

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1259 of 2015

In
Civil Writ Jurisdiction Case No. 23812 of 2013

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1. The State Of Bihar, through, the Principal Secretary, Department of Health, Bihar, Patna.
 2. The Principal Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
 3. Officer-on-Special Duty, Health Department, Government of Bihar, Patna.
 4. Section officer, Section-17 of Medical Education, Health Department, Government of Bihar, Patna.

.... Appellant/s

Versus

Dr. Lalit Kumar Son of- Late Shatrughan Singh, Professor, Department of Radiology, Vardhman Institute of Medical Science, Pawapuri, Nalanda. Resident of Mohalla- Road No. 2, Rajendra Nagar, P.S.- Kadam Kuan, District- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manoj Kumar, AC to SC 12

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 09-11-2016 I.A. No. 5408 of 2015 has been filed for
condoning the delay of 178 days in filing the appeal.

On a consideration of the facts and circumstances stated in the application, the delay in filing the appeal is condoned.

I.A. No. 5408 of 2015 is, accordingly, disposed of.

Heard learned counsel for the State-appellants.



The appeal has been filed against the judgment and order dated 16.05.2014 passed in CWJC No. 23812 of 2013 by a learned Single Judge of this Court by which the impugned order dated 24.9.2013, by which the prayer of the writ petitioner for his voluntary retirement had been refused, has been quashed. It was further directed that as notice period of three months has already been completed, the petitioner of the said case would be entitled to his voluntary retirement and he would accordingly stand relieved of the duties of his post with immediate effect.

Three writ applications have been disposed of by the common order dated 16.05.2014 passed therein; however, the present appeal is confined only to the case of one of the writ petitioners (respondent herein) with regard to rejection of his voluntary retirement which has been quashed by the said judgment.

From the facts of the case it is evident that the sole respondent, Dr. Lalit Kumar had completed the three conditions for seeking voluntary retirement as provided under Rule 74(b)(i) of the Bihar Service Code and had given three months notice for voluntary retirement by his application dated 21.6.2012 on the ground that he had completed 58 years of age as also more than 30 years of service and therefore his voluntary retirement in terms



of Rule 74 of the Bihar Service Code should be accepted with effect from 1.10.2012. The same was rejected by order dated 24.9.2013 by the State Government which was impugned in the writ application. The learned Single Judge has discussed the scope of Rule 74(b) (i) of the Bihar Service Code referring to the several decisions of this Court and also of the Supreme Court in the matter, wherein it has been decided that the option lies with the employee to initiate the process of voluntary retirement and the only right given to the Government is that if the Officer is under suspension, such option of the employee for voluntary retirement can be denied and further there can be refusal of voluntary retirement only during the notice period of three months, otherwise it would be a deemed retirement on expiry of three months notice. It was accordingly held by the learned Single Judge that in view of the provisions of the Rules and the judgments of the Apex Court and this Court there is no option to the State Government to refuse the application for voluntary retirement on any ground except when the Government servant has been placed under suspension, whereas the writ petitioner had admittedly never been placed under suspension and thus his voluntary retirement would be automatic.

Learned counsel for the appellant-State of Bihar



submits that the application of the writ petitioner for voluntary retirement had been refused on the sole ground that there was shortage of teachers in the Government Medical Colleges especially on account of newly created Medical Colleges. However, learned counsel is unable to point out in view of the clear language of Section 74(b)(i) of the Bihar Service Code, that any such authority can be exercised by the Government when the writ petitioner had fulfilled the pre-conditions for seeking voluntary retirement and was admittedly not placed under suspension when he had filed his application for voluntary retirement with a clear three months notice.

In the aforesaid view of the matter, we see no reason to interfere with the order of the learned Single Judge. The appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Rajendra Kumar Mishra, J)

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