

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.702 of 2013

Dr. (Smt.) Beena Kumari Sinha D/O Late Satya Narayan Sharma Resident Of
Satyam Bhawan House No. 9, Radha Rani Sinha Road P.S.- Adampur Distt.-
Bhagalpur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department Of Health, Government Of Bihar, Patna
3. The Joint Secretary, Department Of Health, Government Of Bihar, Patna
4. The Under Secretary, Department Of Health And Family Welfare,
Government Of Bihar, Patna
5. The Deputy Secretary, Department Of Health, Government Of Bihar, Patna
6. The Civil Surgeon-Cum-Chief Medical Officer, Munger
7. The Superintendent, Sadar Hospital, Munger

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Nutan Kumari Sharma, Adv.
For the Respondent/s	:	Mr. PRASHANT PRATAP, GP2
		Mr. Lala S. N. Rai, AC to GP2
		Mr. Asit Jha, AC to GP2

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 14-03-2018

This writ petition under Article 226 of Constitution of India has been filed for quashing Notification no. 748(9) dated 30.6.2008 by which petitioner has been voluntarily retired from service with effect from 22.5.2006 and period of absence from 26.10.2004 to 3.7.2005 and 19.7.2005 to 21.5.2006 has been treated as extraordinary leave as well as consequential order issued by notification no. 1088(3) dated 9.9.2008 by which application of petitioner for voluntary retirement has been accepted with effect from 22.5.2006 as per provision of Rule 74(B) of Bihar Service Code and Notification no. 565(3) dated 11.8.2009 by which period of absence from 26.10.2004 to 3.7.2005 and 19.7.2005 to 21.5.2006 has been treated as extraordinary leave however



subsequently the period from 1.5.2006 to 21.5.2006 has been treated to be on duty, with a further prayer to give petitioner voluntary retirement with effect from the date of issuance of order i.e. 30.6.2008 and to reconsider order by which absence of petitioner has been treated as extraordinary leave whereas petitioner was granted sanctioned leave, earned leave and other leave was due to her which was not adjusted and also period of waiting for posting.

Briefly stated the facts of the case, as stated in the petition, is that petitioner after doing her MBBS was appointed on 22.9.2007 as Medical Officer and was posted at Primary Health Centre, Sultanganj, Bhagalpur and after serving at various places she was deputed in the Welfare Department from 2.1.1996 to 2.7.2005. Thereafter, by notification dated 29.6.2005 petitioner was posted as Dy. Superintendent, Sadar Hospital, Munger. Petitioner joined the post of District Superintendent, Sadar Hospital, Munger, on 4.7.2005. But on account of her ill health she submitted an application for voluntary retirement on 21.1.2006 addressed to Secretary of the Department of Health and Family Welfare, Government of Bihar but no order was communicated to petitioner either accepting or rejecting her application and thereafter she again filed an application for voluntary retirement on 6.7.2006 but no order was passed.



The Civil Surgeon-cum-Chief Medical Officer, Munger, directed the petitioner to give her charge to one Dr. Gyan Bhushan in connection with letter no. 479 dated 20.5.2006 of Superintendent, Sadar Hospital, Munger, forwarding her application for leave from 22.5.2006 to 21.8.2006 and in compliance of said order petitioner handed over the charge to Dr. Gyan Bhushan on 22.5.2006. By memo dated 6.6.2007 a decision was taken to initiate departmental proceeding against petitioner for alleged misconduct and memo of charge was framed and served upon petitioner through registered post. Petitioner had submitted her show cause and after conclusion of departmental proceeding and pursuant to second show cause notice, petitioner filed her reply to second show cause and stated that she was not on unauthorised leave and her leave was duly sanctioned by competent authority and as such she cannot be proceeded for unauthorised absence.

She has further stated that due to medical and family reasons she could not perform her duty at Munger and she may be posted at Bhagalpur Medical College or her application for voluntary retirement may be accepted. By the impugned order, as contained in Annexure-1, dated 30.6.2008 application of petitioner for voluntary retirement has been accepted with effect from 22.5.2006. The order of voluntary retirement cannot be given



retrospective effect and it can be operative only from the date of issuance of order.

A counter affidavit has been filed on behalf of respondent in which it has been stated that by memo dated 30.6.2008, which has been impugned in the writ petition, a decision was taken to grant voluntary retirement to petitioner with effect from 22.5.2006 as well as to treat the period from 23.10.2004 to 3.7.2005 and 19.7.2005 to 21.5.2006 as extraordinary leave and said decision has been taken after proper consideration of enquiry report and show cause submitted by petitioner. It has further been stated that in view of order dated 30.6.2008 under Rule 74(B) of Bihar Service Code read with Finance Department's circular No. 6190 dated 27.4.1979 the petitioner has been granted voluntary retirement with effect from 22.5.2006.

