

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7981 of 2013

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Dr Nesar Haider Son Of Late Zulfikar Haider Resident Of At + P.O. - Sakari,
District - Muzaffarpur (Retired District Leprosy Control Officer, Darbhanga)

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department Of Health, Government Of Bihar, Patna
3. The Director, Department Of Health, Government Of Bihar, Patna
4. The Principal Secretary, Department Of Finance, Bihar, Patna
5. The Joint Secretary, Department Of Health, Government Of Bihar, Patna
6. The Regional Deputy Director, Health Services, Darbhanga Commissioner,
Darbhanga
7. The Civil Surgeon, Darbhanga
8. The District Leprosy Control Officer, Darbhanga
9. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Md. Shamimul Hoda, Adv & Mr. Surya Narain Yadav, Adv
For the State	:	Mr. Anil Kumar Verma AC to AAG-9
For the A.G.	:	Mr. Anjani Kumar Sharan, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 12-02-2018

Heard learned counsel for the parties.

This writ petition under Article 226 of the Constitution



of India has been filed for partly setting aside the notification dated 27.05.2010 by which the period from 05.08.1997 to 01.04.2001, has been treated as unauthorized absence and the same has been regularized as extra ordinary leave and to treat the period from 05.08.1997 to 06.09.1999 as earned/due leave and further to treat the period from 07.09.1999 to 01.04.2001, as waiting for posting.

Briefly stated the facts of the case is that the petitioner was appointed on 21.09.1976 as Medical Officer, Jhanjharpur, Madhubani and thereafter the petitioner was transferred from Jhanjharpur and was relieved on 17.10.1978 as Medical Officer, Pachrukhi, Siwan. The petitioner was again transferred to Sakri as Medical Officer on 18.10.1982, and thereafter to Paithankawai, Darbhanga as Medical Officer on 22.06.1990 till 04.08.1997. It has been submitted that wife of the petitioner was seriously ill and he took casual leave from 05.08.1997 to 08.08.1997.

The petitioner was again transferred to Giridih by transfer order dated 21.06.1997, and he was releived from the post on 05.08.1997 but could not join on the transferred place due to serious illness of his wife and the petitioner had given an application for leave due to serious illness of his wife.



It has been further submitted that after recovery of illness of his wife, pursuant to the transfer order dated 21.06.1997, the petitioner was relieved on 05.08.1997, but due to illness of his wife, he could not join at the transferred place and therefore submitted joining in the office of Civil Surgeon-cum-Chief Medical Officer on 07.09.1999, but his joining was not accepted after two years and the petitioner was sent back to Health Directorate, Patna and pursuant to letter dated 07.09.1999, the petitioner submitted his joining in the Health Department at Patna on 13.09.1999.

Subsequently, the petitioner by Health Department Notification dated 25.03.2001 was posted in extra Primary Health Centre Mehra, Darbhanga and he retired from that place in the month of February-2006 from the post of District Leprosy Control Officer, Darbhanga. The petitioner submitted several representations since 2001 for regularization of his service for the period from 05.08.1997 to 07.09.1999, but respondents did not took any step for regularization of the said period. It has been submitted on behalf of the petitioner that the petitioner had taken casual leave from 05.08.1997 to 08.08.1997, as his wife was suffering from heart disease and when she recovered from the illness, he joined his service at the transferred place i.e.



Giridih on 07.09.1999, and when his joining was not accepted he joined in the department on 13.09.1999 pursuant to the notification issued by the Health Department. It has been further submitted that the petitioner in his career of thirty three years of service never took any leave and first time sought leave for the treatment of his wife and Accountant General had given certificate of due leave of the petitioner by his letter dated 31.05.2002, and as such prayed for regularization of his service for the above period. The Office of Accountant General by its letter dated 31.05.2002, has submitted the leave due to the petitioner in the department and thereafter the said period should be regularized by the authorities. The petitioner was surprised when a memo of charge dated 15.06.2007/19.06.2007 was served upon him by which departmental proceeding was initiated against the petitioner and the petitioner was directed to submit his written statement before the conducting officer against the charges levelled against him. The charges levelled against the petitioner is that although he was transferred on 21.06.1997, but he has submitted his joining after two years, as such he was unauthorizedly absent for the said period.

This court is surprised with the initiation of departmental proceeding against the petitioner after his



retirement under Rule-17 of Civil Services (Classification, control and Appeal) Rules-2005. At best proceeding under Bihar Pension Rules could have been initiated but even that was not permissible, as the alleged misconduct relates to the year 1997, much prior to his date of retirement in the year 2006, and the authorities could initiate proceeding under Bihar Pension Rules only with respect to misconduct committed within four years from the date of retirement. However, the same has not been challenged by the petitioner and his prayer is limited to the extent that the period from 05.08.1997 to 01.04.2001 has been held as unauthorized absence and same has been treated as extraordinary leave, after regularizing his services.

Petitioner prays that Earned Leave/Medical Leave is due to him, as such the period from 05.08.1997 to 07.09.1999 be treated as on earned leave/due leave as the petitioner had never taken any leave in his entire career of more than 33 years and earned leave/other leaves was due to him as reported by the Office of Accountant General. It has been further prayed that the period from 07.09.1999 to 01.04.2001, be treated as waiting for posting, as pursuant to the health department order, he had joined on 07.09.1999 in the Directorate of Health and thereafter from 07.09.1999 to 01.04.2001, he remained waiting for posting



and he was posted by order of department on 01.04.2001. The petitioner has submitted representation to this effect to the Principal Secretary, Department of Health, Bihar, Patna as contained in Annexures-10 and 11, but his representation for the said relief to treat the period from 05.08.1997 to 06.09.1999 as earned leave/due leave on account of leave due to petitioner submitted by Accountant General and the period from 06.07.1999 to 01.04.2001 as waiting for posting, but no decision has been taken on the said representation.

After considering the submissions of learned counsel for the petitioner and learned counsel for the State, the writ petition is disposed of directing the Principal Secretary, Department of Health & Family Welfare before whom the representation of the petitioner is pending for modification of notification no. 592(9) dated 27.05.2010, by which the period from 05.08.1997 to 01.04.2001 has been treated as unauthorized absence and regularized as extra ordinary leave, requires reconsideration by the Principal Secretary, Health Department, Patna, Bihar and this writ petition is disposed of directing the Principal Secretary, Health Department, Patna, Bihar to consider the representation of the petitioner as contained in Annexures-10 and 11 and to give petitioner a personal hearing before passing a reasoned and



speaking order on the representation filed by the petitioner,
within a period of 3 months from the date of receipt/production
of a copy of this order.

With such liberty and observation, the present petition is
disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20.02.2018
Transmission Date	N.A.

