

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5045 of 2017

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Rajiv Nayanam, son of Late Janardan Prasad Sharma, resident of Quammruddin Ganj, Biharsharif, District Nalanda, At present Manager (Technical), National Highways Authority of India, New Delhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
4. National Highways Authority of India through its Deputy General Manager HR/Admn.-11 Ministry of Road Transport and Highways G-526 Sector, 10 Dwarka, New Delhi.

... .. Respondent/s

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with
Civil Writ Jurisdiction Case No. 5551 of 2017

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Amrendra Singh Son of Late Chandeshwar Prasad Singh, resident of Ram Krishna Prasad Path, Kadamkuan, Patna. at present Manager Vigilance, National Highways Authority of India, New Delhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
4. National Highways Authority of India through its Deputy General Manager (HR/Admn.-11) Ministry of Road Transport and Highways G-526 Sector, 10 Dwarka, New Delhi.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 5045 of 2017)

For the Petitioner/s	:	Mr. Rajesh Kr. Singh, Adv. Mr.Ranvijay Narain Singh, Adv. Mr. Dharmendra Kumar Singh, Adv. Miss. Himanshi Singh, Adv.
For the Respondent/s	:	Mr.Manoj Kr.Ambastha-SC 26



Mrs. Pushpanjali Sharma, Adv.
Mr. Balram Kapri, Adv.
(In Civil Writ Jurisdiction Case No. 5551 of 2017)
For the Petitioner/s : Mr. Rajesh Kr. Singh, Adv.
Mr. Ranvijay Narain Singh, Adv.
Mr. Dharmendra Kumar Singh, Adv.
Miss. Himanshi Singh, Adv.
For the Respondent/s : Mr. Manoj Kr. Ambastha-SC 26
Mrs. Pushpanjali Sharma, Adv.
Mr. Balram Kapri, Adv.
For NHAI Mr. S.N. Pathak, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT
Date: 04.02.2021

The aforesaid writ petitions have been heard together with the consent of the parties and are being disposed of by the present common judgment in view of the fact that the issues involved in the aforesaid two writ petitions are common.

Facts of CWJC No. 5045 of 2017

2. The present writ petition has been filed for setting aside the notification dated 22.01.2016 issued by the Road Construction Department, Government of Bihar, Patna under the signature of the Deputy Secretary to the Government, whereby and where-under it has been ordered that the resignation letter submitted by the petitioner be accepted with effect from the date of issuance of the said notification dated 22.01.2016 with the condition that the petitioner shall not be entitled to pension and gratuity, however, he shall be entitled to payment of G.P.F./ Group Insurance as well as 50% of the leave encashment amount. The petitioner has also prayed for directing the



respondent- authorities to pay the pension amount and other retiral benefits to which the petitioner is entitled.

3. The brief facts of the case are that the petitioner was appointed as Assistant Engineer in the Road Construction Department, Government of Bihar, in the year 1997 and while he was working on the said post, the National Highways Authority of India (hereinafter referred to as NHAI) invited applications from the Officers of the Central/ State Government Department/ Organizations/ Public Sector undertaking for appointment on deputation basis and since the petitioner was fulfilling the eligibility criteria for the post of Manager (Technical), he had made an application for the said post, after obtaining permission from the Government of Bihar, where-after he was called for interview by the NHAI, scheduled to be held on 05.12.2008. Subsequently, the petitioner was selected and was asked to report on 09.03.2009 and, accordingly, the petitioner was relieved by the Government of Bihar vide notification dated 15.06.2009, issued by the Road Construction Department, Government of Bihar to enable him to join NHAI, where-after he had joined at NHAI on 08.07.2009. Thereafter, the NHAI had issued a circular dated 29.08.2012, inviting applications from the officers of the rank of Manager



(Technical) and others, who were on deputation, for the purposes of absorption with NHAI and in pursuance thereof, the petitioner, vide his letter dated 12.09.2012, had requested the Secretary, Road Construction Department, Government of Bihar to grant him no objection certificate for the purposes of his absorption as Manager (Technical) with NHAI, Government of India.

4. It is the further case of the petitioner that since he was not being granted no objection certificate by the respondent State authorities, he had submitted his resignation on 17.10.2014 with a request to the Road Construction Department to accept his resignation while allowing pension and other retiral benefits so that he can seek his absorption with NHAI on the post of Manager (Technical). However, the Government of Bihar failed to pass any appropriate order leading to the petitioner filing a writ petition bearing CWJC No. 9476 of 2015 before this Court, inter alia praying therein to direct the respondent State of Bihar to accept his resignation and the same was disposed of by this Court by an order dated 03.08.2015, directing the respondent State of Bihar to take a final decision upon the application of the petitioner dated 17.10.2014, whereby the petitioner has made a request for voluntary retirement. The Road Construction



Department, Government of Bihar, by an order dated 11.09.2015 had considered the resignation letter of the petitioner dated 17.10.2014 and had rejected the same leading to the petitioner challenging the same before this Court by filing a writ petition bearing CWJC No. 17570 of 2015, which was also disposed of by this Court by an order dated 27.11.2015 with an observation that the petitioner may write to the respondent State in unambiguous terms and if such a letter is received, the Principal Secretary shall accept the resignation of the petitioner from the State of Bihar and the same shall be notified within two weeks thereof. The petitioner had then challenged the said order dated 27.11.2015 by filing an appeal bearing LPA No. 2273 of 2015, however, during the pendency thereof, the respondent-authorities had issued the impugned notification dated 22.01.2016, by which the resignation tendered by the petitioner was though accepted but with a condition that the petitioner shall not be entitled to pension and gratuity, however, he shall be entitled to payment of G.P.F./ Group Insurance as well as 50% of the leave encashment amount. Consequently, the aforesaid LPA No. 2273 of 2015 had stood disposed of as withdrawn vide order dated 29.01.2016 passed by the learned Division Bench with liberty to the petitioner to approach this



Court by filing appropriate application. The said notification dated 22.01.2016 is under challenge in the present proceeding.

Facts of CWJC No. 5551 of 2017

5. The present writ petition has been filed for setting aside the notification dated 22.01.2016 issued by the Road Construction Department, Government of Bihar, Patna under the signature of the Deputy Secretary to the Government, whereby and where-under it has been ordered that the resignation letter submitted by the petitioner be accepted with effect from the date of issuance of the said notification dated 22.01.2016 with the condition that the petitioner shall not be entitled to pension and gratuity, however, he shall be entitled to payment of G.P.F./ Group Insurance as well as 50% of the leave encashment amount. The petitioner has also prayed for directing the respondent- authorities to pay the pension amount and other retiral benefits to which the petitioner is entitled.

