative and penal interest in favour of the retired petitioner, who has been submitted his voluntary resignation without any pressure, coercive and only for contesting the Bihar State Assembly election on 5.5.1980 and further be pleased to direct to respondents to allow the pensionary benefits in favour of the petitioner as per the similar situated case of petitioner who allow pensionary benefits contained as Annexure 4 and 5 to this petition."

The facts giving rise to this writ application lie in a narrow compass. The petitioner was initially appointed as an Assistant Teacher on 24.9.1960. He in fact had worked in capacity of the teacher till 4.5.1980 and on 5.5.1980 he had tendered his resignation in order to contest Assembly Election for the State of Bihar to be held in the year 1980. The petitioner in fact claims that he had not only contested 1980 Assembly Election but also 1985 and 1990 Assembly Elections and was also elected as a M.L.A. from Rajpur Legislative Assembly constituency. According to the petitioner, he has been claiming his grant of pensionary benefits for the services rendered by him as a teacher for the period 24.9.1960 to 4.5.1980 but the same was rejected by the office of the Accountant General on the ground that the persons resigning from the service would not be entitled for grant of pensionary relief in terms of Rule 101 of the Bihar Pension Rules. According to the petitioner, he had further pursued the matter before the Lokayukta where the Director, Primary Education had taken a similar stand that the petitioner on account of submitting resignation from the Government service would not be entitled for grant of pension and other retirement benefit in terms of Rule 101 of the Bihar Pension Rules and the Director, Primary Education also had drawn support for reaching to this conclusion on the earlier decision taken by the office of the Accountant General.

This writ application in fact was filed on 1.4.2011 for grant of retirement benefit including monthly pension on the premises that the petitioner had not submitted his resignation rather he had taken only voluntary retirement to which he was entitled after completion of 20 years of service. He has also in this regard placed reliance on the resolution of the Finance Department published in the Bihar Gazette on 3rd February, 1982 as with regard to condonation in break of service of the teachers of the

Nationalized Secondary school.

In this case two counter affidavits have been filed, one by the District Programme Officer (Establishment), Buxar and the other by the office of the Accountant General. In both the counter affidavits the facts regarding the petitioner's resignation from the Government service in the year 1980 on the eve of his contesting Assembly Elections and thus, is not being entitled for grant of pension and other retirement benefits in terms of Rule 101 of the Bihar Pension Rules has been reiterated. In fact the respondent District Programme Officer (Establishment) has also distinguished the case of one Jagat Mohan Prasad sought to be relied by way of a plea of discrimination cited by the petitioner.

Let it be noted that there is no reply to the counter affidavit and as such, this Court will have to proceed that the petitioner in fact had resigned from the Government service which cannot be said to be a voluntary retirement. As a matter of fact when the petitioner claims that he is aged about 72 years as on 11.3.2011 as affirmed by him in affidavit in support of his application, his age in May, 1980 would be somewhere only 42 years which in turn would disqualify him to even claim his voluntary retirement from service in terms of Rule 74 of the Bihar Service Code. Under the Bihar Service Code voluntary retirement can be claimed by a Government servant only upon completion of 50 years of age or 30 years of service as the provisions were existing in the month of May, 1980. This, this Court will have no difficulty in accepting uncontroverted stand of the respondents that the petitioner actually had resigned from the service and was never allowed voluntary retirement. As a matter of fact for voluntary retirement three months prior notice and its acceptance is necessary, whereas the petitioner himself claims that he had worked till 4.5.1980 and had left the Government service on 5.5.1980 to contest the 1980 Assembly Elections at a point of time when he had not even completed even 20 years of service and was aged about only 42 years, thus not even fulfilling the requirement of Rule 74 (b)(i) of the Bihar Service Code which reads as follows:

> "74(b)(i) Notwithstanding anything contained in the preceding sub-rule a Government servant may, after giving at least three months previous notice, in writing to the appointing authority concerned retire from service on the date on which such a Government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice:
>
> Provided that no Government servant under suspension shall retire from service except with the specific approval of the State Government."

As a matter of fact when the petitioner had tendered his resignation on 5.5.1980 to contest the election he had actually forfeited the entire past service in terms of Rule 101 of the Bihar Pension Rules which reads as follows:

> "101. (a) Resignation of the public service or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.
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> (b) Resignation of an appointment with the approval of the appointing authority to take up another appointment, service in which counts, is not a resignation of the public service."

This Court in fact would not be required to once again go into the question of scope and applicability of Rule 101 of the Bihar Pension Rules in the case of resignation of a Government servant leading to forfeiture of his claim of pension, inasmuch as this issue has now been already settled by the Division Bench of this Court in the case of State of Bihar & anr. V. Dr. (Smt.) Shahida Hassan, reported in 2010(2) PLJR 189, wherein after noticing the provision of Rule 101 it was authoritatively held that a Government service on resignation from the Government service would forfeit his claim of past service for earning pension. In fact the Division Bench in the case of Dr.(Smt.) Shahida Hassan (supra) had also though considered the earlier judgment of this

Court in the case of Tapan Kumar Chatterjee v. the State of Bihar & ors., reported in 1998(1) PLJR 707, and the view taken by the learned Single Judge therein was overruled by the Division Bench holding that the same did not lay down a correct law as with regard to grant of pension of a person resigning from service.

In the case of Dr.(Smt.) Shahida Hassan (supra) the Division Bench also had taken into consideration the provision of Rule 135 of the Bihar Pension Rules and had held that in terms of the provisions made in Rule 135 of the Bihar Pension Rules it has to be held that an exception has been carved out in the Bihar Pension Rules for grant of pension to a retiring person after completing 25 years of service. The Division Bench in this regard had held that on a perusal of Rules 144 and 145 of the Bihar Pension Rules it was clear that they deal with computation of pension and not entitlement of pension. Thus, in view of authoritative pronouncement of the Division Bench in the case of Dr. (Smt.) Shahida Hassan (supra) this Court will have no difficulty in holding that the petitioner after tendering resignation even before completion of 20 years of service and at the age of almost 42 years when he had tendered his resignation he had forfeited his claim for earning pension in terms of Rule 101 of the Bihar Pension Rules.

As a matter of fact this writ application filed after 31 years of cause of action is itself wholly belated because the right of the petitioner to earn pension if at all had emerged on 5.5.1980 and therefore, the present writ application filed by the petitioner as a last recourse after having failed at each and every forum either before the Accountant General or before the office of the Lokayukta is wholly belated and therefore, apart from on merits this writ application is also fit to be dismissed on the ground of delay and laches.

Thus, for the reasons indicated above, this Court does not find any merit in this application and the same is, accordingly, dismissed.

(Mihir Kumar Jha, J)

surendra/-

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