

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.3489 of 2016**

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Runa Devi W/o Late Mohan Mandal, Resident of Mohalla - B.B. Ganj, Lal Kothi,  
Near Police Chowki, B.B. Ganj, Danapur, P.S.- Danapur, District -Patna.

.... .... Petitioner

Versus

1. The State of Bihar
2. The Inspector General Jail and Reforms Services, Bihar, Patna.
3. The Superintendent, Adarsh Kendriya Kara, Beur, Patna.
4. The Joint Secretary- cum - Director (Admin) Jail and Reforms Services, Deptt of Home, Govt. of Bihar, Patna.
5. The Additional Secretary- cum - Director (Admin) Jail and Reforms Services, Department of Home, Govt. of Bihar, Patna.

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Siya Ram Shahi, Adv.

For the Respondent/s : Mr. Mritunjay Kumar, AC to GP-12

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 27-07-2017**

Heard Mr. Siya Ram Shahi, learned counsel appearing for the petitioner and Mr. Mritunjay Kumar, learned AC to GP-12, for the State.

A rather peculiar issue is put to debate in the present writ petition. Whereas the petitioner on assessment of her efficiency, has prayed for voluntary retirement, not only the permission has been refused rather she has been visited with initiation of disciplinary proceeding for her failure to join the transferred place of posting. The matter would require an interpretation of Rule 74 of the Bihar Service Code as also the scheme of the State Government as circulated vide Memo No. 2-9-8/78/6190F dated 27.4.1979.



With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission.

The petitioner prays for issuance of an appropriate writ for quashing the order bearing Memo No. 3775 dated 30.6.2015 of the Inspector General, Jail and Reforms Services, Bihar, Patna, impugned at Annexure 3 to the extent it transfers the petitioner whose name appears at serial no.7 of the order from Adarsh Kendriya Kara, Beur, Patna to Shaheed Khudi Ram Bose Kendriya Kara, Muzaffarpur. The petitioner has also prayed for quashing of the order bearing Memo No. 86 dated 5.1.2016 whereby the Superintendent, Adarsh Kendriya Kara, Beur has informed the petitioner that her application for voluntary retirement has been rejected vide order dated 4.1.2016 and thus, she should immediately give her joining at transferred place pursuant to the order impugned at Annexure 'G'. A copy of the order is impugned at Annexure 6. The third order questioned by the petitioner in this writ petition is an order bearing letter no. 02 dated 4.1.2016 of the Joint Secretary cum Director (Admn.), Jail and Reforms Services, Department of Home, Govt. of Bihar, whereby on refusal of consent given by the Finance Department, her application for voluntary retirement has been rejected until the year 2018. A copy of the order is impugned at Annexure 5.

The facts leading to the orders impugned briefly stated is



that the petitioner was appointed a Lady Warden on temporary basis on 31.1.1991 and her services was confirmed with effect from 1.2.1991 vide Memo No. 987 dated 18.4.1991 of the Superintendent, Central Jail, Muzaffarpur present at Annexure 1. The petitioner after having served in other places is posted as a Lady Warden, Adarsh Kendriya Kara, Beur, Patna. It is while the petitioner is serving at Adarsh Kendriya Kara, Beur, Patna that she was charged with dereliction of duty and subjected to disciplinary proceeding as she had allegedly failed in her duty to ensure the custody of a lady prisoner Rekha Devi at P.M.C.H. who escaped from custody. A departmental proceeding was initiated and vide order hearing No. 6722 dated 29.12.2014 the petitioner was imposed with penalty of stoppage of four annual increments with cumulative effect under the orders of the Inspector General, Jail and Reforms Services, Bihar, Patna, a copy of which is present at Annexure 'E' to the counter affidavit. It is in view of such circumstances and considering her physical condition that the petitioner applied for voluntary retirement before the Inspector General of Prisons vide her application dated 25.5.2015 which was duly forwarded by the Superintendent, Adarsh Kendriya Kara, Beur to the Inspector General, Jail and Reforms Services vide his letter dated 30.5.2015 enclosed at Annexure 'A' to the counter affidavit. The Addl. Secretary cum Director in consideration of the application so filed by



the petitioner for voluntary retirement asked her to reconsider her decision vide his letter dated 29.6.2015 present at Annexure 'B'. In response to the letter of the Addl. Secretary cum Director, vide Annexure 'B' the petitioner reiterated her request vide her letter present at Annexure 4, which was duly received in the office of the respondents on 17.9.2015. In between vide order bearing Memo No. 3775 dated 30.6.2015, 211 Jail Wardens were transferred inclusive of the petitioner whose name appeared at serial no.7. Since the petitioner had already submitted her application for voluntary retirement, she did not join at the transferred place. On the other hand, her application for voluntary retirement was acted upon as manifest from the letter of the Superintendent, Adarsh Kendriya Kara, Beur addressed to the Addl. Secretary dated 13.7.2015 present at Annexure 'F'. The letter of the Superintendent, Adarsh Kendriya Kara, Beur also contained an information regarding undergoing punishment of the petitioner vide Annexure 'E'. The petitioner filed her objection to the transfer order vide her letter dated 12.1.2016 present at Annexure 7 as also informing the Superintendent, Adarsh Kendriya Kara, Beur that she had already submitted her application for voluntary retirement in view of her medical condition. Since the petitioner was undergoing punishment vide Annexure 'E', of stoppage of increment, that an objection was raised by the Finance Department and it is on such



objection being raised that the application of the petitioner for voluntary retirement has been rejected under the orders of the Joint Secretary cum Director, Jail and Reforms Services, Bihar, Patna dated 4.1.2016, impugned at Annexure 5. Feeling aggrieved she is before this Court.