6. The brief facts of the case are that the petitioner was appointed as Assistant Engineer in the Road Construction Department, Government of Bihar, in the year 1997 and while he was working on the said post, the National Highways Authority of India (hereinafter referred to as NHAI) invited applications from the Officers of the Central/ State Government



Department/ Organizations/ Public Sector undertaking for appointment on deputation basis and since the petitioner was fulfilling the eligibility criteria for the post of Manager (Technical), he had made an application for the said post, after obtaining permission from the Government of Bihar, where-after he was called for interview by the NHAI, scheduled to be held on 05.12.2008. Subsequently, the petitioner was selected and was asked to report on 09.03.2009 and, accordingly, the petitioner was relieved by the Government of Bihar vide notification dated 15.06.2009, issued by the Road Construction Department, Government of Bihar to enable him to join NHAI, where-after he had joined at NHAI on 18.09.2009. Thereafter, the NHAI had issued a circular dated 29.08.2012, inviting applications from the officers of the rank of Manager (Technical) and others, who were on deputation, for the purposes of absorption with NHAI and in pursuance thereof, the petitioner, vide his letter dated 12.09.2012, had requested the Secretary, Road Construction Department, Government of Bihar to grant him no objection certificate for the purposes of his absorption as Manager (Technical) with NHAI, Government of India.

7. It is the further case of the petitioner that since he was not



being granted no objection certificate by the respondent State authorities, he had submitted his resignation on 17.10.2014 with a request to the Road Construction Department to accept his resignation while allowing pension and other retiral benefits so that he can seek his absorption with NHAI on the post of Manager (Technical). However, the Government of Bihar failed to pass any appropriate order leading to the petitioner filing a writ petition bearing CWJC No. 8938 of 2015 before this Court, inter alia praying therein to direct the respondent State of Bihar to accept his resignation and the same was disposed of by this Court by an order dated 03.08.2015, directing the respondent State of Bihar to take a final decision upon the application of the petitioner dated 17.10.2014, whereby the petitioner has made a request for voluntary retirement. The Road Construction Department, Government of Bihar, by an order dated 11.09.2015 had considered the resignation letter of the petitioner dated 17.10.2014 and had rejected the same leading to the petitioner challenging the same before this Court by filing a writ petition bearing CWJC No. 17001 of 2015, which was also disposed of by this Court by an order dated 27.11.2015 with an observation that the petitioner may write to the respondent State in unambiguous terms and if such a letter is received, the



Principal Secretary shall accept the resignation of the petitioner from the State of Bihar and the same shall be notified within two weeks thereof. The petitioner had then challenged the said order dated 27.11.2015 by filing an appeal bearing LPA No. 95 of 2016, however, during the pendency thereof, the respondent-authorities had issued the impugned notification dated 22.01.2016, by which the resignation tendered by the petitioner was though accepted but with a condition that the petitioner shall not be entitled to pension and gratuity, however, he shall be entitled to payment of G.P.F./ Group Insurance as well as 50% of the leave encashment amount. Consequently, the aforesaid LPA No. 95 of 2016 had stood disposed of as withdrawn vide order dated 22.12.2016 passed by the learned Division Bench with liberty to the petitioner to approach this Court by filing appropriate application. The said notification dated 22.01.2016 is under challenge in the present proceeding.

Contentions of the Ld. Counsel for the petitioners.

8. The learned counsel for the petitioners has submitted that the respondent State had wrongly processed the case of the petitioners by wrongly considering their cases for grant of voluntary retirement, whereas the case of the petitioners is for acceptance of their resignation, however, with all pensionary



and retiral benefits including pension and gratuity. The learned counsel for the petitioners, while assailing the impugned notification dated 22.01.2016, has submitted that Rule 74(b) of the Bihar Service Code is not applicable in the case of the petitioner inasmuch as the petitioners have never sought either voluntary retirement or compulsory retirement but had submitted their resignation from their services, hence, once their resignation is accepted, they are liable to be paid all the pensionary/ retiral dues including pension and gratuity. In this connection, the learned counsel for the petitioners has referred to a judgment reported in *2019 (2) PLJR- 885 [Binay Kumar Thakur vs. The State of Bihar]*, paragraph nos. 3, 11, 13 and 14, which are reproduced herein below:-

“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 NHAH 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 NHAH dated 01.04.2013 (Annexure-16) with stipulation as contained in Clause 2, relevant portion whereof reads thus :

“2. Your absorption in NHAH 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.”

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.

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.”

9. It is thus submitted by the learned counsel for the petitioners, Shri Rajesh Kumar Singh, that since the petitioners had submitted their resignation with condition that they should be granted pensionary/ retiral benefits, the Road Construction Department, Government of Bihar should not have accepted the resignation of the petitioner, in case they were not in a position to grant benefits/ facilities which the petitioners had sought vide their resignation letter, however, since they have accepted the letter of resignation of the petitioners, they could not have forfeited the pension and pensionary benefits of the petitioners.

10. The learned counsel for the petitioners has further referred to a judgment reported in *2004(1) PLJR-12 [Deo Krishna Mishra vs. The State of Bihar and Ors.]*, paragraph Nos. 8 to 11 whereof are reproduced herein below:-

“8. On the said question this Court heard another writ petition bearing C.W.J.C. No. 1678 of 2003 and the order in the said case was reserved. Thus, in the present case also vide order dated 3.9.2003 the order was reserved for disposal along with, C.W.J.C. No. 1678 of 2003.

9. In the case of Tapan Kumar Chatterjee v. The



State of Bihar and Ors. reported in : 1998 (1) PLJR 707 learned Single Judge while interpreting the provision contained in Article 12(1) of the Statutes relating to general condition of service of the University employees also noticed Rule 101(a) and (b) of the Rules, and, held that provision of Article 12(1) of the Statutes relating to 'general condition of service' is same and similar to Rule 101(a) of Bihar Pension Rules, 1950. However, under Sub-rule (b) of Rule 101 of the Bihar Pension Rules certain distinction has been made in the matter of resignation simplicitor for further appointment. Further, the Court held "If the argument advanced by the counsel for the University is accepted then it is to be interpreted that in all cases of resignation the past service of an employee will forfeit, clubbing them with the same class of employees dismissed or removed from service for misconduct or other reason. Such interpretation will amount to make the two unequals as equal, as an employee resigned, by way of resignation simplicitor for one or other purpose like employment in other organization or to take rest in life (like voluntary retirement) will be placed at par with the employees dismissed or removed from service because of stigma.

I, therefore, hold that the resignation from service as mentioned under Article 12(1) of the University Statute relating to General Condition of



Service, equivalent to Rule 101(a) of the Bihar Pension Rules entails forfeiture of past service only in such cases where resignation is given for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination, as laid down under the provision aforesaid. The aforesaid rule is not applicable in the case of resignation simplicitor, though may be applicable in a case where on receipt of allegation or charge sheet and other criteria mentioned 'under the rule, a person submits resignation.

