

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2267 of 2018

Binay Kumar Thakur, Son of Sri Raj Narain Thakur, permanent Resident of Village Chainpur, P.O. and P.S. Bangaon, District- Saharsa (Bihar) (Presently residing at Flat No. A/ 402, N.H.A.I. Residential Complex, Plot 5-B, Sector-17, Dwarka, New Delhi- 110075).

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Road Construction Department, Govt. of Bihar having its office at Visheshvaraiya Bhawan, Bailey road, Patna-800001
3. The Additional Secretary, Road Construction Department, Govt. of Bihar having its office at Visheshvaraiya Bhawan, Bailey road, Patna-800001
4. Principal Secretary, Department of Finance, Govt. of Bihar, Old Secretariat, P.O./P.S.- Old Secretariat, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Singh, Advocate
For the Respondent/s : Mr.Chittranjan Sinha PAAG-2

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
CAV JUDGMENT

Date : 14-03-2019

Heard learned counsel for the petitioner and learned counsel appearing for the respondent-State.

2. The present writ application has been filed for quashing of the impugned notification as contained in Memo No. 01/Estb.-09/2013-12010(S) dated 12.12.2014, as contained in Annexure-20 to this application, issued by Respondent No. 3, the Additional Secretary to the Government, Road Construction Department, Government of Bihar to the extent that while accepting the technical resignation of the petitioner from the post of Executive Engineer, Road Construction Department, Patna on



account of appointment of the petitioner by way of absorption against the post of Deputy General Manager (Technical), in the National Highways Authority of India, New Delhi (hereinafter referred to as the 'NHAI') pension and other post retiral benefits to the petitioner had been denied. The application for technical resignation enabling the petitioner to join NHAI was a conditional offer, hence, a conditional offer and not a resignation simpliciter would not entitle the respondent authorities to forfeit the benefit of pension and other post retiral benefits. Petitioner has also prayed for payment of his pensionary and other post retiral benefits along with statutory as well as penal interest to which he is duly entitled or in the alternative for treating the technical resignation as an application for voluntary retirement and provide pension and post retiral benefits as the petitioner fulfills the qualifying years of service and other eligibility criteria as stipulated under Memo No. 190 dated 27.04.1979 of the Finance Department, Government of Bihar as he has completed the minimum qualifying service of 20 years in the Road Construction Department, Government of Bihar.

3. The facts of the case are not in dispute. The petitioner was appointed as an Assistant Engineer on 16.06.1987 and was confirmed in service with effect from 03.07.2004. He was promoted to the post of Executive Engineer (Civil) vide



notification No. 12231(S) dated 01.11.2006 (Annexure-5). While being posted as Executive Engineer (Monitoring) in the office of the Chief Engineer (Monitoring) a news advertisement was published by the NHAI inviting application for various posts on deputation vide advertisement dated 10.11.2007. By a letter dated 17.01.2008, the Deputy General Manager (Admn.), NHAI directed the petitioner to appear for interview. Petitioner was selected and the services of the petitioner was placed under NHAI on deputation for 4 years vide Memo No. 5406(S) dated 18.04.2008 by the Road Construction Department, Bihar, Patna, which is Annexure-10 to the writ application. Thereafter, NHAI consequent upon his release from Road Construction Department, Bihar, Patna appointed the petitioner as Deputy General Manager (Technical) on deputation basis for a period of 4 years, which is Annexure-11 to the writ application. On 01.11.2012, NHAI issued a circular inviting from the officers of the rank of Deputy General Manager who were willing for selection on absorption basis, which is Annexure-12. Petitioner duly informed the Secretary, Road Construction Department, Government of Bihar, Patna for forwarding his application to the NHAI for his appointment by way of absorption vide letter dated 07.11.2012, as contained in Annexure-13. However, the Road Construction Department issued



a letter to the Manager (Admn.), NHAI for returning back the services of the petitioner as the period of 4 years expired on 13.04.2012 vide Memo No. 155(S) dated 08.01.2013 as contained in Annexure-14. At this stage, the NHAI requested for extension of deputation term of the petitioner for a period of one year by letter dated 28.01.2013, as contained in Annexure-15, as the petitioner was posted in the Vigilance Division of the NHAI and was handling some critical investigations which were half way through which was not replied by the Road Construction Department. Thereafter the petitioner was given an offer of appointment on absorption basis with NHAI dated 01.04.2013 (Annexure-16) with stipulation as contained in Clause 2, relevant portion whereof reads thus :

“2. Your absorption in NHAI is subject to submission and verification of the following documents :-

1) Consent of the Cadre Controlling Authority in parent department provided that this condition may be dispensed with in case of your resignation/ voluntary retirement has been accepted by the parent department.”

