

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6512 of 2012

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1. Dr. Shyam Narain Arya S/O Late Brahmadeo Narain Sinha R/O
Vidyapati Marg, P.O.- G.P.O., P.S.- Kotwali, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary Department Of Health, Government Of Bihar, Patna
3. Additional Secretary, Department Of Health, Government Of Bihar,
Patna
4. Deputy Secretary, Department Of Health, Government Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinay Raj, Advocate

For the State : Mr. Anuj Kumar, AC to SC 7

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

5 18-07-2016 Heard the parties.

The petitioner seeks quashing of an order dated 15.09.2011, whereby his claim for grant of pension has been rejected by the Health Department, Government of Bihar, on the basis that he had tendered his resignation in the year 1976 itself and, therefore, in view of Rule 101(a) of the Bihar Pension Rules, 1950 he is not entitled for pension.

There are certain facts which are not in dispute. The petitioner was appointed in Bihar Health Service as Permanent Assistant Civil Surgeon on 16.05.1958. Thereafter, he was confirmed on 16.05.1959. For certain reasons, he is said to have applied for voluntary retirement in the month of March, 1976.



Soon thereafter, in the month of May, 1976, he submitted his resignation. Immediately after submitting his resignation, he left discharging his duties. The petitioner does not dispute; rather, asserts that he had done his duties for the period from 16.05.1958 to 14.05.1976 only and not thereafter. He has, however, claimed that no order for accepting his resignation was ever passed. It is his further case that a gradation list of the members of the Bihar Health Service was published in the year 1992, in which the petitioner's name figures at serial no. 424. It has also been asserted that the petitioner was never communicated any decision on his application for voluntary retirement.

In the background of the aforesaid facts, the petitioner claims that it cannot be said that the petitioner resigned from service and, therefore, by applying Rule 101(a) of the Bihar Pension Rules, he would be held not entitled to proportionate pension for the period during which he actually worked.

A counter affidavit has been filed on behalf of the respondents-State of Bihar. It has not been disputed that the petitioner's name figures in the 1990 gradation list as claimed by the petitioner.

Learned AC to SC-7 has, however, submitted that



only on the strength of presence of the petitioner's name in the gradation list, it cannot be said that he was continuing in service as on that date. He submits that inclusion of the petitioner's name in the gradation list is an apparent clerical mistake. With the counter affidavit, charge report, dated 14.05.1976, has been brought on record through which the petitioner had handed over his charge to Professor S.N. Prasad. In the charge report, the petitioner, while demitting the charge of Lecturer in Medicine (Neurology), Patna Medical College, has himself put the reason behind his demitting the official. The charge report reads thus;

Charge Report

“I, (Name of Relieved Officer) Shyam Narayan Arya undersigned have handed over charge to Shri Prof. S. N. Prasad undersigned as Lecturer in Medicine (Neurology), Patna Medical College, on the afternoon of the 14.05.76 of year 1976. As I have resigned from Government Service and my resignation has been accepted vide Notification 2/A-1-4-13/76-696(2) dated 12.05.76 from Health Department.”

It is evident from the said charge report that the petitioner himself had recorded that he had resigned from Government Service and his resignation had been accepted. After 36 years of the said charge report, the petitioner cannot

turn around and make a claim that he cannot be said to have resigned from the post.

Rule 101(a) of the Bihar Pension Rules clearly lays down that resignation of a public servant shall entail forfeiture of past service, for the purpose of reckoning of pensionable service.

Learned counsel for the petitioner has vehemently argued that Rule 101(a) of the Bihar Pension Rules and Rule 135 thereof contain conflicting provision inasmuch as Rule 135 permits payment of retiring pension after resignation being accepted after completion of qualifying service of not less than 25 years; whereas, Rule 101(a) contemplates forfeiture of the entire past service for the purpose of reckoning pensionable service.

I am not able to accept such contention. Payment of pension to the employees of the State Government is governed by the Bihar Pension Rules, 1950. Rule 101(a) and Rule 135 apply in different fields altogether. Rule 101(a) deals with consequence of resignation by a Government Servant on computation of pensionable service. It prescribes that in case of resignation, past service shall stand forfeited. The petitioner, at the time of submitting his resignation, must have been fully

aware of its consequences.

Learned counsel for the petitioner, referring to Rule 135 of the Bihar Pension Rules has submitted that Government Servants have been made entitled to a retiring pension after completing qualifying service of not less than 25 years on their resignation being accepted. The said submission deserves to be rejected for simple reason that the said Rule 135 deals with those Government Servants who fall in Rule 5. In any view of the matter, petitioner had not completed 25 years of service on the date when he handed over the charge after resignation from service.

In view of the discussions as above, I do not find any illegality in the impugned order. This application stands dismissed.

(Chakradhari Sharan Singh, J)

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