10. In C.W.J.C. No. 1678 of 2003 this Court while considering similar provision contained in Rule 101(a) of the Bihar Pension Rules has held that resignation entails forfeiture of past service only in the case of misconduct, insolvency and inefficiency not due to age or failure to pass a prescribed examination or on receipt of allegation or charge sheet and not in the case of resignation simplicitor.

11. Accordingly, this writ petition is allowed with a direction to the Vice Chancellor (Respondent No. 2) to re-examine the claim of the Petitioner relating to the remaining retiral benefits, such as, pension, gratuity, leave encashment, group insurance etc. by counting his service before acceptance of resignation and dispose it of by a reasoned order and the amount in that regard found



payable must be paid to the Petitioner within two weeks. In the facts and circumstances, there shall be no order as to costs.”

11. The learned counsel for the petitioners, by referring to the aforesaid judgment rendered in the case of **Deo Krishna Mishra** (supra), has submitted that resignation entails forfeiture of past service in terms of rule 101 (a) of the Bihar Pension Rules only in cases where resignation is given for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination or on receipt of allegation or charge sheet and not in cases of resignation simplicitor.

12. Thus, it is submitted that the resignation of the petitioners being simplicitor in nature and the petitioners having specifically stated in their resignation letter that their resignation be accepted with all the pensionary/ retiral benefits, it was the prerogative of the State Government to either reject the resignation application of the petitioners or to accept the same with pensionary/ retiral benefits, hence the impugned notification dated 22.01.2016 is illegal and is fit to be set aside.

Contentions of the Ld. Counsel for the respondents:-

13. Per contra, the learned counsel for the respondent no.2 i.e. the Principal Secretary, Road Construction Department,



Government of Bihar, by referring to the counter-affidavit filed in the aforesaid two writ petitions, has submitted that the answering department has never given any no objection certificate to the petitioners for absorption on the post of Manager (Technical) and action has been taken as per para-3 of Memo No. 5790 dated 30.04.1976 of the Finance Department, which is reproduced herein below:-

“सार्वजनिक उपक्रमों में सरकारी सेवकों के स्थायी रूप से अंतर्लिन होने वाले सभी मामलों में स्वशासी निकाय ;सार्वजनिक उपक्रम समेतद्ध में नियुक्ति के लिए चयन उसके स्वयं के आवेदन के आधार पर किये जाने की स्थिति में उनका स्थानांतरण लोकहित में समझा नहीं जाये और सरकार अपने अधीन की गई सेवा अवधि के लिए किसी निवृत्ति लाभ या छुट्टी के अग्रनयन के संबंध में कोई दायित्व नहीं स्वीकार की जाय।”

14. It is further submitted that accordingly, consent was sought from the petitioners vide letter dated 19.06.2015 to the effect that they should submit an affidavit that they would not claim any retirement benefit or earned leave for the period of service rendered in the State Government and only then a decision will be taken on their resignation letter, to which the petitioners had submitted their reply stating therein that the aforesaid para-3 of the Memo dated 30.04.1976 is not applicable to the case of the petitioners and moreover, the resignation letters of similarly situated persons have already been accepted



in the past with retiral benefits, hence, the petitioners had requested the State Government to accept their resignation letters in light of Rule 74 of the Bihar Service Code along with the retiral benefits to which the Road Construction Department, Government of Bihar had replied by stating that as per the Finance Department letter No. 6190 dated 27.04.1979, for voluntary retirement, a minimum service of 20 years is mandatory and since the petitioners have not completed service of 20 years, they cannot be granted the benefit of Rule 74 of the Bihar Service Code, hence, it is essential that the petitioners should submit their consent to the effect that pension and gratuity would not be payable to them and only then a decision can be taken on the resignation letter submitted by them. The petitioners had then requested the State Government to take a decision on their request for acceptance of their resignation as per the departmental consent whereafter the matter was examined at length and the resignation of the petitioners were accepted vide the impugned notification dated 22.01.2016 with the condition that the petitioners shall not be entitled to pension and gratuity, however, they shall be entitled to payment of G.P.F./ Group Insurance as well as 50% of the leave encashment amount.



Determination

15. Having heard the learned counsel for the parties, having perused the materials on record and having gone through the judgments cited by the learned counsel for the petitioners, at the inception, I find it appropriate to reproduce Rule 74 of the Bihar Service Code and Rule 101 of the Bihar Pension Rules herein below:-

Bihar Service Code

“74. (a) The State Government may require any Government servant who has completed twenty one years of duty and twenty five years of total service calculated from the date of his first appointment to retire from Government service, if it considers that his efficiency or conduct is not such as to justify his retention in service. Where any Government servant is so required to retire no claim to any special compensation shall be entertained.

(b) (i) Notwithstanding anything contained in the preceding sub-rule a Government servant may, after giving at least three months previous notice, in writing, to the appointing authority concerned retire from service on the date on which such a Government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice:



Provided that no Government servant under suspension shall retire from service except with the specific approval of the State Government:

Provided further that in case of the officers and servants of the Patna High Court (including those of Circuit Bench at Ranchi) under the rule making authority of the Chief Justice, no such officer and servant under suspension shall retire from service except with the specific approval of the Chief Justice.

(ii) The appointing authority concerned may after giving a Government servant at least three month's previous notice in writing, or an amount equal to three month's pay and allowance in lieu of such notice, require him in public interest, to retire from service on the date on which such a Government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.]

(iii) A Government servant who retires voluntarily is required to retire in public interest under this rule on attaining the age of 50 years, or completing qualifying service of 30 years, shall be entitled to retiring pension and death cum-retirement gratuity.”

Bihar Pension Rules



“Rule- 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.

(b) Resignation of an appointment [with the approval of the appointing authority] to take up another appointment, service in which counts, is not a resignation of the public service.”

16. The issue to be decided in the present batch of writ petitions is as to whether upon the petitioners having submitted their resignation and the same having been accepted by the Road Construction Department, Government of Bihar by the impugned notification dated 22.01.2016, can the petitioners be precluded from grant of pensionary/ retiral benefits including pension and gratuity. In this regard, first of all even if the arguments advanced by the learned counsel for the petitioners and the law laid down by Co-ordinate Benches of this Court in the case of Binay Kumar Thakur (supra) and Deo Krishna Mishra (supra) are taken into account on its face value, it is clear that in case the resignation is simplicitor, the incumbent shall be entitled to payment of retiral/ pensionary benefits, but in the present case the matter is quite different, which is apparent from the peculiar facts of this case, as has been laid



bare in the counter affidavit filed by the respondents and is also being detailed hereinbelow.