4. Petitioner in response to letter dated 01.04.2013 referring to his earlier letter dated 07.11.2012 submitted an application dated 09.04.2013, which is contained in Annexure-17, before the Secretary, Road Construction Department for



acceptance of his technical resignation with stipulation that considering that the petitioner has completed more than 25 years of service with the Government of Bihar his resignation be accepted granting benefit of pension and other post retiral benefits. Having failed to get any response the petitioner sent reminders vide letter dated 24.05.2013, 08.08.2013 as contained in Annexure-18 series. The NHAI also requested the Secretary, Road Construction Department, Government of Bihar giving a list of 6 officers posted as Deputy General Manager (Technical) and Manager (Technical) in the NHAI including the petitioner to consider their absorption in the NHAI dated 05.06.2013 with a reminder dated 25.02.2014, as contained in Annexure-19 series. Eventually, the said resignation letter of the petitioner was acted upon and the resignation of the petitioner for absorption with the NHAI on the post of Deputy General Manager (Technical) was accepted by the Government of Bihar vide Memo No. 12011 (S) dated 12.12.2014 but without any pension or pensionary benefits, which has been impugned as Annexure-20 and is under challenge in the present writ application.

5. Learned counsel for the petitioner submits that the resignation of the petitioner from the service of the Government of Bihar being conditional, as it was a technical resignation wherein



benefit of pension and post retiral benefits was also prayed for, but the respondent authorities by a non-speaking order and without providing any reasonable opportunity accepted the technical resignation of the petitioner treating it as a resignation simpliciter without the benefit of pension and other post retiral benefits, which is in the teeth of the order passed by the Hon'ble Apex Court and is fit to be quashed. He further submits that the petitioner had already put in 27 years of satisfactory service, hence, the respondent authorities ought to have accepted the technical resignation of the petitioner not as a resignation simpliciter or unconditional resignation but a conditional resignation and acceptance of the technical resignation by the impugned notification dated 12.12.2014 without pension and post retiral benefits tantamounts to imposition of major punishment of removal or dismissal from service, which could not be resorted to by the parent department, Government of Bihar without regular departmental proceeding. It is submitted that pension is not a bounty as envisaged under Article 308 of the Constitution of India and an employee, who has rendered 27 years of satisfactory service with the Government of Bihar, is entitled to his pension and post retiral benefits, as the absorption in the NHAI was not a fresh appointment by way of direct recruitment but an absorption



after the consent of the parent department. He submits that the Finance Department vide Memo No. 190(F) dated 27.04.1979 has formulated a scheme of voluntary retirement from service and has specifically mentioned that those officers or Government servants, who have put in 20 years of minimum qualifying service, are entitled to get the benefit of voluntary retirement scheme and are also entitled to pension and other post retiral benefits. He further submits that in similar matters the respondent-State while accepting the resignation of similarly situated officers has granted pension and post retiral benefits to Managers (Technical) who have been absorbed by the NHAI from the parent department i.e. the Road Construction Department vide Memo No. 1107(S) dated 10.02.2014 as contained in Annexure-21, which depicts a discriminatory and pick and choose method of the Government of Bihar and is in the teeth of Articles 14 and 16 of the Constitution of India. The petitioner on receiving the impugned notification dated 12.12.2014 represented before the Principal Secretary, Road Construction Department for grant of pensionary and post retiral benefits treating his technical resignation as an application for voluntary retirement, which is Annexure-24 series, but no action has been taken.



6. Learned counsel for the petitioner relied on the judgment of the Apex Court in the case of Dr. Prabha Atri Vs. State of U.P. & others since reported in (2003)1 SCC 701, paragraphs 10 and 11, in the case of Sheel Kumar Jain Vs. New India Assurance Ltd. & Ors. since reported in (2011) 12 SCC 197, paragraphs 30, 31 and a judgment of the Division Bench of this Court dated 10.11.2014 in LPA No. 688 of 2009 stating therein that it was not open to the respondents to have accepted the resignation of the petitioner if they are not in a position to grant benefit/facilities as demanded by the petitioner in the said letter of technical resignation, as it was not an unconditional letter of resignation nor a voluntary resignation from service which entails forfeiting of past service benefit. He submits that the technical resignation letter of the petitioner dated 09.04.2013, as contained in Annexure-17, was with stipulation and condition that his absorption in the NHAI be approved along with pension and other retiral benefits which was also the contents of the reminder letters dated 24.05.2013 and 08.08.2013, as contained in Annexure-18 series. He submits that the respondents were within the authority not to have accepted the conditional/ technical resignation of the petitioner or to have rejected the letter dated 09.04.2013 itself,



leaving it open to the petitioner to have taken appropriate action under the law.