Mr. Shahi, learned counsel appearing for the petitioner, submits that the illegality in the action of the respondents does not stop at refusal of permission for voluntary retirement rather the petitioner has been subjected to disciplinary proceeding even when she has reminded the authorities that on account of medical condition she has sought voluntary retirement and thus, is not in a position to join at the transferred place. Mr. Shahi, learned counsel appearing for the petitioner in reference to the judgments of this Court since reported in 2001(2) PLJR 44 (**Hari Prakash Chawla v. Union of India & ors.**), 2008(4) PLJR 194 (**Dr. Shah Azad Siddiqui v. the State of Bihar & ors.**) and 2011(3) PLJR 593 (**Dr. Krishna Kumar Mallick v. the State of Bihar & ors.**) has submitted that in view of stipulations present under Rule 74 of the Bihar Service Code read alongside the circular of the State Government dated 27.4.1979, the prayer of the petitioner could not have been rejected for voluntary retirement much less on grounds that the petitioner was suffering punishment which was in the nature of stoppage of increment and not



in the nature of recovery. The argument has been contested simply on grounds that that since the petitioner was undergoing punishment she has not been allowed to voluntary retire and since she has failed to join at transferred place, she has also become liable for disciplinary proceeding for alleged misconduct.

A supplementary counter affidavit has been filed today and Mr. Mritunjay Kumar, learned AC to GP-12, in reference to paragraph-5 thereof admits that the scheme contained in the circular dated 27.4.1979 whereby the period of qualifying services was reduced from 30 years to 20 years for seeking voluntary retirement, is in force.

I have heard learned counsel for the parties and have perused the records.

The case in hand is another example of unwarranted litigation generated by the State Government and this time it is the Finance Department. There is no contest that in view of the provisions underlying Rule 74 of the Bihar Service Code read alongside the scheme of the State Government present in the circular dated 27.4.1979, the petitioner having completed 20 years of qualifying service, was well within her rights to seek voluntary retirement. The petitioner having been punished for her lack of efficiency in alertness vide order present at Annexure 'E', there could not have been a more



bonafide request than one made by the petitioner for seeking voluntary retirement by informing the respondents that she was not in a position to discharge her duty to the fullest extent. It is preposterous that the Finance Department has sought to raise an objection on such application on grounds that the punishment imposed on the petitioner vide Annexure 'E' was in force. It is plain absurdity that to deny a Government servant his increment, he should not be allowed to retire but kept in service and paid salary for the period, so that the punishment order can take effect. While raising such objection the Finance Department has completely shut its eyes to the fact that the order of penalty is a denial of benefit and not a recovery proceeding. The Finance Department also has failed to realize that while delaying the voluntary retirement of the petitioner, it is burdening the State Exchequer by payment of salary when the Government servant is asking for post retirement benefit and not salary. The decision of the Department of Finance is against the tenets of the finance and the principles underlying financial administration.

Reverting to the prayer of the petitioner for voluntary retirement, the respondents in paragraph 5 of the supplementary affidavit do accept that the scheme of 27.4.1979 is in force and that the qualifying service for seeking voluntary retirement is 20 years. It is not in dispute that the petitioner has crossed well over 25 years



qualifying service to seek voluntary retirement. The judgments so relied upon by Mr. Shahi in support of his contention and the Scheme of 1979 leave no room for confusion that the prayer of the petitioner for voluntary retirement was fit to be allowed and any denial of future increment vide the penalty order at Annexure 'E', can certainly not be a ground for such refusal. The judgments relied upon by learned petitioner's counsel further clarify that if an application for voluntary retirement is complete in all respect, it has to be allowed and a delinquent cannot be subjected to any disciplinary proceeding for any alleged violation of an order, issued subsequent to the filing of any such application.

In the circumstances discussed, this Court is constrained to observe that the respondents have proceeded in a rather myopic manner to not only refuse the prayer made by the petitioner but also to subject her to disciplinary proceedings.

For the reasons and discussions aforementioned, the order of refusal of voluntary retirement to the petitioner as contained in the letter dated 4.1.2016 of the Joint Secretary cum Director (Admn), Jail and Reforms Services, impugned at Annexure 5, the order of the Superintendent, Adarsh Kendriya Kara, Beur, Patna bearing memo no. 86 dated 5.1.2016 together with the disciplinary proceeding so initiated against the petitioner for her failure to abide by the transfer



order present at Annexure 3, is held illegal and contrary to the statutory provisions and are accordingly quashed and set aside.

The writ petition is allowed with a direction to the Joint Secretary cum Director (Admn), Jail and Reforms Services, Department of Home or the authority concerned to proceed in accordance with law for accepting prayer for voluntary retirement made by the petitioner with effect from the date on which she made such application and accord her all consequential benefits.

**(Jyoti Saran, J)**

Surendra/-

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| AFR/NAFR          | AFR        |
| CAV DATE          | NA         |
| Uploading Date    | 31.08.2017 |
| Transmission Date | NA         |