17. The petitioner of the first case namely Sri. Rajiv Nayanam had submitted his resignation on 17.10.2014 with a request to the Road Construction Department to accept his resignation while allowing pension and other retiral benefits so that he can seek his absorption with NHAI on the post of Manager (Technical). The respondents Road Construction department, Government of Bihar, vide letter dated 19.06.2015 had written to the said petitioner, stating therein that no objection certificate has not been issued to him for the purposes of being absorbed with the NHAI, hence, as per the opinion of the Finance Department, it is required that he should submit his consent by way of an affidavit stating therein that he would not be entitled to retirement benefits or leave encashment amount and only then a decision would be taken upon his resignation letter dated 17.10.2014, to which the said petitioner had filed his reply dated 29.07.2015, pointing out that para-3 of Memo No. 5790 dated 30.04.1976 of the Finance Department and Rule 74(b) of the Bihar Service Code are not applicable in his case inasmuch as he has never sought either voluntary retirement or compulsory retirement but has submitted his resignation from



service, hence his case may be processed in accordance with Rule 74 of the Bihar Service Code and his resignation letter be accepted along with all retiral benefits. In reply thereof, the Road Construction Department, Government of Bihar vide letter dated 09.09.2015 had informed the said petitioner that the Finance department has advised that as per the Finance Department letter No. 6190 dated 27.04.1979, for voluntary retirement, a minimum service of 20 years is mandatory and since the petitioner has not completed service of 20 years, he cannot be granted the benefit of Rule 74 of the Bihar Service Code, hence, it is essential that he should submit his consent to the effect that pension and gratuity would not be payable to him, failing which the department would be free to take a decision on the resignation letter submitted by him in accordance with the advice given by the Finance Department. The said petitioner had then submitted his consent vide his reply dated 14.09.2015 to the effect that all the rules and regulations of the Government of Bihar in force will be applicable in his case for the purposes of acceptance of his resignation, hence his resignation be accepted in accordance with the rules. This consent was again reiterated vide his letter dated 20.10.2015 and now he further requested the State Government to accept his resignation as per Rule 74 of



the Bihar Service Code. The said petitioner, vide letter dated 11.12.2015 had again requested the Government of Bihar to accept his resignation in accordance with the departmental consent.

18. The petitioner of the second case namely Sri. Amrendra Singh had submitted his resignation on 17.10.2014 with a request to the Road Construction Department to accept his resignation while allowing pension and other retiral benefits so that he can seek his absorption with NHAI on the post of Manager (Technical). The respondents Road Construction Department, Govt. of Bihar, vide letter dated 19.06.2015 had written to the petitioner of the second case, stating therein that no objection certificate has not been issued to him for the purposes of being absorbed with the NHAI, hence, as per the opinion of the Finance Department, it is required that he should submit his consent by way of an affidavit stating therein that he would not be entitled to retirement benefits or leave encashment amount and only then a decision would be taken upon his resignation letter dated 17.10.2014 to which the said petitioner had filed his reply dated 29.07.2015, pointing out that para-3 of Memo No. 5790 dated 30.04.1976 of the Finance Department and Rule 74(b) of the Bihar Service Code are not applicable in



the case of the petitioner inasmuch as he has never sought either voluntary retirement or compulsory retirement but has submitted his resignation from service, hence his case may be processed in accordance with Rule 74 of the Bihar Service Code and his resignation letter be accepted along with all retiral benefits. In reply thereof, the Road Construction Department, Government of Bihar vide letter dated 09.09.2015 had informed the said petitioner that the Finance department has advised that as per the Finance Department letter No. 6190 dated 27.04.1979, for voluntary retirement, a minimum service of 20 years is mandatory and since the petitioner has not completed service of 20 years, he cannot be granted the benefit of Rule 74 of the Bihar Service Code, hence, it is essential that he should submit his consent to the effect that pension and gratuity would not be payable to him, failing which the department would be free to take a decision on the resignation letter submitted by him in accordance with the advise given by the Finance Department. The said petitioner had then submitted his consent vide his reply dated 14.09.2015 to the effect that all the rules and regulations of the Government of Bihar in force will be applicable in his case for the purposes of acceptance of his resignation, hence his resignation be accepted in accordance with the rules. This



consent was again reiterated vide his letter dated 20.10.2015 and now he requested the State Government to accept his resignation as per Rule 74 of the Bihar Service Code.

19. Thus it is apparent from the facts and circumstances of the present case that the petitioners had themselves requested the State Government to process their case for acceptance of their resignation as per the departmental consent and as per the rules and regulations of the Government of Bihar in force, hence the resignation of the petitioners cannot be regarded to be "resignation simplicitor" inasmuch as even after the petitioners were made aware of the opinion of the Finance Department, the prevailing rules and the fact that they would not be entitled to pension and gratuity, except G.P.F./ Group Insurance as well as 50% of the leave encashment amount, they had chosen to request the State Government to even then accept their resignation, hence their resignation has rightly been accepted by the respondent State Government by the impugned notification dated 22.01.2016 with the stipulation that they shall not be entitled to pension and gratuity, thus I do not find any infirmity in the impugned notification dated 22.01.2016, therefore the instant writ petitions are bereft of any merit.

20. Another aspect of the matter is that the decision referred



to by the learned counsel for the petitioners, as rendered by a co-ordinate Bench of this Court in the case of **Deo Krishna Mishra** (supra) is no longer a good law inasmuch as the said judgment was rendered by relying upon a judgment delivered by a co-ordinate Bench of this Court in the case of **Tapan Kumar Chatterjee vs. The State of Bihar & Ors.**, reported in 1998(1) PLJR 707, however, the said judgment rendered in the case of **Tapan Kumar Chatterjee** (supra) has been held by a learned Division Bench of this Court to be not laying down the correct law and has, in fact, overruled the same by a judgment passed by the Ld. Division Bench of this Court in the case of the **State of Bihar & Ors. Vs. Dr. Shahida Hassan**, reported in 2010(2) PLJR 189, paragraph nos. 3, 8, 14 and 18 to 20 whereof are reproduced herein below:-

"3. Learned Single Judge upon ana-lysing the provisions, namely, Rule 101(a) and Rule 135 of the Rules and Rule 74(b)(i) of the Bihar Service Code (for short 'the Code') and placing reliance on the decisions rendered in *Tapan Kumar Chatterjee v. The State of Bihar*, 1998 (1) P.L.J.R. 707, *Union of India v. Braj Nandan Singh*, 2003 (3) P.L.J.R. 409 and *Union of India v. Lt. Col. P.S. Bhargava*, (1997) 2 SCC 28 came to hold that there is a distinction between resignation simpliciter and resignation which is given for misconduct,



insolvency and insufficiency; that Rule 101(a) of the Rules is contradictory to the provision contained in Rule 135 of the Rules; that it is difficult to reconcile Rule 135 of the Rules with Rule 74(b)(i) of the Code; and that when there is manifest contradiction, construction should be placed which emphasises the meaning of the words; that once resignation has been accepted, denial of pension after completion of qualifying service would be violative of Articles 14 & 16(1) of the Constitution of India; and that writ petitioner is entitled to get pension, gratuity, leave encashment and G.P.F.