7. Learned counsel appearing on behalf of the State-respondents has filed its counter affidavit stating therein that the Department vide letter dated 08.01.2013, as contained in Annexure-14, requested the NHAI to return back the services of the petitioner to the parent department as the period of deputation of 4 years had already expired but instead of returning back to the parent department the petitioner continued in the NHAI. It is further submitted that letter of appointment of the petitioner dated 01.04.2013 issued by the NHAI had a clear stipulation at paragraph 2 quoted above for obtaining the consent of the Cadre Controlling Authority of the parent department and also stipulated that this condition may be dispensed with in case of acceptance of resignation/voluntary retirement by the parent department. It has also been stated in the counter affidavit that the matter of acceptance of technical resignation was sent to the Finance Department, Government of Bihar but the Finance Department has not given concurrence with regard to payment of pension and other retiral benefits to the petitioner in the light of Rule 101(a) of the Bihar Pension Rules, 1950. So far as issue of discrimination raised by the petitioner in paragraph 29 of the writ application of



similarly situated officers of the Road Construction Department absorbed in the NHAI, the counter affidavit at paragraph 20 of the reply does not rebut the submissions of the petitioner but simply states at paragraph 20 in reply to paragraph 29 that the Finance Department, Government of Bihar has not given its concurrence with regard to payment of pension and other retiral benefits to the petitioner in the light of Rule 101(a) of the Bihar Pension Rules, 1950. It is further submitted that the case of the petitioner cannot be treated as a case of voluntary retirement as the petitioner himself got absorbed in the services of NHAI without consent of the parent department and without obtaining no objection certificate (NOC) from the Road Construction Department. Hence, the petitioner is not entitled to pension and other retiral benefits.

8. Before I proceed to consider the matter, it may be fruitful to quote Rule 101(a) of the Bihar Pension Rules, 1950, which is in the following terms :

“101(a) : Resignation of the public service or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.”

9. I have considered the submissions of the learned counsels for the parties. From a consideration of Rule 101(a) of the



Bihar Pension Rules, 1950, it is evident that it provides two types of situation. (1) Resignation of the public servant and (2) Dismissal or removal of public servant for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination. In either of the cases it would entail forfeiture of past service. The petitioner was appointed as an Assistant Engineer (Civil) with the Road Construction Department on 16.06.1987, promoted to the post of Executive Engineer (Civil) on 01.11.2006. On an advertisement issued by the NHAI for appointment on deputation, the application of the petitioner along with others were sent by the Road Construction Department to the NHAI with no objection on 08.02.2008 (Annexure-8). Vide Memo No. 5406 dated 18.04.2008 (Annexure-10) the services of the petitioner was sent for deputation to the NHAI by the Road Construction Department i.e. the parent department. Thereafter, the offer of appointment on absorption basis of the petitioner for the post of Deputy General Manager (Technical) was sent to the Road Construction Department by the NHAI vide letter dated 01.04.2013 which stipulated the consent of the Cadre Controlling Authority in the parent department. The petitioner submitted a technical resignation application in pursuance to the offer of appointment on 09.04.2013 with clear stipulation that his technical



resignation be accepted along with pension and other post retiral benefits. In the case of Dr. Prabha Atri (supra) at paragraph 10, it has been held thus :

“10. We have carefully considered the submissions of the learned counsel appearing on either side, in the light of the materials and principles, noticed supra. This is not a case where it is required to consider as to whether the relinquishment envisaged under the rules and conditions of service is unilateral or bilateral in character but whether the letter dated 9-1-1999 could be treated or held to be a letter of resignation or relinquishment of the office, so as to sever her services once and for all. The letter cannot be construed, in our view, to convey any spontaneous intention to give up or relinquish her office accompanied by any act of relinquishment. To constitute a “resignation”, it must be unconditional and with an intention to operate as such. At best, as observed by this Court in the decision in P.K. Ramachandra Iyer : (1984) 2 SCC 141: 1984 SCC (L&S) 214 it may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple. The appellant had put in about two decades of service in the hospital, that she was placed under suspension and exposed to disciplinary proceedings and proposed domestic enquiry and she had certain benefits flowing to her benefit, if she resigns but yet the letter dated 9-1-1999 does not seek for any of those things to be settled or the disciplinary proceedings being



scrapped as a sequel to her so-called resignation. The words “with immediate effect” in the said letter could not be given undue importance dehors the context, tenor of language used and the purport as well as the remaining portion of the letter indicating the circumstances in which it was written. That the management of the hospital took up such action forthwith, as a result of acceptance of the resignation is not of much significance in ascertaining the true or real intention of the letter written by the appellant on 9-1-1999. Consequently, it appears to be reasonable to view that as in the case reported in P.K. Ramachandra Iyer the respondents have seized an opportunity to get rid of the appellant the moment they got the letter dated 9-1-1999, without due or proper consideration of the matter in a right perspective or understanding of the contents thereof. The High Court also seems to have completely lost sight of these vital aspects in rejecting the writ petition.”