It has further been contended in the counter affidavit that by memo dated 6.6.2007 a decision was taken to initiate departmental proceeding against petitioner under CCA Rules 2005 for unauthorized absence and violation of departmental order. The enquiry officer submitted his report on 24.8.2007 and found petitioner guilty of charges and thereafter a second show cause notice was issued to petitioner along with copy of enquiry report and petitioner submitted her reply dated 28.10.2007 and after consideration of entire materials available on record, the order



contained in Annexure-1 was passed by the Department. The respondents have also taken plea of delay and laches in filing writ petition as order passed is of year 2008-2009 but writ petition was filed in 2013. Fixation of pension on a wrong and lower pay scale is a continuing wrong as such petition cannot be dismissed on delay and laches.

After hearing the parties and considering the materials available on record, it is admitted fact that petitioner had submitted her application for voluntary retirement on 21.1.2006 and as per Bihar Service Code, after three months of submitting application for voluntary retirement it is deemed that application of an employee for voluntary retirement has been accepted and an employee has voluntarily retired from service after passing of three months from the date of submission of application. A notification has to be issued by the Department regarding voluntary retirement of employee and process of payment of retirement benefit has to be initiated but no such step was taken by the Department showing acceptance of her voluntary retirement. The application of petitioner for grant of voluntary retirement was not accepted although no order was passed within three months from the date of submission of application of voluntary retirement. It is deemed that after three months the petitioner has voluntarily retired from service and relation of employer and employee ceased



to exist and a retired employee is entitled to all retirement benefits after three months from the date of an application.

But in case of petitioner by order dated 20.5.2006 the Civil Surgeon-cum-Chief Medical Officer, Munger, directed her to hand over the charge to Dr. Gyan Bhushan and petitioner handed over the charge and her application for leave from 20.5.2006 to 21.8.2006 was also forwarded to the competent authority. Subsequently, by departmental memo dated 6.6.2007 departmental proceeding was initiated against petitioner, as such, at this stage the State cannot take a plea that relation of employer and employee ceased to exist after three months of submission of application of petitioner for voluntary retirement rather it shows that her application for voluntary retirement was not accepted and she was being treated as an employee of the Health Department and was also subjected to departmental proceeding. She cannot be given voluntary retirement from retrospective effect and it has to be from the date of issuance of order. The order dated 30.6.2008 and the notification dated 30.6.2008 as contained in Annexure-1 of the writ petition granting voluntary retirement to the petitioner cannot be given retrospective effect and it is to be made effective from the date of issuance of order i.e. 30.6.2008. The counsel for the petitioner relies upon the judgment passed in ***Dr. Prem Chandra Jha and another Vs. State of Bihar and Ors.*** dated



5.12.2002 since reported in **2003(1) PLJR 178** and paras-3, 4 and 5 are extracted below:-

“ 3. Counter affidavit has been filed on behalf of the respondents in which the notification dated 1.11.2002 (Annexure-A) accepting the voluntary retirement of petitioner no. 1 from the date of issuance of the notification under Rule 74(b) of the Bihar Service Code has been placed on record. Notification dated 15.11.2002 (Annexure-B) has also been placed on record which shows that the voluntary retirement of petitioner no. 2 has been accepted from 16.7.2002.”

“4. Mr. Dhrub Narayan, learned counsel appearing on behalf of the petitioners, states that in view of the notification dated 1.11.2002 (Annexure-A), grievance of petitioner no. 1 does not survive. However, he points out that so far as petitioner no. 2 is concerned her voluntary retirement has been accepted from 16.7.2002 by notification dated 15.11.2002 which shall deprive her the benefits of service from 16.7.2002 to 15.11.2002, although she had worked for the said period. Learned counsel appearing on behalf of the State is unable to justify it.”

“5. Let the date of acceptance of voluntary retirement of petitioner no. 2 be treated as 15.11.2002 i.e. the date on which notification was issued and necessary corrigendum be issued within three weeks from the date of communication/receipt of a copy this order.”

The petitioner has also been subjected to hostile discrimination as similarly placed persons as contained in Annexure-9 series has been granted voluntary retirement from date of issuance of notification but in case of petitioner only it has been accepted from retrospective date i.e. from date of application.

In the result, the writ petition is allowed and the order, as contained in Annexure-1, is set aside and the authorities are directed to pass a fresh order treating acceptance of voluntary retirement of petitioner as 30.6.2008 i.e. the date of issuance of



notification and pass a fresh order by which the period from 26.10.2004 to 3.7.2005 and 19.7.2005 to 30.4.2006 has been regularized treating said period as on extraordinary leave. Petitioner may file a representation before the Secretary, Department of Health and Family Welfare and the authority will pass an order treating the date of voluntary retirement of petitioner as 30.6.2008 and shall also pass a fresh order with respect to period of absence after taking into account her sanctioned leave, earned leave and other leave due to her and period of waiting for posting as claimed by her and regularise her absence period accordingly.

The writ petition is allowed to the extent indicated above.

(S. Kumar, J)

sudip/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