8. Mr. Ghosh, learned Addl. Advocate General II appearing for the State submitted that the language of Rule 101(a) is clear and unambiguous and it does not conceive of any kind of resignation simpliciter and resignation otherwise except what has been carved out as an exception in Rule 101(b) of the Rules. It is canvassed by him that the decision rendered in Tapan Kumar Chatterjee (supra) does not lay down the law correctly as in the said decision Rule 101 has not been appositely interpreted. It is his further submission that the decision rendered in Braj Nandan Singh (supra) cannot be regarded as a precedent as the Bench was concerned with Rule 101(a) of the Rules.



14. In *Lt. Col. P.S. Bhargava* (supra) a two-Judges Bench of the Apex Court was dealing with pension rules for the Army. Their Lordships referred to various Regulations, viz. Regulations 22, 25, 26, 38 and came to hold that on completion of qualifying service, an officer, like the respondent therein would be entitled to get pension and gratuity. After so expressing their Lordships adverted to three provisions, namely, Regulations 3, 4 and 16. Regulation 3 of the said Regulations stipulated that full rate of pension or gratuity provided for in these Regulations shall not be granted unless the service rendered has been satisfactory and if the service has not been satisfactory, the competent authority may make such reduction in the amount of pension or gratuity as it thinks proper. Regulation 16(a), which was referred to by their Lordships, stipulated that when an officer who has to his credit the minimum period of qualifying service required to earn a pension, is cashiered or dismissed or removed from the service, his/her pension may, at the discretion of the President, be either forfeited or be granted at a rate not exceeding that for which he/she would have otherwise, qualified, had he/she retired on the same date. Regulation 16(b) of the said Regulations stipulates that when an officer who has to his/her credit the minimum period of qualifying service required to earn a pension is called upon to retire or to resign or in the event of his/her refusing to do so is retired from or gazetted out of the service, he/she may at



the discretion of the President be granted a pension at a rate not exceeding that for which he/she would have otherwise qualified, had he/she retired on the same date in the normal manner. Interpreting the said Regulation their Lordships expressed the view as follows:—

“18. Regulation 16(a) gives the President the power either to forfeit or to reduce the rate of pension in the event of an officer being cashiered, dismissed or removed from the service. Under sub-regulation (b) of Regulation 16, if an officer is called upon to retire or resign, he may at the discretion of the President be granted a pension at a rate not exceeding what he would have otherwise qualified. Regulation 16 gives the power to the President to reduce or forfeit the pension of an officer who has to his credit the minimum period of qualifying service only in the event of his being cashiered, dismissed or removed from the service. Even in such a circumstance, there is no automatic forfeiture of pension or gratuity. An officer whose service is terminated by reason of his being cashiered, dismissed or removed from the service would normally be entitled to get his pension though the President has a right to forfeit or reduce the pension.

19. Regulation 16 does not cover a case of voluntary resignation. Regulation 16(b) does refer to a case where an officer who has to his



credit the minimum period of qualifying service being called upon to resign whose pension can be reduced. Had the Regulations intended to take away the right of a person to the terminal benefits on his voluntary resigning, then a specific provision similar to Regulation 16(b) would have been incorporated in the Regulations but this has not been done. Once an officer has to his credit the minimum period of qualifying service, he earns a right to get pension and as the Regulations stand, that right can be taken away only if an order is passed under Regulation 3 or 16. The cases of voluntary resignations of officers, who have to their credit the minimum period of qualifying service are not covered by these two Regulations and, therefore, such officers, who voluntarily resign, cannot be automatically deprived of the terminal benefits.”

18. Be it noted, Mr. Singh, learned Senior Counsel appearing for the employees, submitted that the interpretation on Rule 24, as has been done by the Apex Court, cannot be pressed into service while interpreting Rule 101(a) in view of the entire scheme of the Rules. It is also canvassed by him that there is an anomaly between Rule 101(a) and Rule 135 of the Rules and, if they are appreciated in the context of Rule 74 of the Code, it is difficult to harmoniously reconcile them. He has also



emphasised on the fact that Rule 101(a) has to be purposively interpreted to convey that there is a distinction between resignation simpliciter and resignation otherwise. The aforesaid submissions of Mr. Singh do not merit acceptance inasmuch Rule 101(b) carves out an exception to Rule 101(a) of the Rules. Rule 135 deals with a different, situation altogether. It confers a right on an employee, who submits his resignation after 25 years and the same is accepted by the employer. The said Rule, if we cull out ourselves to say so, is a further, exception to Rule 101(a). We perceive no anomaly or repugnancy between Rule 101(a) and Rule 135 of the Rules, for they deal with different situations which is permissible. The reference of the Code that there has been an amendment that one would qualify to get pension after expiry of 10 years is of no aid or assistance but as that does not deal with the factum of resignation, qualifying service for The purpose of pension and being entitled to get pension on resignation being accepted are in two different realms: It is a well settled principle of law of interpretation that the object and purpose of the provisions and the language employed in each rule or provision is to be appositely understood.

19. In view of the aforesaid we are of the considered opinion the decision rendered in *Tapan Kumar Chatterjee* (supra) does not laid down the



correct law and, accordingly, the same is overruled and any other decision following that decision has to follow the similar path and we so direct.

20. The case of the respondent in LPA No. 373/2004 is squarely covered within Rule 101(a) of the Rules and, therefore, the order passed by the learned Single Judge is unsustainable and, accordingly, set aside.

21. This aspect of the matter has also been dealt with by yet another Division Bench of this Court in a case reported in 2010 SCC OnLine Pat 88 (**State of Bihar vs. Kailash Pati Chaturvedi**), relevant paragraphs whereof are reproduced herein below:-

"The essential facts emerging from the order under appeal disclosed that the writ petitioner claimed to have been appointed on the post of Labour Inspector on 13.7.1955 and for reasons known to him he resigned from service on 31.3.1966. He claimed to have filed pension papers on 25.5.1966. Since counter affidavit had not been filed on behalf of the State and the respondent, the writ court entertained the writ petition filed in the year 1998 and issued order in favour of the writ petitioner tacitly accepting his claim that he was entitled for pension.

