

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No 11344 of 2014

=====

Satish Chandra Srivastava son of late Sidheshwari Saraw Resident of Cinema Road,
Gopalganj, P.S. Gopalganj, District - Gopalganj at present Posted as District
Programme Officer (I.C.D.S.), Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar
2. Principal Secretary, Social Welfare Department, Government of Bihar, Patna
3. Director, I.C.D.S., Social Welfare Department, Government of Bihar, Patna
4. Special Secretary, Social Welfare Department, Government of Bihar, Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr Naresh Chandra Verma, Advocate

For the Respondent/s : Mr M K SINGH, SC VI

=====

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 11-12-2017

Heard the counsel for the petitioner and counsel for the
State.

2 The short point for consideration in the instant case is
whether the petitioner, who had given a request for voluntary
retirement, has locus poenitentiae to resile from the said request till
such date the same has taken effect.

3 The fact in the instant case is that Annexure 1 dated
10.07.2013 was the petitioner's request for voluntary retirement with
effect from 01st August, 2014. The petitioner gave a representation
dated 24.02.2014 to the Secretary, Social Welfare Department,
Government of Bihar, Patna withdrawing his request and making a



request that the earlier voluntary retirement notice may not be processed. In spite of the said request dated 24.02.2014, which the respondents acknowledge in paragraph 7 of the counter affidavit, the notification dated 13.03.2014 has been issued. By the same, petitioner's request for voluntary retirement with effect from 01.08.2014 has been allowed. However, the same does not consider the request for withdrawal of his notice of voluntary retirement by representation dated 24.02.2014. As a result of the aforesaid, the petitioner was purported to be retired ignoring his request for withdrawal.

4 Prior to the date of voluntary retirement i e, 01.08.2014, the petitioner filed the instant writ petition and an interim order dated 01.08.2014 was passed in respect of the said proceedings wherein, till final disposal of this writ petition or till 28.02.2015 which otherwise was the actual date of retirement of the petitioner, operation of Annexure 3 was stayed. The effect of the same is that the petitioner has in fact continued to discharge his duties on his post irrespective of the order of voluntary retirement, up till his actual date of retirement being 28.02.2015.

5 In view of the admitted position that the petitioner's request dated 24.02.2014 withdrawing his request for voluntary retirement, which was to take effect on 01.08.2014 was not considered, the action of the authorities in issuing the order retiring



him with effect from 01.08.2014 is unjust and illegal. The law in this regard has been considered by this Court in the case of *Vijay Das – Versus- State Bank of India & Others* reported in 2003 (1) PLJR 44. Relying upon various decisions of the Apex Court as also this Court, the legal position has been reiterated in paragraph 5 of the said judgment. No Government rule or statutory provision has been brought to the notice of the Court suggesting that the petitioner was precluded from withdrawing his request for voluntary retirement, before it took effect.

6 In view of the aforesaid legal position, the order dated 13.03.2014 purporting to retire the petitioner with effect from 01.08.2014 is set aside. The petitioner would be deemed to be in employment till his actual date of superannuation which is 28.02.2015. As a consequence of his superannuation with effect from 28.02.2015, the petitioner would be entitled to all consequential benefits.

7 In the aforesaid terms, the writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.12.2017
Transmission Date	NA

