

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15307 of 2019

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Dr. Vishnu Kant Pandey, Son of Rameshwar Pandey, Resident of Budha Colony, Main Road, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Special Secretary, Department of Health, Government of Bihar, Patna.
4. The Additional Secretary, Department of Health, Government of Bihar, Patna.
5. The Principal, Patna Medical College and Hospital, Patna.
6. The Prof. Cum-Head of the Department, Department of Surgery, Patna Medical College and Hospital, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kunal Tiwary
For the Respondent/s : Mr. Nagendra Pd. Yadav (SC23)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 01-08-2019

Heard the learned counsel for the petitioner and the State.

The petitioner is aggrieved by the order dated 31.05.2019 issued under the signature of the Deputy Secretary to the Government in the Health Department contained in Memo No. 369 (17), whereby the prayer of the petitioner for his voluntary retirement has been acceded to but such request has been allowed with a condition / rider that he



shall not be entitled in future for being considered for any engagement on contract or for any other responsibility.

The petitioner has also raised a grievance that necessary facts have not been correctly stated in the order in as much as the petitioner was not serving as Associate Professor, Department of Surgery but was last posted as Associate Professor in Laparoscopic Surgery Department, PMCH. The necessary correction in such order with respect to the post from which the petitioner has sought voluntary retirement has not been carried out despite the request of the petitioner before the concerned authority including Principal Secretary, Department of Health, Government of Bihar, Patna.

There is another grievance of the petitioner which is with respect to the date from which his request for voluntary retirement has been accepted. The petitioner had requested for retiring voluntarily from 31st of July, 2019, which date was chosen by him for taking advantage of the increment in pay to which he would have been entitled. Without any reason, it has been submitted, the Health Department has allowed his voluntary retirement w.e.f. 31st of May, 2019.



The aforesaid grievances have been sought to be redressed by the petitioner by filing several representations before the authorities, but as argued and noted in the earlier part of the order, the same has not yet been done.

With respect to the first objection, namely, that the petitioner has wrongly been described as having last worked as Associate Professor in the Department of Surgery which has not been corrected, the order must read that the petitioner has voluntary retired from the post of Associate Professor, Laparoscopic Surgery Department, which is a separate department in PMCH. The rider / prohibition on the petitioner for being appointed on contractual terms in case such an occasion arise in future is also without justification and without there being any authority of the Health Department to insert such a rider in the order accepting the request for voluntary retirement of the petitioner. All that the authority could have seen was whether the petitioner was involved in any case requiring any departmental proceeding or criminal action against him. In a case of voluntary retirement, without there being any charge against the employee, the Code (Bihar



Service Code) provides that such request could be unilaterally withdrawn before the same is accepted. This, therefore, presupposes that no disqualification shall attach to such persons who have been allowed to retire voluntarily.

The aforesaid aspects are required to be looked into and necessary / clarificatory order is also required to be passed by the concerned authority.

Under the aforesaid circumstances, this Court directs the petitioner to make a fresh representation before the Principal Secretary, Department of Health, Government of Bihar, Patna (Respondent No. 2), within a period of two weeks, who, on receipt of such representation, shall have the facts verified and thereafter pass necessary orders by issuing a clarificatory order with respect to the last post held by the petitioner before his voluntary retirement. The future disqualification attached to him also required to be revisited and if it is beyond the competence of the authority, the same must be deleted. A decision be also positively taken with respect to the request of the petitioner for retiring him voluntarily from the choice date of 31st of July, 2019. The



order shall be passed within a period of six weeks of receipt of such representation. Any other grievance raised in the representation shall also be looked into.

With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	02.08.2019
Transmission Date	