10. In another decision of the Apex Court in the case of Sheel Kumar Jain (supra) at paragraph 30, 31 it has been laid down as follows :

“30. The aforesaid authorities would show that the court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement and while construing the statutory provisions, the court will have to keep in mind the purposes of the statutory provisions.



31. The general purpose of the 1995 Pension Scheme, read as a whole, is to grant pensionary benefits to employees, who had rendered service in the insurance companies and had retired after putting in the qualifying service in the insurance companies. Paras 22 and 30 of the 1995 Pension Scheme cannot be so construed so as to deprive of an employee of an insurance company, such as the appellant, who had put in the qualifying service for pension and who had voluntarily given up his service after serving 90 days' notice in accordance with sub-para (1) of Para 5 of the 1976 Scheme and after his notice was accepted by the appointing authority."

11. The issue is whether the case of the petitioner would be a resignation simpliciter, unconditional, voluntary or a conditional resignation. From letter dated 09.04.2013 the petitioner had requested for a technical resignation from the parent department with clear stipulation that his pension and all retiral benefits along with technical resignation be accepted. On a consideration of the decision of the Apex Court in the case of Dr. Prabha Atri (supra) as also Sheel Kumar Jain (supra), it is evident that law on the point is that the resignation must be voluntary and unconditional with clear intention to operate as such. If the aforesaid decisions are applied to the letter dated 09.04.2013 it is evident that it is neither unconditional nor a letter of resignation simpliciter. The letter, in fact, asked for pension and all other post retiral benefits to be provided to the writ petitioner and only after a



decision on giving the said benefits, to accept the resignation of the petitioner. Unfortunately, without first deciding on the issue as to whether the writ petitioner would be entitled to the aforesaid benefits particularly in relation to the pension and other pensionary benefits, the parent department, without applying its mind to the relevant rule, accepted the resignation of the petitioner for absorption in the NHAI without pension and pensionary benefits, thereby, forfeiting his past service which would tantamount to imposition of major punishment without resorting to regular departmental proceeding as the petitioner on the date of his relieving for absorption had already completed more than 20 years of service with the State Government. Moreover, the respondents have not replied as to why some employees of the Road Construction Department absorbed with the NHAI have been granted all pensionary benefits and the petitioner has been discriminated. Only explanation given is that the Finance Department has not given its concurrence with regard to payment of pension and retiral benefits to the petitioner in the light of Rule 101(a) of the Bihar Pension Rules, 1950. In my view, it is not open to the respondents to have accepted the resignation of the petitioner, if they were not in a position to grant benefits/facilities which the petitioner had sought in the first place in the letter dated



09.04.2013. If they were not in a position to grant such benefit as demanded in the said letter then it was not open to them to have accepted the letter of resignation given by the writ petitioner. From perusal of letter dated 09.04.2013, it is evident that it is not an unconditional letter of resignation nor a voluntary resignation from service asking for or after forfeiting the past service benefits.

12. So far as contention of the respondents that the petitioner did not join the parent department after his deputation period expired, which was communicated by the parent department to the NHAI vide letter dated 08.01.2013, as contained in Annexure-14, could not be held as a shield by the respondents for forfeiting the pension and pensionary benefits as the resignation of the petitioner for absorption in NHAI was accepted thereafter on 12.12.2014, hence, the respondents cannot be allowed to approbate and reprobate at one and the sametime.

13. In the aforesaid circumstances, the claim of the writ petitioner for pensionary benefits etc. has been wrongly rejected by the respondents as the letter dated 09.04.2013 is not one of resignation simpliciter. It could have been rejected the letter of technical resignation leaving it open to the writ petitioner to have taken appropriate action under the law.



14. Accordingly, the writ is allowed. Impugned order dated 12.12.2014, as contained in Annexure-20, to the extent of forfeiting the pension and other post retiral benefits, is set aside. Petitioner is entitled to pension and post retiral benefits as granted to other similarly situated employees of the Road Construction Department absorbed in the NHAI.

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.03.2019
Transmission Date	NA

