

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 5902 of 2011

=====

Dr. Anil Kumar Kanchan son of late Singheshwar Ram resident of village +
P.O. Mahanth Maniyari P.S. Maniyari District Muzaffarpur at present
residing at Mohalla Kashipur, Hospital Road, Samastipur.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary Old Secretariat, Patna.
2. The Commissioner cum Secretary, Health Department, Government of Bihar, New Secretariat, Patna.
3. The Deputy Secretary, Health Department, Government of Bihar, New Secretariat, Patna.
4. The Director in Chief, Health Department, Government of Bihar, New Secretariat, Patna.
5. The Deputy Director Health Department Government of Bihar New Secretariat, Patna.
6. The Chief Executive Officer, State Health Committee Government of Bihar, Patna.
7. The Superintendent of S.K.M.C.H. Muzaffarpur.
8. The Civil Surgeon cum Chief Medical Officer, Samastipur.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Manish

For the Respondent/s : AC to GA - 3

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 25-01-2016

Heard Sri Manish, learned counsel for the petitioner and
learned A.C. to Govt. Advocate - 3.

The petitioner, invoking writ jurisdiction of this Court
under Article 226 of the Constitution of India, has prayed for
quashing of an order contained in Memo no. 742(2) dated 18-06-2009
issued by the Deputy Secretary, Health Department, Govt. of Bihar
(Annexure - 6 to the writ petition) to the extent whereby though
period of absence of the petitioner from 30-11-2007 to 11-04-2008

was regularized as extra-ordinary leave by one line, it has been stated that the said period shall not be counted for the purpose of calculation of pension. The petitioner is aggrieved with the last line of the order contained in **Annexure - 6** to the writ petition.

As per writ petition, the petitioner was appointed, vide Notification dated 06-11-2007 issued by the Deptt. of Health, Govt. of Bihar, whereby alongwith petitioner, other several persons were appointed as Assistant Civil Surgeon-cum-Medical Officer. It has been claimed that pursuant to the said notification, the petitioner gave joining and vide **Annexure - 2** to the writ petition i.e. Memo no. 2930 dated 03-12-2007, he was relieved for undertaking training on deputation in Live Saving Anaesthetic skills for Emergency Obstetrics Care at Shri Krishna Medical College & Hospital, Muzaffarpur. The petitioner joined training programme on 08-11-2007 alongwith other Medical Officers and completed the same and relieved on 11-04-2008, vide **Annexure - 3** to the writ petition. Pursuant to **Annexure - 3**, the petitioner gave his joining, however; subsequently vide **Annexure - 6** to the writ petition by order contained in Memo no. 742(2) dated 18-06-2009, the period of training was treated as the period without charge. However, the said period was regularized as extra-ordinary leave. Besides this, the condition was imposed that the said period shall not be counted for

the pensionary benefit.

A specific stand has been taken in paragraph - 11 of the writ petition that similarly situated persons have been granted benefit, but the petitioner has been ignored.

In this case, a counter affidavit has been filed on behalf of the respondent duly sworn by the Director, Health Department, Govt. of Bihar, but in the counter affidavit, only bald statement has been made to justify the regularization of the period as extraordinary leave, however no plausible explanation has been given as to under what circumstances, the said period, though was regularized for all the purpose, has been directed that it may not be counted for the pensionary benefit nor any reply has been given to paragraph - 11 of the writ petition. Meaning thereby that the stand taken by the petitioner that similarly situated person has been granted same relief has not been disputed and as such, it is presumed that same has been accepted.

In view of facts and circumstances, particularly the fact that petitioner was duly relieved by the civil surgeon for undertaking training programme and after completing the same, he was relieved by the competent authority and thereafter, he joined, the Court is of the opinion that the direction for not counting the said period i.e. period of training for pensionary benefit is not

justifiable and as such, same condition is hereby set aside and it is declared that the period from 30-11-2007 to 11-04-2008 spent by the petitioner during training period shall be treated for the benefit of calculation of the pensionary benefit also.

Accordingly, the writ petition stands allowed with above observation.

(Rakesh Kumar, J.)

Anay

U			
---	--	--	--