

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20149 of 2018

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Kanhaiya Singh Son of Late Ram Ayodhya Singh, Resident of near Sahid Bhawan, Mahavir Tola, P.S. Aarah, Nawada District Bhojpur at present posted as Medical Officer, Sub Divisional Hospital, Jhanjharpur, Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Principal Secretary, Health and Family Welfare Department, Government of Bihar, Patna
3. Joint Secretary, Health Department, Government of Bihar, Patna
4. Additional Secretary, Health Department, Grievance Redressal Cell, Government of Bihar, Patna
5. Under Secretary, Health Department, Government of Bihar, Patna
6. Deputy Secretary, Health Department, Government of Bihar, Patna
7. District Magistrate, Madhubani
8. Civil Surgeon-cum-Chief-Medical-Officer, Madhubani

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajendra Narain, Sr. Adv. Mr. Rajiv Kumar Singh, Adv.
For the Respondent/s	:	Mr.Binod Kr. Yadav- SC 18 Mr. Aditya Nath Jha, AC to SC 18

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 31-07-2019

In this case, the petitioner is raising a grievance that he has filed an application for his voluntary retirement in terms of Rule 74 (b) of the Bihar Service Code, but the respondents have not taken action rather they have communicated through counter affidavit about the pendency of the departmental proceeding against him.

2. The petitioner is a Doctor and he has joined medical service of the State of Bihar on 26.03.1988 as Medical Officer



posted at P.H.C. Dhuraiya at Banka, but on account of some severe illness of his wife, he remained absent from 26.12.2005 to 18.05.2015, on that account, a proceeding was initiated against him, vide Memo no. 410 dated 15.05.2015 (Annexure-9), the punishment was awarded to the petitioner which are (1) censure (2) stoppage of increment and (3) not to make payment on the principle of “no work no pay” and that period will be treated to be his leave. That order was challenged by the petitioner in C.W.J.C. No. 12145 of 2017, which was quashed, having recorded that the District Magistrate did not find the charges having proved whereas the Additional Secretary has passed the order without any material completely on extraneous consideration and whereafter the petitioner again filed an application for V.R.S. and when it remained pending, the petitioner filed C.W.J.C. No. 10660 of 2017 and this Court, vide order dated 26.02.2018 (Annexure-11) has disposed of the writ application with a direction to dispose of the representation with respect to grant of V.R.S. The petitioner again filed an application bringing to notice of this Court to the order passed in C.W.J.C. No. 10660 of 2017 and requested to take a decision with regard to his V.R.S. within a time prescribed, but instead of giving benefit, the Department has rejected the application of the petitioner, vide Memo no. 624 (3) dated



16.08.2018 (Annexure-13) whereby and whereunder the application for V.R.S. has been rejected, mentioning therein that the petitioner does not qualify the minimum period of service of 20 years and later on, the Principal Secretary, vide Memo no. 666(3) dated 04.09.2018, again reiterated the same version as recorded in the order of Joint Secretary, refused to grant the benefit of V.R.S. Thereafter, the petitioner filed a contempt application, vide M.J.C. No. 1666 of 2018, but that has been dropped in view of the order passed by the Joint Secretary as well as Principal Secretary as mentioned above.

3. The learned counsel for the petitioner submits that during the pendency of this case, what the respondents have done, they have again initiated a departmental proceeding for the period 21.11.2010 to 10.08.2018. He further submits that a similarly situated person, namely, Jitendra Kumar Singh, who also remained absent for a long period, has been granted the benefit of V.R.S.

4. In contra, the counsel for the State submits that the period, which has been earlier subject matter of proceeding, has not been taken into consideration for refusal to grant of V.R.S., as the petitioner continued to remain absent from 2010 till date and, as such, the Department has decided to initiate a proceeding against him and vide Memo no. 855 dated 10.08.2018. (Annexure



R-1), initiated a proceeding against him, but the counsel for the petitioner submits that this Memo of charge has not been served upon him but only he could know about the proceeding through the counter affidavit filed by the State, but the question in the present case whether the petitioner can be granted V.R.S. when he is facing a departmental proceeding for being absent unauthorisedly, certainly the answer will be no, on the ground, filing application for V.R.S. does not *ipso facto* vest a right to grant the relief of V.R.S., as it depends on several factor, as one of the factor whether he is facing a departmental proceeding.

5. In the present case, already a departmental proceeding is going on against the petitioner, the petitioner has compared himself to Jitendra Kumar Singh, which does not apply in the present case in view of the fact that the order, which has been passed in favour of Jitendra Kumar Singh, does not reflect the pendency of any proceeding against Jitendra Kumar Singh.

6. In such view of the matter, this petition cannot survive. However, this Court directs the authority concerned to serve the copy of this Memo of charge, complete the proceeding in terms of Rule 17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 and complete the entire process within a period of six months from the date of receipt or



production of a copy of this order. On completion of the proceeding, if the petitioner is exonerated, in such circumstance, the application for V.R.S. of the petitioner will be considered and take decision within one month.

7. Accordingly, this application is disposed of.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.08.2019
Transmission Date	N/A

