

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2814 of 2022

=====

Bashishth Singh, son of Late Nirsu Singh, resident of Village- Alabalpur, P.S. Sarai, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Bihar, Patna
2. The Principal Secretary, Department of Education, Bihar, Patna
3. The Principal Secretary, Department of Health, Bihar, Patna
4. The Additional Chief Secretary, Department of Education, Bihar, Patna
5. The Director (Madhyamik Siksha), Bihar, Patna
6. The District Education Officer, Muzaffarpur

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Ms. Soni Shrivastava, Advocate
For the Respondent/s : Mr. Madhaw Prasad Yadaw, GP-23

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 24-09-2024

Heard Ms. Soni Shrivastava, learned Advocate for the petitioner and Mr. Madhaw Prasad Yadaw, learned Advocate for the State.

2. The petitioner is aggrieved by the order contained in Memo no. 1410 dated 04.09.2020 passed by the Director (Secondary Education), Bihar, Patna as also the appellate order contained in Memo no. 2137 dated 25.10.2021 passed by the Additional Chief Secretary, Department of Education, Bihar, Patna, whereby the claim of the petitioner for including his past service between the period 19.07.1965 to 12.11.1969 as a



continuing service with the service rendered by him in the Department of Education, where he had joined w.e.f. 06.09.1971 for the purpose of pensionary benefits from the date it became due has been rejected.

3. Before coming to the issue that has been raised in the present writ petition, the short facts which are relevant for adjudication, are as follows:

(i) The petitioner was initially appointed as Malaria Inspector under the Malaria Division, Health Department, Government of Bihar on 19.07.1965. He continued there till 12.11.1969 when the Border Unit under Health Department, Bihar, came to be closed pursuant to the decision of the State Government. The petitioner, thereafter, had joined government recognized High School, Tegradih (Muzaffarpur) as Assistant Teacher in 06.09.1971 and superannuated on 30.06.2001. The petitioner having been superannuated, submitted all his documents for the purposes of fixation of his pension. After the sanction order issued by the Department, the authority letter has been issued by the Accountant General, Bihar and thus the petitioner started receiving pension and other pensionary benefits.

(ii) On being aggrieved that the past services rendered



as Malaria Inspector in the Health Department has not been taken into consideration for the purposes of pensionary benefit(s), the petitioner submitted a detailed representation before the Director (Secondary Education) Bihar, Patna, with a request to include his service period from 19.07.1965 to 12.11.1969.

(iii) On calculation of the aforesaid period of service in Health Department with the one rendered in the Education Department, the total service length of the petitioner would have been more than 33 years.

4. Ms. Shrivastava, learned Advocate for the petitioner drawing the attention of this Court to Section 105 of the Bihar Pension Rules, 1950 (for short 'the Rules, 1950') contended that the State Government has been pleased to laid down a broad criteria for condoning the breakage in service. If the interruptions have been caused by reasons beyond the control of the Government servant or in fact it should not have been as a result of voluntary resignation or dismissal etc., the services rendered prior to breakage, should in all circumstances be counted for the purposes of pensionary benefit, if the services rendered prior to breakage should not be for less than two years and the total period of breakage should not exceed two years.



5. Learned Advocate for the petitioner has further drawn the attention of this Court to Government Resolution no. 3014 dated 31.07.1980 issued by the Finance Department, Government of Bihar as also subsequent Resolution dated 15.01.1982, the copies of which have also been brought on record as Annexure-2 and 2/1 to the writ petition. It is, thus contended that the services rendered prior to breakage in service would be considered continuous under all circumstances, save and except the exceptions mentioned in Clause 4 of the Resolution no. 3014 dated 31.07.1980, which clearly says that in absence of any adverse entry in the service book, all the breakage of the service including on account of dismissal or removal of the service or participation in Hartal, all the breakage shall be deemed to be condoned with only caveat that the period of breakage shall not be counted for the purposes of pension. The afore-noted resolutions have also been taken note of in the subsequent letter issued as contained in Memo no. 636 dated 18.07.1992 as also in the letter no. 154/2004/3089 dated 23.08.2004 issued by the Chief Secretary, Government of Bihar, with regard to continuity in service for the purposes of pension.

6. Adverting to the aforesaid prescriptions provided under the Rules, 1950 as well as the resolutions/letters issued by



the Government time to time, learned Advocate for the petitioner has taken this Court to the impugned order(s) and urged before this Court that irrespective of the aforesaid provisions, which entirely covers the case of the petitioner, his claim has been rejected by the Director (Secondary Education), Bihar, Patna vide his order contained in Memo no. 1410 dated 04.09.2020 stipulating that the services rendered by the petitioner in Malaria Department for the period 19.07.1965 to 12.11.1969 cannot be counted for the purposes of pensionary benefits, as the same was purely temporary and for the time being; further he had already been terminated from that service. Moreover, the past service was not pensionable and, as such, the same cannot be taken into account by condoning the breakage in service in the light of the provisions as contained under Clause 2 of the Circular no. 636 dated 18.07.1992 issued by the Finance Department, Government of Bihar.