No doubt, by subsequent amendments 10



years of service under the State is sufficient as a qualifying service to entitle an employee for pension but the issue which calls for consideration is effect of Rule 101(a) of the Bihar Pension Rules which runs as follows:

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 for forfeiture of past service”.

According to the learned counsel for the appellants, that is State of Bihar and its officials, the said rule was wrongly interpreted and construed in a judgment of this court in the case of *Tapan Kumar Charterjee v. The State of Bihar*, reported in 1998 (1) PLJR 707, that only where resignation from public service is on account of misconduct, insolvency, inefficiency etc. it would entail forfeiture of past service, like dismissal or removal for such reasons. It was further submitted that recently a Division Bench of this Court by judgment and order dated 27.1.2010 passed in L.P.A. No. 373 of 2004 (*State of Bihar v. Dr. Smt. Shahida Hassan* analogous appeals) has held that the decision rendered in *Tapan Kumar Charterjee's* case does not lay down the correct law. The Division Bench



has further held that issue of minimum qualifying service for the purpose of pension is independent of the effect of rule 101(a) under which resignation simplicitor or resignation otherwise cannot stand on different footings.

A perusal of the Division Bench judgment of this Court in L.P.A. 373 of 2004 (Supra) reveals that the issue initially for determination in this case is no longer res integra and it has to be held, on the basis of said Division Bench judgment, that the writ court failed to notice the provisions of rule 101(a) of the Bihar Pension Rules and to appreciate that as an effect of the said rule the past service of the writ petitioner was forfeited on account of his resignation. Since the past service was forfeited under a valid rule, it cannot be held in his favour that he had completed the qualifying service for entitlement to pension under Bihar Pension Rules.

As a result of aforesaid discussion, we have no option but to hold that the order under appeal is contrary to law. Accordingly, this appeal is allowed and the judgment and order under appeal is set aside. The writ petition stands dismissed but without any order as to costs."

22. This Court would also like to refer to a judgment



rendered by a learned Division Bench of this Court on the issue in question, reported in 2007 SCC OnLine Pat 328 (**Syed Raza Ahmad Hussaini vs. The State of Bihar & Ors**), paragraph nos. 2, 8, 10, 11, 14, 15, 18, 23 and 24 whereof are reproduced herein below:-

"2. The following aspects, indisputably, emerged from the record, which may be highlighted, are relevant for the purpose of adjudication of the controversy raised in the present case:

- 1) The petitioner is a Judicial Officer, who resigned from his service after putting in 11 years, 2 months and 22 days in the District Judiciary as a Munsif or a Civil Judge (Junior) in JMFC.
- 2) His resignation came to be effective w.e.f. 1st September, 1986 upon acceptance by the State Government on recommendation of the High Court.
- 3) The petitioner tendered his resignation voluntarily and unilaterally on the ground of his premature transfer from Bhagalpur to Madhubani, Which highly shocked and mentally disturbed him.
- 4) The photo copy of the resignation letter of the petitioner is placed at Annexure-2 to the petition.



- 5) The photo copy of the notification dated 19.8.1986 issued by the Government upon recommendation of the High Court about acceptance of the resignation of the petitioner is placed at Annexure 3 to the petition.
- 6) The photo copy of the Order no. 127/G of 1986 dated 30.8.1986 of the District Judge, Madhubani, directing the petitioner to make over charge is placed at Annexure 4 to the petition.
- 7) The photo copy of the letter dated 24.6.2005 of the Accountant General, Bihar, Patna, is placed at Annexure 6 to the petition.
- 8) The photo copy of the letter bearing memo No. 7354 dated 31.7.2006 issued from the Office of the Registrar General, High Court, Patna communicated to the petitioner, is placed at Annexure 7 to the petition.
- 9) The contention of the High Court, as well as, the State Government has been that the representation, which was made after 18 years of retirement of service was processed in accordance with law.
- 10) In course of the process, the relevant provisions of the Service conditions and the Code, as well as, the pension Rules have been taken into consideration while rejecting the representation.



11) Thus, the petitioner has been informed by the authorities that he is not qualified to claim pension since he has voluntarily and unilaterally resigned from the service after serving 11 years, 2 months and 22 days.

8. Let it be mentioned at this stage, first, that Rule 101(a) of the Rules, upon consideration of the provision thereof, makes no any doubt that a resignee cannot claim pensionary benefits, probably, because on resignation he has severed the relationship of master and employee unilaterally and voluntarily. Therefore, the respondent authorities have, also, placed reliance on this provision.

10. Clause (a) of Rule 101 deals with resignation and dismissal and resultant ramification and impact on the right of pension of the employee. It leaves in no manner of doubt that a person, who has tendered his resignation voluntarily and unilaterally and that has been accepted by the authority, cannot claim pensionary benefits on account of entailment forfeiture of past service as an outcome of the resignation as statutorily severance is affected in relationship of the master and servant.

11. We need not go into about object and design of the pensionary benefits entitlement at this stage in view of the aforesaid clear provision on which the



respondent-authorities have relied on.

14. It, therefore, becomes evident on the plain interpretation and reading that Rule 135 of the Rules will be attracted only where it pertains to the persons or schedule enumerated and highlighted in Rule 5 of the Rules, so is not the case here in the light of the factual profile.

15. Therefore, it becomes explicit and unambiguous that the relevant proposition of law with regard to the entitlement of pension has been statutorily prescribed in Rule 101(a) of the Rules. According to the general principle of law of resignation, a person, who has severed relationship on his own on the ground stated, would not be entitled to pensionary benefits.

18. Such a submission, undoubtedly, will be attractive and alluring but not acceptable and recognizable when one goes into the detailed facts and relevant statutory provision. It does not deal with the situation as we have in the present case about the resignation. Secondly. It does not apply to the facts of the present case. Minimum pension for a qualifying service, even if one has completed 10 years of service, can be fixed by the Government and the entitlement can be conferred, which does not, in any way, refer or involve a case of resignation by an employee voluntarily.



23. In the result, upon consideration of the entire chronological events leading to the event of resignation of the petitioner (in person) employee from the Judicial Service, as well as, the relevant factual profile coupled with the relevant statutory provisions under Rule (1(a) read with Rule 135 of the Rules and the general law of resignation and entitlement of pension, we are left with no alternative option but to raise our hands in helplessness and to dismiss the petition at the very outset after hearing both the parties. Since the petitioner (in person) is, now, a practising Advocate and had been in Judicial Service, we do not think it appropriate to saddle him with costs. Accordingly, this, petition shall stand dismissed without any order as to cost. Rule is discharged.

