

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3203 of 2015

Dr. Shah Azad Siddiqui Son of Late Md. Ibrahim Siddiqui Resident of
Mohalla - New Khajoor Banna, Patthar Ki Masjid, P.S. Sultanganj, District -
Patna

... .. Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna
3. The Additional Secretary, Department of Health, Govt. of Bihar, Patna
4. The Joint Secretary, Department of Health, Govt. of Bihar, Patna
5. The Director - in - Chief, Health Services, Bihar, Patna
6. The District Provident Fund Officer, Patna

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Mahesh Narayan Parbat, Sr. Advocate Mr. Arun Kumar Prasad Mr. Shafiur Rahman
For the State	:	Mr. Gyan Prakash Ojha, GA 7 Mr. Abhishek Singh, AC to GA 7

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 22-02-2019

Heard learned Senior Counsel for the petitioner and the
learned Counsel for the respondent State.

2. The petitioner seeks regularisation of his services for
the period of 9 years 8 months and 11 days, which has not been
regularised in view of his unauthorised absence.

3. In order to appreciate the issue this Court would
consider the brief background. Having joined as Dental Surgeon in
Class II in 1974, the petitioner on 12.1.1980 went to Uganda on
deputation (Ex India Leave). The petitioner after availing of Ex
India Leave joined back on 30.6.1986. The petitioner's joining



upon return was finally accepted by Annexure 4 dated 15.1.1990 with effect from the date of submission of his joining i.e. 30.6.1986.

4. The petitioner thereafter gave an application for another Ex India Leave for going to Saudi Arabia on 28.11.1991. Having given such application, without any order on the same, the petitioner unilaterally proceeded to Saudi Arabia. After staying there for 4 years 9 months and 6 days he returned and gave application for his joining on 15.11.1996 (Annexure 9 series).

5. The petitioner's joining upon return from Saudi Arabia was never accepted. There is no communication brought on record by the petitioner to show that after he had unilaterally proceeded to Saudi Arabia on 28.11.1991, either a permission was accorded for his such departure or that upon his return his joining was ever accepted.

6. The petitioner however applied for voluntarily retirement on 6.3.1998. The authorities failed to take any action on the said application of the petitioner made for voluntary retirement. Since no order was passed on his application either accepting or rejecting the same, taking notice of of the relevant extant service Rules this Court under order dated 31.7.2008 passed in CWJC No. 4441 of 2005 earlier filed by the petitioner directed



that the petitioner had deemed to have been voluntarily retired on 30.6.1998, in view of efflux of three months from the date of submission of his application for voluntary retirement.

7. The petitioner thereafter moved the authorities for grant of post retiral dues. The claim of the petitioner was rejected as he did not fulfill qualifying period requisite for grant of pension as 9 years 8 months and 11 days was considered to be a period during which the petitioner was on unauthorised leave. Details of the period has been specified in the order;

Firstly between 30.6.1993 to 9.3.1990 i.e. period during which he had submitted his joining on his return from Ex India Leave at Uganda till issuance of the order dated 15.1.1990 (Annexure 4) whereby his joining was accepted with effect from 30.6.1986 and whereafter he was given posting under order dated 8.3.1990. Since the petitioner's joining with effect from 30.3.1986 had been duly accepted by communication dated 15.1.1990 issued by Deputy Director, Health Services (Annexure 4) this Court would hold that the period between 30.6.1986 to 9.3.1990 cannot be treated as unauthorised leave. The petitioner is entitled to count said period as his service tenure for the purpose of calculation of all admissible benefits for the said period on account of length of service.



8. The other two periods are between 31.12.1991 to 30.6.1998. This covers the period after his unilateral departure to Saudi Arabia till the date of acceptance of his voluntary retirement by operation of the statute with effect from 30.06.1998 under orders of the High Court dated 31.7.2008. There is nothing on record to show that before proceeding to Saudi Arabia or at any point thereafter, any order was issued accepting the petitioner's application for proceeding on Ex India Leave. There is also nothing on record to show that upon his return from Saudi Arabia his joining was ever accepted in the Department. Even his voluntary retirement has been accepted because the authorities failed to pass any order on his application by a deeming fiction under the statutory provisions which contemplated automatic acceptance of voluntary retirement upon lapse of three months from the date of application, and in case no order was passed thereupon.

9. Learned Senior Counsel appearing for the petitioner has submitted with reference to Annexure 1 dated 22.7.2014 that since the same records that the petitioner was awaiting posting from 8.10.1996 to 30.6.1998 the said period of service should also be regularised and benefits of that length of service should be



made available to the petitioner. Relevant portion of the order dated 22.7.2014 is being reproduced hereinbelow:-

क्र०सं०	तथाकथित पदस्थापन के प्रतीक्षा में	पदस्थापन अवधि	टर्मियुक्ति
1	स्वास्थ्य विभाग में पदस्थापन की प्रतीक्षा में	30-06-86 से 09-03-90 तक	अनधिकृत अनुपस्थिति
2	एक्स इंडिया लीव	31-12-91 से 7-10-96	अनधिकृत अनुपस्थिति
3	स्वास्थ्य विभाग में पदस्थापन की प्रतीक्षा में	08-10-96 से 30-06-98	अनधिकृत अनुपस्थिति

10. In the table petitioner has specifically been shown as on unauthorised absence from 8.10.1996 up till 30.6.1998.

11. The said remark in respect of the said period of table is otherwise also correct as there is nothing on record to show that the petitioner's absence during said period was authorised by any order/communication of the authority or that his joining was ever accepted upon his return from Saudi Arabia. The entire period therefore between 31.12.1991 to 7.10.1996 as well as the period from 8.10.1996 to 30.6.1998 has rightly been considered to be unauthorised leave.

12. In view of the aforesaid finding, at best the petitioner can be permitted to add the period between 30.6.1986 to 9.3.1990 as length of service for the purpose of grant of any benefit for which he may be entitled.



13. Before parting with the order, this Court would record that the petitioner was specifically directed under order dated 6.7.2015 as follows:-

“Till the petitioner produces all the Passports, which are relevant for adjudication of the matter, this Court is not willing to pass any direction in his favour. Let the petitioner decide what kind of assistance he wants to render to this Court.”

14. In spite of the said order and repeated adjournments granted after 6.7.2015 the petitioner has not established his bonafide by placing on record passport for the relevant period as directed in the earlier order of this Court”

15. Be that as it may since in view of the legal position and the facts noticed hereinabove where the petitioner is found to be entitled to count the period between 30.6.1986 to 9.3.1990 the period in service for the purpose of length of service, the writ petition has been allowed to the limited extent indicated above.

(Madhuresh Prasad, J.)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	26.02.2019
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