

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4233 of 2018

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Jayant Narayan Shrivastava, son of Late Sarvagya Narayan Shrivastava,
Resident of Flat No. 403, Block- Yamuna- 1, Jalal City, P.S.- Rupaspur,
District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. Principal Secretary, Water Resources Department, Bihar, Patna.
3. Joint Secretary, Water Resources Department, Bihar, Patna.
4. Under Secretary (Management), Water Resources Department, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Adv.
For the Respondent/s	:	Mr. Harish Kumar-GP8
		Mr. Binod Kumar Sinha, AC to GP8

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 27-07-2018

In the present writ application, I.A. No. 5402 of 2018
has been filed which is allowed and the same would be treated to
be part of the main writ application.

Heard learned counsel for the parties.

In this case, the petitioner is seeking relief of quashing
of the decision contained in letter no. 330 dated 19.2.2018
(Annexure -P/8) by which the application for voluntary retirement
filed by the petitioner has been rejected on the ground that he has
remained absent without proper sanction of leave and the
explanation submitted by him was not found satisfactory and,
hence, the application voluntary retirement has been rejected.



The fact of this case is that the petitioner had filed an application for voluntary retirement on the ground that he is unable to discharge his duty effectively on the ground that he is busy with the treatment of his wife who is suffering from Kidney Polycystic and cyst in the liver and her treatment was being done at CMC, Vellore Hospital in the State of Tamilnadu. It has further been submitted that her Creatinine level and Blood Pressure are also in a higher side. Earlier she was treated at HMRI, Paras but, ultimately she is being treated at CMC, Vellore and, as such, the petitioner is unable to discharge the duty and made a prayer to grant him voluntary retirement in terms of Rule 74 (b)(i) of the Bihar Service Code but, instead of considering the application for V.R.S., an order dated 4.12.2017 was passed wherein it has been mentioned as he has remained absent without there being sanction of leave which is against the circular and, inasmuch as, he was served with a show-cause notice vide letter dated 534 dated 3.4.2017 but, till date, no explanation was filed by him and even after 3.4.2017, he has not filed an application for grant of leave and without proper sanction of the leave, he had remained unauthorized absence. On receipt of the same, he informed to the Joint Secretary vide letter dated 2.1.2018 that he has challenged the show-cause notice dated 4.12.2017 before this



Court in C.W.J.C. No. 125 of 2018 which was disposed of vide order dated 10.1.2018 and the Court has passed the following order:-

“The learned counsel for the petitioner at the outset submits that he would be submitting reply to the show cause dated 04.12.2017.

Accordingly, it is directed that the petitioner may submit his reply within two weeks and the concerned authority may take decision on the same within four weeks thereafter by a speaking and reasoned order.

The learned counsel for the petitioner submits that he may be permitted to raise all issues mentioned in the present application.

The petitioner may do so.

After a decision is taken by the concerned authority on the aforesaid show cause issued to the petitioner, the case of the petitioner for V.R.S. shall be considered and disposed off within four weeks thereafter.

The writ petition is disposed off in the aforesaid terms.”

In terms of the aforesaid order, the authority has considered the application with regard to unauthorized absence and refused to grant V.R.S. vide Memo dated 19.2.2018 (Annexure:- P/8).

The question in the present case is not that of sanction of the leave but, the question in the present case is with regard to grant of V.R.S. on the reason assigned therein that the petitioner is unable to discharge the duty on account of attending the treatment



of his wife and it is very difficult for him to discharge the duty of the State effectively.

Rule 74 (b)(i) postulates and prescribes the condition and qualification for grant of V.R.S. and the counsel for the State has not disputed that he qualifies those conditions for grant of V.R.S. Only the question in the present case is as to whether the petitioner should not be considered for grant of V.R.S. on account of unauthorized leave. Unauthorized leave may deprive him of money or for that he may be visited with some punishment but, no such action has been taken by the State but, the question in the present case is that he has shown his inability to do the service on the ground mentioned therein and, thus, he may be relieved from the service as there is no allegation that the petitioner has been proceeded with any departmental proceeding on financial irregularity or any serious misconduct.

In that view of the matter, this Court feels that refusal to grant V.R.S. is not the proper exercise of power granted to the State in the matter of granting V.R.S. and, as such, the order dated 19.2.2018 is set aside the matter is remanded back to the authority concerned, will consider the fact that the petitioner's wife is suffering from serious illness and he is attending her for her



treatment and he has to go to different hospitals in connection with the treatment of his wife.

Accordingly, the same ground has been taken in the order dated 2.4.2018 contained in I.A. No. 5402 of 2018 (Annexure:- P/10/A) is also quashed and the same is remanded back.

The authority is supposed to take a final decision within a period of eight weeks from the date of receipt/production of a copy of this order.

In the result, the present writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.08.2018
Transmission Date	NA