7. The petitioner on being aggrieved by the order afore-noted, challenged the same before the Additional Chief Secretary, Department of Education, Bihar, Patna but the same also came to be rejected vide order contained in Memo no. 2137 dated 25.10.2021 based on the similar finding.

8. Assailing the impugned order(s), learned Advocate



for the petitioner contended that the orders are not sustainable in law as well as in facts, as they have been passed in the teeth of the statutory provisions and in complete defiance of the government resolutions/letters as discussed hereinabove. The services rendered by the petitioner on the post of Malaria Inspector was a regular service and the petitioner had been receiving salary in the regular pay-scale and a regular service-book was also maintained, the photo copy of the service-book in relation to past service rendered by the petitioner in Health Department, has also been brought on record by way of filing rejoinder to the counter affidavit.

9. The petitioner has also raised a point of discrimination that one of the similarly situated persons, namely, Arun Kumar, had also rendered services in the Health Department, but in his case, his past service has been counted for the purposes of pension. The office order issued in favour of Arun Kumar, who was also appointed as Assistant Teacher like the petitioner in a government recognized school, has been brought on record by way of Annexure-P/2 to the rejoinder to the counter affidavit.

10. *per contra*, Mr. Yadaw, learned Advocate for the State countering the submissions of learned Advocate for the



petitioner, urged before this Court that the impugned order(s) negating the claim of the petitioner for counting his past services rendered in Malaria Department, is in consonance with Clause 2 of the Circular no. 636 dated 18.07.1992 issued by the Finance Department, Government of Bihar. It is further contended that the impugned order(s) are quite reasoned and speaking order by which the claim of the petitioner and his appeal has been rejected taking note of the fact that the services rendered by the petitioner in the Malaria Department was purely temporary and for the time being. That apart, the service of the petitioner had already been terminated and he remained without service for a long time. The past service of the petitioner was non-pensionable service and in such circumstances, it cannot be counted for the purposes of pension in addition to the services rendered by the petitioner in the Education Department.

11. Learned Advocate for the State, supported the impugned order(s), by contending that there is no infirmity in it and, as such, the orders do not require any interference.

12. This Court has anxiously heard learned Advocates for the respective parties and meticulously perused the materials available on record, especially the resolutions and the letters issued by the State Government.



13. In Rule 105 of the Rules, 1950, the prescriptions have been stipulated for condonation of interruptions and deficiencies in service. For proper appreciation, this Court thinks it apt to quote Rule, 105 of the Rules, 1950.

“**105.** Subject to any rules, which the Provincial Government may prescribe and upon such conditions as it may think fit in each case to impose the authority competent to fill the appointment held by a Government servant at the time condonation is applied for, where he, to vacate the appointment, may condone all interruptions in his service.

It is to refer to Rule 105 of the Bihar Pension rules and to say that State Government have been pleased to lay down the following broad criteria for condoning the breakage in service:-

(a) The interruptions should have been caused by reasons beyond the control of the Government servant concerned, in other words, it should not have been as a result of voluntary resignation or dismissal etc.

(b) The service rendered prior to break should not be for less than two years.

(c) The period of break should not exceed one year at a time. In case where there are two or more interruptions the total period



of the breaks should not exceed two years. However, in such cases, the period of service rendered prior to break would count if condonation at (b) above is satisfied.”

14. Bare reading of the afore-noted provisions, there is no iota of doubt that if the interruptions in two services have been caused by reasons beyond the control of the Government servant and not as a result of voluntary resignation or dismissal from service, the period of services rendered prior to break should be considered for the purposes of pension with the caveat that the services rendered prior to break should not be for less than two years and in no circumstances, the total period of break should exceed two years. It has also been clarified that in case where there are two or more interruptions, the total period of break should not exceed for two years. The word “resignation” or “dismissal” has also been explained under Rule 101 of the Rules, 1950. The resignation of the public servant or dismissal or removal from it for misconduct, insolvency and inefficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past services. Thus, in the opinion of this Court, any resignation, dismissal or removal entail forfeiture of past services, which is only on account of misconduct, insolvency and inefficiency not due to age or failure to pass a



prescribed examination.

15. Rule 103 of the Rules, 1950 talks about the forfeiture of past services on account of interruptions. It clearly says that an interruption in the service of a Government servant entails forfeiture of his past service, except in certain cases, which has been enumerated therein. However, it would noteworthy to mention that Rule 103(d) of the Rules, 1950 clearly stipulates that abolition of the post or loss of appointment owing to reduction of establishment cannot entail forfeiture of past services.

