

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1185 of 2019

=====

Fazal Karim, Son of Late Anwar Karim R/o 174, Patliputra Colony, P.S.
Patliputra, Distt.-Patna

... .. Petitioner/s

Versus

1. The State of Bihar,
2. The Principal Secretary, Department of Water Resources, Government of Bihar, Patna
3. The Under Secretary, Water Resources Department, Govt. of Bihar, Patna
4. The Chief Engineer, Master Planning, Pant Bhawan, Water Resources Department, Patna Range, Patna
5. The Executive Engineer, Master Planning and Investigation Division, Tilaiya, Hazaribagh

... .. Respondent/s

=====

Appearance :

For the Petitioner : Mr. Bishnu Kant Dubey, Advocate
For the Respondents : Mr. Anjani Kumar (AAG-4)

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 21-01-2019

Heard learned counsel for the petitioner and the State.

2. The petitioner has sought quashing of the order contained in Memo No. 270 dated 11.10.2000 which according to him has been made available under the provisions of Right to Information Act in the month of June, 2018 whereby the petitioner has been dismissed from service of Assistant Engineer as well as for quashing of the order dated 08.03.1996 whereby the representation/request of the petitioner for voluntarily retirement has also been rejected.

3. The petitioner joined the services of the Government in the year 1979 and worked to the



satisfaction of his employer till about 1995. On the request of the petitioner for grant of 200 days of extra ordinary leave for making Haj pilgrimage, the petitioner was granted three months extra ordinary leave with effect from 10.05.1995.

4. However, since the petitioner fell seriously ill while staying at Saudi Arabia, he could not come back on the expiry of the period of leave and had to make a representation from Gizan, Saudi Arabia for extension of his leave which he made on 01.08.1995. Several such representations were filed for extension of leave, some of which have been made part of the record of this petition.

5. By order dated 16.01.1996 contained in Annexure -8 to the writ petition the request for extension of extra ordinary leave was rejected and the petitioner was directed to return to India without any delay and report to his employer immediately.

6. Learned counsel for the petitioner has submitted that by order dated 31.01.1996 contained in Memo No. 6 issued under the signature of Deputy Secretary of the Government, the petitioner was placed under suspension for having remained absent from duty without any cause. It was clarified in the aforesaid order of suspension that the resolution with respect to departmental



proceeding against the petitioner shall be issued separately.

7. In the meantime, the petitioner vide his representation dated 01.02.1996 and 16.02.1996 sought voluntarily retirement from service in terms of the Proviso to Rule 74(b)(i) of the Bihar Service Code after having attained 50 years of age. The aforesaid representation/request of the petitioner was rejected vide order dated 08.03.1996 intimating to him that for his unauthorized absence from duty and committing fraud with the employer, his request of voluntarily retirement has not been acceded to.

8. Learned counsel for the petitioner submits that the aforesaid letter rejecting the request of the petitioner for voluntarily retirement was never communicated to him.

9. A departmental proceeding however was initiated against the petitioner on 02.04.1996 which also, according to the learned counsel for the petitioner, was conducted behind the back of the petitioner. In the aforesaid departmental proceeding, charges were proved and the petitioner was shown as an absentee in such proceeding.

10. Since the petitioner did not know about all these developments, he continued to represent his



employer for extension of leave as also for approval of his voluntarily retirement from service.

11. However on 27.02.1999, the petitioner, as claimed by him, for the first time learnt that he was asked for his second show cause on the proposal of punishment of dismissal from service. To this show cause notice, the petitioner replied and stated that the charges of giving wrong address of Saudi Arabia, committing forgery with the department and giving wrong local address of Patna were incorrect. The charge of committing fraud, the petitioner urged before the authorities, was not based on any correct premise and the postal address of Saudi Arabia was the address of his brother-in-law Mr. M.N. Ashraf who is still serving at Gizan, Saudi Arabia. The petitioner also intimated to the authorities that the address of Patna provided by him is the correct address and the same continues to be his address today. His absence from the duty even after the expiry of extra ordinary leave was under circumstances which was beyond his control as he had suffered some illness for which he was being treated. However, later, according to the petitioner, his request for voluntarily retirement also was rejected.

12. The aforesaid explanation of the petitioner did not find favour with the disciplinary authority. By order dated 11.10.2000, the petitioner has been dismissed from



service and during the period of suspension it was directed that nothing shall be paid to him.

13. The aforesaid order was made known to the petitioner only through the mechanism of RTI. The petitioner thereafter on being aggrieved by the rejection of his request for voluntarily retirement, approached the Departmental Public Grievances Redressal Cell but there also, his request was rejected.

14. Mr. Bishnu Kant Dubey, learned counsel for the petitioner has therefore submitted that with the passage of time, the petitioner does not insist for setting aside of the order of dismissal but has urged this Court to consider the claim of the petitioner for voluntarily retirement. The reasons proposed by the petitioner for the aforesaid relief are that the entire proceedings were conducted behind the back of the petitioner; the local address provided by the petitioner is still correct and that the order of dismissal was deliberately passed in order to prevent/preclude the petitioner from taking advantage of the provision of the proviso to 74(b)(i) of the Bihar Service Code for voluntarily retirement.

15. From the perusal of the order impugned, it *prima facie* appears that the petitioner had abandoned the service. After the expiration of the period of extra ordinary leave and especially when there was no communication



regarding extension of such leave as requested by the petitioner, the petitioner ought to have approached his employer earlier and ought not to have waited for 20 years in the hope that his request would be acceded to. Even with respect to the request for voluntarily retirement, the order rejecting such requests cannot be faulted with especially in the background of the petitioner not having joined duty despite the rejection of his application for extension of extra ordinary leave. The grounds urged by the petitioner for seeking extension of leave also do not appear to be worthy of any acceptance/credence. It is not the case of the petitioner that he fell terminally ill and therefore he never returned to his employer. The grounds raised or the arguments urged on behalf of the petitioner could have been accepted if after sometime, the petitioner would have returned with a plausible cause. Remaining absent from duty and only awaking from the slumber when he received second show cause notice with respect to the proposed punishment of dismissal clearly establishes and proves that the petitioner had no intention to continue in service and that for all practical purposes, he had severed his links with his employer.

16. The perusal of the order impugned further indicates that a report was sought from the Indian Embassy at Saudi Arabia which confirmed the fact that



with wrong intention, the petitioner had proceeded on leave. The petitioner was noticed by way of press release as well but he did not participate in the departmental proceeding and also chose not to come back to India to report to his employer.

17. Under such circumstances, the grounds raised by the petitioner in the present writ petition are not fit to be accepted/allowed, to say the least.

18. This Court has no option but to summarily dismiss the present writ petition.

19. The writ petition is accordingly dismissed.

20. Cost easy.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.01.2019
Transmission Date	