24. Petition dismissed."

23. It would be apposite to refer to a Judgment rendered by a co-ordinate Bench of this Court in the case of **Dr. Chandra Deo Pandey Vs. The State of Bihar & Ors.**, reported in 2011 (4) PLJR 914, paragraph nos. 2, 3, 11 and 14 whereof are reproduced herein below:-

2. Time they say is the best heater (healer) but then not in all cases. The petitioner having been appointed on 22.7.1966 in the Government service after tendering his resignation on 14.4.1977 became



over ambitious in 1990 first to challenge the acceptance of such resignation and also in alternative for claiming the payment of pension, gratuity and other retirement benefits. When the same was denied by the respondents on the ground that in terms of Rule 101(a) of the Bihar Pension Rules a person having resigned from the service would not be entitled to payment of pension, gratuity and other retirement benefit, he came to this Court in 1991 after 14 years of acceptance of his resignation assailing the decisions of his acceptance of resignation as also denying him post retirement benefit. Such writ application, C.W.J.C. No. 4684/1991 filed on 16.7.1991; was placed before the Division Bench on 31.7.1991 but the then counsel for the petitioner, appearing in that case, had given up first claim of the petitioner for reinstatement in service by accepting that the petitioner had resigned from service which had also been accepted by the Government.

3. The petitioner, however, in that writ application had continued to press his claim for payment of retirement benefit and as such, when the respondents took help and support of Rule 101(a) of the Bihar Pension Rules envisaging forfeiture of pension on account of resignation the petitioner leave was sought to amend the said writ petition for challenging the vires of Rule 101(a) of the Bihar Pension Rules.



11. Even otherwise the clear and specific Rule of 101(a) of the Bihar Pension Rules reading as follows:—

“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.”

would not permit the petitioner to claim retirement benefit including payment of pension and gratuity after acceptance of his resignation. Pension though not a bounty is also not a wind fall. It to be earned in the manner prescribed under the Rules. In fact under the Rules there are four types of pension namely:—

- (a) Compensation Pension,
- (b) Invalid Pension,
- (c) Superannuation Pension,
- (d) Retiring Pension,

And detailed conditions of grant of such pension under Rules 107 to 134 do not envisage a person tendering resignation from service being also entitled to grant of pension. The petitioner having also not completed twenty five years of service prior to acceptance of his resignation would also not fall within the exception carved out under Rule 135 of



the Rules. This aspect of the matter has been recently settled by the Division Bench of this Court in the case of State of Bihar v. Dr. (Smt.) Shahida Hassan reported in 2010 (2) PLJR 189.

14. As with regard to the claim of payment of provident fund there would be no difficulty in holding that the petitioner despite acceptance of his resignation would still be entitled for payment of provident fund. In this regard even the respondents have conceded the claim of payment of provident fund to the petitioner but their only reservation is that since the petitioner himself was drawing and disbursing officer, he himself was required to furnish the details of such deductions made from his salary for its being deposited in the provident fund. In that view of the matter, this Court would give liberty to the petitioner to just inform the authorities about his monthly deductions made from his salary and deposited under the head of provident fund whereafter the concerned District Provident Fund Officer/Director of Provident Fund would take necessary decision as with regard to payment of provident fund to the petitioner. It is made clear that whatever amount is found payable under the head of provident fund to the petitioner will also accrue interest at the prescribed statutory rate as has been amended from time to time. Such exercise as with regard to payment of amount of provident fund alongwith interest must be completed within a period



of six months from the date the petitioner will furnish his statement of deductions and its deposit in the provident fund to the competent authority, namely, concerned District Provident Fund Officer/Director of Provident Fund.

Subject to the aforementioned observations and directions as with regard to payment of provident fund and salary, this writ application is dismissed.

24. Although there are catena of judgments on the issue in question wherein the lis has been decided against the petitioner herein, nonetheless, it would be relevant to refer to one more judgment rendered by a co-ordinate Bench of this Court in the case of **Kumar Satyendra Prasad Sinha vs. The State of Bihar & Ors.**, reported in 2014 SCC OnLine Pat 6049, relevant portion whereof are reproduced herein below:-

"The occasion for finalizing the details and terms and conditions of foreign service was not required due to an intervening development. The intervening development was on 11.12.1990 when the Managing Director of the Board gave him an opening in the Marketing Board itself by appointing him on the post of Market Secretary. The terms and conditions of such appointment is Annexure-4. The three significant conditions laid down by the Managing Director for appointment of the petitioner under the Marketing Board was - (1) that he will



resign from the Agriculture Department (2) that his appointment in the Board service will be treated from the date his resignation would be accepted by the Agriculture Department and (3) that he will get the same pay-scale which he was deriving on the post under the Agriculture Department.

On 11.12.1990, the Director, Agriculture wrote a letter to the Managing Director, Marketing Board that the resignation of the petitioner was accepted by the Agriculture Department effective 27.8.1990. There is no dispute thereafter that the petitioner became an employee of the erstwhile Marketing Board. The Board, however, came to be dissolved by virtue of a Repealing Act in the year 2006.

Petitioner worked under the Marketing Board and superannuated on 30.6.2013. By virtue of the Repealing Act service of the petitioner like many other similarly situated employees was taken over by the State. The notification contained in Annexure-B does indicate the list of persons, who were given the benefit of take-over. The date they became employee of the Board was the date from which their services were treated under the State after the take-over. Benefit did accrue to the petitioner by virtue of the gazette notification but now petitioner is looking back on the service from 1.12.1980 till the period of his resignation and employment under the erstwhile Marketing Board.



Counsel for the petitioner submits that the relevant provision, which helps him beget the benefit of past service, is Rule 101(b) of the Bihar Pension Rules, 1950. On the contrary, the stand of the State is that it is Rule 101(a) which has applicability in the given facts of the case.

The above provision of Rule 101(a) and (b) are reproduced herein below for ready reference:-

“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.

(b) Resignation of an appointment with the approval of the appointing authority to take up another appointment, service in which counts, is not a resignation of the public service.”

Counsel for the petitioner harps on the interpretation to be given to Rule 101(b). According to him, since his resignation for appointment was with the approval of the appointing authority and he took up another appointment which was also a public service, therefore, his resignation tendered from the Agriculture Department is of no avail and the same will not come in the way of the petitioner demanding benefit of past service. According to him, he was initially sent to the Marketing Board by the State,



thereafter, with due permission, he was appointed in the Marketing Board. Marketing Board being a limb of the State, he gave up one public service for another public service. The continuity of service, therefore, remains so shall the benefit.

The submission of the counsel further is that in a similar circumstance in a recent decision rendered in the case of Anil Kumar Srivastava v. the Bihar State Electricity Board, reported in 2010 (4) PLJR 498, benefit was granted to the employee under the facts and circumstances dealt by the learned single Judge.