16. Admittedly, the petitioner was appointed as Malaria Inspector in Border Unit under Health Department, Bihar and rendered his services therein since 19.07.1965 to 12.11.1969. The services of the petitioner, as was not required and dispensed with on account of closure of the said Border Unit, Sitamarhi (Health Department) by the decision of the State Government. Thus, in the opinion of this Court, the service of the petitioner has not been dispensed with either on account of voluntary resignation or dismissal/removal from his service.

17. Now, coming to the Resolution no. 3014 dated 31.07.1980 issued by the Finance Department, Government of Bihar, especially Clause 4 thereof, which prescribes that in



absence of any adverse entry in the service-book, all the period of breakage of the service, except resignation or removal/dismissal by the State Government or participation in Hartal, automatically, deemed to be condoned. However, the period of breakage shall not be counted for the purposes of pension.

18. The aforesaid government resolution has subsequently been modified by Resolution dated 15.01.1982, when the government confronted with a situation that Clause 4 of the Resolution dated 31.07.1980 is being used in a stringent manner due to which many of the teaching and non-teaching employees are unable to get full pension. Thus, the government took a decision to delete the word “resignation” from Resolution no. 3014 dated 31.07.1980.

19. The intention of the State Government was laudable to extend the benefit(s) of past services rendered prior to breakage, if the same has not been caused on account of misconduct, inefficiency or the reason, which entail forfeiture of past service.

20. Now, coming to the Circular no. 636 dated 18.07.1992 issued by the Human Resources Department, Bihar, especially Clause 2 thereof, the government admitted that the



conditions and procedures for condonation of the breakage of services of Government employees as contemplated under Rule 105 of the Rules, 1950 have been made more beneficial by deleting the word “voluntary resignation”, but as this provision was misused, the government took a decision to make a partial amendment in Resolution no.581 dated 15.01.1982; in case the breakage is on account of voluntary resignation, in such cases, the decision of the government for condonation of the same shall be placed before the Accountant General for formal opinion. It is further clarified that in the service period, the breakage in any circumstances, should not be more more than two years. Further, any teacher who has been working in a government affiliated middle school, if joins any unaffiliated non-recognized middle school in his service period, his breakage shall not be condoned, irrespective of the fact that later on the school in which he subsequently joined got recognition from the government.

21. This Court does not find that earlier Resolution no. 3014 dated 31.07.1980 as well as Resolution no. 581 dated 15.01.1982 have been modified, except to the extent indicated hereinabove, which relates to “voluntary resignation”.

22. Admittedly, the period of breakage i.e. the date on



which the service of the petitioner was dispensed with from the Malaria Department on 12.11.1969 to the date of joining as an Assistant Teacher on 06.09.1971, it comes to 1 year 9 months and 23 days, thus, quite less than two years. The service-book of the petitioner duly certified and endorsed by the District Malaria Officer, Muzaffarpur, produced as Annexure-P/1 to the rejoinder to the counter affidavit, reveals that the petitioner had been getting regular pay-scale, though the post was said to be temporary. Irrespective of the fact that the post was temporary, at that point of time, it is the admitted fact that the petitioner has been working under the Health Department, Government of Bihar on a regular pay-scale.

23. What is required for the condonation of breakage as it appears from the prescriptions made in the Rules, 1950 and the resolutions issued by the Government that two services must be under the Government and there is no adverse entry in the service-book.

24. The services of the petitioner has also not been dispensed with on account of dismissal or removal or participation in Hartal but on account of closure of the Border Unit of the Health Department. The reason for rejecting the claim of the petitioner that his earlier services cannot be counted



for the purposes of pension on account of the same being temporary or non-pensionable, in the opinion of this Court, is not sustainable in the eyes of law and the same would amount to re-writing the prescriptions provided under the statutory rules and the government decision; without there being any authority. The impugned orders of the respondent authorities are also against the very aim and purport of the government decision, which has been incorporated and brought to existence for the purposes of benefit(s) of the employees, who have had served the State Government before the breakage but because of the reason being beyond his control, his services have been dispensed with. The statutory provisions as well as government resolutions have not been considered in right perspective while rejecting the claim of the petitioner by passing the impugned order(s) and, in fact, have given a complete go by to them.

25. For the reasons afore-noted, this Court hereby set aside the impugned order contained in Memo no. 1410 dated 04.09.2020 passed by respondent no.5 (Annexure-5 to the writ petition) as also the appellate order contained in Memo no. 2137 dated 25.10.2021 passed by respondent no.4 (Annexure-6 to the writ petition) and directed the respondents to consider the earlier service rendered by the petitioner in the Health Department for



the purposes of pensionary benefit(s) after condoning the breakage in service as a continuous service with the services rendered by him in the Department of Education and ensure pension and other consequential benefits accordingly, within a period of twelve weeks from the date of receipt/production of a copy of this order.

- 26. The writ application stands allowed.
- 27. There shall be no order as to cost(s).

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25-09-2024
Transmission Date	

