

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19348 of 2017

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Vandana Kumari, Wife of Sri A.B. Chargauey, Residing at Flat No. 3 (E),
Sakuntala Garden Apartment, Punaichak, P.S.- Shastri Nagar, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Mines and Geology Department, Government of Bihar, Patna.
2. Principal Secretary, Mines and Geology Department, Government of Bihar, Patna.
3. Special Secretary, Mines and Geology Department, Government of Bihar, Patna.
4. Joint Secretary, Mines and Geology Department, Government of Bihar, Patna.
5. Under Secretary, Mines and Geology Department, Government of Bihar, Patna.
6. Director, Mines and Geology Department, Government of Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh, Advocate
For the Respondent/s : Mr. Ajit Kumar Jha, A.C. to GP-2
For Mines and Geology Dept : Mr. Naresh Dikshit, Advocate
Kalpana, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 25-07-2018

Heard learned counsel appearing for the respective parties.

2. In this case, the petitioner is challenging the order containing memo no. 2721 dated 15.09.2017, issued under the signature of the Under Secretary, Department of Mines and



Geology, Government of Bihar, Patna, whereby and whereunder the prayer of the petitioner for giving voluntary retirement having been rejected without disclosing the reason for rejection of his application.

3. The petitioner is an employee of the Mines and Geology Department, Government of Bihar, she is holding the post of In-charge Deputy Director and was posted at Muzaffarpur and vide Notification no.1651 dated 29.06.2017 the petitioner has been transferred from Muzaffarpur to Patna. Prior to issuance of transfer order, the petitioner had filed an application on 24.06.2017, requesting the State authorities to grant permission to leave the headquarter for treatment. Whereafter, she filed an application for 15 days leave on account of her illness on 29.08.2017 i.e. the date on which the order of transfer was passed. Later on, the petitioner again filed an application on 13.07.2017, mentioning therein that she is under the treatment of a doctor of Paras hospital and requested for extension of leave from 14.07.2017 to 13.08.2017. Again, she filed an application on 14.08.2017, requesting for extension of his medical leave from 14.08.2017 to 13.10.2017, but she was served a letter by the Special Secretary, Government of Bihar, directed her to take charge within 24 hours, otherwise



ready to face the departmental action. The petitioner again filed an application on 25.08.2017, addressed to the Special Secretary, requested that she has already filed an application for medical leave that should be allowed, attaching the prescription issued by the Paras HMRI hospital. Thereafter, on 31.08.2017 she filed an application to the Principal Secretary, mentioning therein that she is not physically and mentally fit to discharge the official duty as she has been undergoing medical treatment and requested that she should be granted voluntary retirement. But, instead of granting the voluntary retirement, she has been put under suspension vide order dated 04.10.2017 followed by service of charge-sheet dated 17.10.2010, attaching the “*prapatra-k*”

4. In the present case, the question is that before the transfer, the petitioner filed an application for grant of medical leave on the ground that she is not feeling well and time to time she requested for extension of his medical leave on account of undergoing medical treatment in the hospital. When she was served a letter from the Principal Secretary, directing her to join within 24 hours again she informed the authority that she has been admitted in the hospital and getting treatment, instead of accepting her application she has been slapped with the order of



suspension followed by service of charge-sheet.

5. Considering the facts of this case, it will be relevant to quote Rule-74(b) of the Bihar Service Code, which is as follows:-

“74.(b)(i) Notwithstanding anything contained in the preceding sub- rule a Government servant may, after giving at least three months previous notice, in writing, to the appointing authority concerned retire from service on the date on which such a Government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice:

Provided that no Government servant under suspension shall retire from service except with the specific approval of the State Government:]

[Provided further that in case of the officers and servants of the Patna High Court (including those of Circuit Bench at Ranchi) under the rule making authority of the Chief Justice, no such officer and servant under suspension shall retire from service except with the specific approval of the Chief Justice.]

[(ii) The appointing authority concerned may after giving a Government servant at least three month's previous notice in writing, or an amount equal to three months pay and allowance in lieu of such notice, require him in



public interest, to retire from service on the date on which such a Government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

[(iii) A Government servant who retires voluntarily is required to retire in public interest under this rule on attaining the age of 50 years, or completing qualifying service of 30 years, shall be entitled to retiring pension and death-cum-retirement gratuity.”

6. The period of qualifying service for V.R.S. was 30 years has been reduced to 20 years, meaning thereby, if a person has completed 20 years of service, on giving three months' prior notice he/she can go for voluntary retirement. However, from the record, it appears that the petitioner is fervently requesting the authority to grant her voluntary retirement, but the same has been rejected vide order dated 15.09.2017 without giving any reason.

7. One thing is very much clear that whenever an employee intends to go for VRS in terms of Rule-74(b) of the Bihar Service Code he or she has go give three months' prior notice as the rule provides in a specific term. Though the petitioner has given notice and mentioned about Rule-74 of the



Bihar Service Code but not in terms of the notice as provided under Rule-74(b) of the Bihar Service Code.

8. This Court is of the view that let the notice be treated to be three months notice of her voluntary retirement on medical ground as till date she has not withdrawn the application for voluntary retirement, and as such, the authority will consider the same as three months notice and pass appropriate order considering the fact that when an employee is suffering from illness and is unable to discharge the duty, will it be a proper for the authority to force such a person to remain attached with service, who may be proved to be the liability to the institution, as the petitioner is suffering from illness, certainly she would not be able to discharge her duty properly and that too she has repeatedly been asking the authority to relieve her from the service.

9. In such view of the matter, the order dated 15.09.2017 is quashed. The matter is remanded back to the respondent authority for fresh consideration considering the fact that she is undergoing treatment in hospital and has shown her inability to discharge her duty effectively and also considering the fact that there is no allegation, either major or minor, against the petitioner of having committed any irregularity or illegality,



rather a simple prayer has been made to grant her voluntary retirement on medical ground, which has been rejected without assigning any reason, and as such, this Court directs the respondent authorities to consider the case of the petitioner for voluntary retirement taking into considering the fact in entirety and pass order in accordance with law. However, in the meantime, the proceeding which has been initiated against the petitioner will remain stayed.

10. With the aforesaid observations and directions, this writ petition is allowed to the above extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	09.08.2018
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