The submission of the counsel does not match with the factual aspect of the said case. The court has to basically look at two important documents, which are Annexures 4 and 5. There is no ambiguity as to the terms and conditions under which petitioner came to be appointed under the erstwhile Marketing Board. The condition of resignation by the petitioner before he could be appointed under the Marketing Board service is unambiguous. The resignation has also been confirmed by the communication contained in Annexure-5. In other words, it was a unilateral decision of the petitioner to give up the comfort of a government service and take up a more challenging assignment under the Marketing Board. There was severance of relationship of master and servant between the petitioner and the State by virtue of his resignation and in view of the same,



Rule 101(a) will come into play and not 101(b).

The Court has also gone through the decision rendered in the case of Anil Kumar Srivastava (supra). The Court has also pointed out the finding rendered by the learned single Judge in paragraphs 23, 24 and 25 therein. That was a case where there was no resignation from the past service and permission was granted to the erstwhile employee of the State to join the Electricity Board. The learned single Judge giving a beneficial interpretation gave the petitioner benefit of past service. Factually the ratio of the case of Anil Kumar Srivastava, therefore, does not apply to the case of the present petitioner when there is no dispute over the fact that the petitioner tendered his resignation, which was accepted and communicated to the erstwhile Marketing Board, therefore, he could and did become a Market Secretary.

The State Government has very fairly treated his service under the Marketing Board from the date he joined the Board i.e. on 28.8.1990 as a full fledged employee of the Marketing Board even though it was an independent statutory body having its own law and rules governing their service. That being so it cannot be a case of the petitioner that his service under the Marketing Board was continuity of service under the State.



By quirk of fate the erstwhile Marketing Board was dissolved and by virtue of the Repealing Act his service was taken over by the State Government again but for that he has already derived benefit. So far as pension and other dues, post resignation is concerned, the stand of the State has been very fairly stated in paragraph 16 of the counter affidavit filed on behalf of respondents no. 2 to 5. Paragraph 16 is reproduced herein below, which is a complete answer to the stand of the State, which seems to be inconsonance with the factual position and the law.

“16. That the finance department has further stated that the petitioner was absorbed/appointed in the Board on his own volition and prior to absorption his service in the Government was less than 10 years as such he will not be covered by circular no. 5190 dated 30.4.1976. It has further been stated by the finance department that under resolution no. 768 dated 03.07.2007 of finance department there is provision that those government servant who remained working under state Government till 31.08.2005 and was being guided by Bihar Pension Rules, 1950 and later on took charge of the work till 31.08.2005 is relieved w.e.f. 01.09.2005 and he tenders his resignation then in that situation also he would be entitled to the benefit under the provision of Rule 101(B). Therefore, in view of the aforementioned facts and provision it is manifest that if the old pension scheme would be in existence in



the duly constituted body in that situation the old pension scheme is applicable. Where as in the marketing Board there was a provision of pension as such in the case of petitioner the resolution no. 768 dated 03.07.2007 is not applicable.”

In view of the above, the writ application has no merit. It is dismissed. Petitioner cannot get the benefit of past service rendered by him under the State since his voluntary resignation amounted to forfeiture of past service.

If there are any other claim, which are left on the basis of gazette notification contained in Annexure-B, the respondent State authorities surely have an obligation to settle within a period of three months from the date of production of a copy of this order but petitioner cannot beget anything more by way of add-on from 1.12.1980 till his new engagement and appointment by the erstwhile Marketing Board on 21.8.1990.

25. This Court finds upon going through the aforesaid judgments rendered by the learned Division Bench of this Court in the case of **Dr. Shahida Hassan** (supra), **Kailash Pati Chaturvedi** (supra) and **Syed Raza Ahmad Hussaini** (supra) that the Judgment rendered in the case of Tapan Kumar Chatterjee (supra) has been held to be not laying down the correct law and the same has been overruled, thus the judgment



rendered by a co-ordinate Bench of this Court in the case of **Deo Krishna Mishra (supra)**, as relied upon by the learned counsel for the petitioners, which has been passed by relying on the judgment rendered in the said case of **Tapan Kumar Chatterjee (supra)**, will consequently have no force in the eyes of law and shall not be a binding precedent. As far as the judgment rendered by a co-ordinate Bench of this Court in the case of **Binay Kumar Thakur (supra)** is concerned, the same is per incuriam inasmuch as the learned Single Judge has failed to consider the law laid down by the learned Division Bench of this Court in the cases of **Dr. Shahida Hassan (supra)**, **Kailash Pati Chaturvedi (supra)** and **Syed Raza Ahmad Hussaini (supra)**. Thus, the reliance of the petitioners on the aforesaid Judgments rendered in the case of **Binay Kumar Thakur (supra)** and **Deo Krishna Mishra (supra)** is misplaced.

26. Though, this Court has already upheld, herein above in the preceding paragraphs, the impugned notification issued by the respondent Road Construction Department, Government of Bihar, dated 22.01.2016, this Court would further derive support from the law laid down by the learned Division Bench of this Court in the cases of **Dr. Shahida Hassan (supra)**, **Kailash Pati Chaturvedi (supra)** and **Syed**



Raza Ahmad Hussaini (supra) as also by the learned co-ordinate Benches of this Court in the cases of **Dr. Chandra Deo Pandey** (supra) and **Kumar Satyendra Prasad Sinha** (supra) for the purposes of holding that the impugned notification dated 22.01.2016, issued by the respondent Road Construction Department, Government of Bihar, Patna qua the petitioners herein do not suffer from any infirmity and are valid in the eyes of Law, specially in view of the principles decided in the aforesaid cases to the effect that under rule 101(a) of the Bihar Pension Rules, resignation simplicitor or resignation otherwise do not stand on different footings, as an effect of the provisions contained in rule 101(a) of the Bihar Pension Rules, the past services of an incumbent stands forfeited on account of his resignation, hence it cannot be held in his favour that he had completed the qualifying service for entitlement to pension under Bihar Pension Rules and moreover, there is no doubt that a person, who has tendered his resignation voluntarily and unilaterally, which has also been accepted by the authority, cannot claim pensionary benefits on account of entailment of forfeiture of past service as an outcome of the resignation as statutorily severance is affected in relationship of the master and servant.



27. Considering the facts and circumstances of the present case and for the reasons mentioned hereinabove in the preceding paragraphs as also taking into account the well settled principle of law laid down by the Ld. Division Bench of this Court in a catena of decisions, as referred to hereinabove, I do not find any merit in the present writ petition, hence the same stands dismissed, however, without any order as to costs.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	28.01.2021
Uploading Date	04.02.2021
Transmission Date	NA

