

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10055 of 2014

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Arti Kumari wife of Ashok Kumar Mahto resident of Mohalla
Prabhat Nagar Masjid Tola, Bhagawanpur, P.S. District
Muzaffarpur Petitioner

Versus

1. State of Bihar through the Principal Secretary Department of
Human Resources Development, Government of Bihar, Patna
 2. The Director, Secondary Education, Department of Human
Resources Development, Government of Bihar, Patna
 3. District Education Officer, Muzaffarpur District Muzaffarpur
 4. Civil Surgeon, Muzaffarpur District Muzaffarpur
 5. Accountant General, Bihar, Patna Respondents
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Appearance :

For the Petitioner : Mr. K.M.Joseph, Advocate
For the Respondents : Mr. S. RAZA AHMAD, AAG 9

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH**

ORAL JUDGMENT

Date: 20-08-2016

The petitioner seeks a direction to the respondents to dispose of her application dated 5.4.2013 for grant of invalid pension, as she took retirement from service because of critical changes in her spine, knee and ankles caused from degenerative osteoarthritis.

The petitioner was appointed on 1.9.1999 as Peon in Prabhat Tara Girls High School, Muzaffarpur, a recognized and aided Christian minority high school. However, on account of ailment, she submitted her resignation on 19.9.2012 which was accepted on 22.9.2012 by the management of the school. It appears that respondents have stopped payment of retiral benefits to the petitioner treating her resignation as one seeking voluntary retirement. The respondents in their counter affidavit stated that on medical examination, the Medical Board had found her fit to discharge her duty.

On the other hand, learned counsel for the petitioner submits that it would be in best of the tradition that if an employee resigns from service, if he or she is not able to deliver or perform his/her duty on account of physical infirmity, or is permanently incapacitated for the public service, his/her resignation should be accepted. He submits that the petitioner is physically incapacitated to perform her duty and prays for a fresh medical examination. Learned counsel next submits that respondents erred in overlooking that the case of the petitioner for grant of invalid pension on ground of physical infirmity is fully covered under Rule 116 read with Rule 107 and 128 of the Bihar Pension Rules. It is relevant to state that retirement on ground of physical incapacitation is different from seeking voluntary retirement under section 74 of the Bihar Service Code. If the claim of the petitioner is found to be correct, she would be entitled to invalid pension.

I find that the petitioner has already filed a representation on 15.4.2014 before the District Education Officer, Muzaffarpur, as contained in Annexure 7. The DEO, Muzaffarpur would dispose of her claim for grant of invalid pension after taking into consideration provisions of Rule 116 read with Rule 107 and 128 of the Bihar Pension Rules within two months from the date of receipt/production of a copy of this order.

The writ petition stands disposed of.

(Samarendra Pratap Singh, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	5.9.2016