

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.199 of 2021**

**In**

**Civil Writ Jurisdiction Case No.5045 of 2017**

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Rajiv Nayanam Son of Late Janardan Prasad Sharma R/o Quammruddin  
Ganj, Biharsharif, District- Nalanda.

... .. Appellant/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 :**

|                      |   |                                                                                                      |
|----------------------|---|------------------------------------------------------------------------------------------------------|
| For the Appellant/s  | : | Mr. Rajesh Kumar Singh, Sr. Adv.<br>Mr. Ranvijay Narain Singh, Adv.<br>Mrs. Akriithy Aishwarya, Adv. |
| For the Respondent/s | : | Mr. Lalit Kishore (Ag)                                                                               |

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**

**and**

**HONOURABLE MR. JUSTICE S. B. PD. SINGH**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)**

**Date : 05-12-2024**

The appellant has assailed the order of the learned

Single Judge dated 04.02.2021, passed in 5045 of 2017.

2. The matter was heard in detail on 12.11.2024

and reads as under:

*“2. Appellant initially joined  
service as an Assistant Engineer in the*



*Road Construction Department, State of Bihar, on 25.08.1997. He was sent on deputation to National Highway Authority on 08.07.2009, while working as such National Highway Authority evolved scheme of absorption of such of those employees are on deputation. In this regard, there was a protracted correspondence from 2014 to 2016. the official respondent somehow reluctant to grant permission or no objection insofar as absorption of the appellant. Resultantly, the appellant was compelled to resign the post of Assistant Engineer on 17.10.2014. The same was accepted belatedly on behalf of the official respondent on 22.01.2016 and on the very same day, National Highway Authority proceeded to absorb the services of the appellant.*

*3. Learned counsel for the appellant is hereby directed to furnish material information to the extent that what was his last date of working in National Highway Authority. Having*



*regard to the length of service rendered by the appellant from 25.08.1997 till acceptance of the resignation on 22.01.2016, the aforementioned service is required to be taken into consideration for the purpose of retirement benefits, if he is otherwise eligible. In other words, resignation application filed on behalf of the appellant could be converted into that of voluntary retirement or not in the light of judicial pronouncements. In this regard, time and again Hon'ble Supreme Court has held that if an employee fulfills the requisite criteria for the purpose of claiming pension and pensionary benefits in that event resignation could be converted to that of voluntary retirement.*

*4. Learned counsel for the respondent is hereby directed to apprise on the next date of hearing as to whether resignation could be converted into that of voluntary retirement so as to extend pension and pensionary benefits to the*



*appellant or not, in view of the fact that appellant has rendered service from 25.08.1997 till 07.07.2009 and from 08.07.2009 to 22.01.2016 on deputation to National Highway Authority. During his deputation to National Highway Authority he had lien over the parent department, namely, Road Construction Department. In other words, he continued to be Government servant till 22.01.2016, the date on which the resignation was accepted.*

3. Core issue involved in the present appeal is whether appellants resignation and its acceptance could be converted to that of voluntary retirement or not. Having rendered service from 25.08.1997 till 07.07.2009 and from 08.07.2009 to 21.02.2016 while he was on deputation to National Highway Authority is required to be determined for the purpose of extending retiral benefits including pension or not.

4. No doubt, an employee who had submitted



resignation and after its acceptance he is not entitled to make application or modify his application for resignation. However, having regard to the length of service rendered by him and the fact that he fulfills the requisite criteria for the purpose of claiming pensionary benefits and pension and it is only a technical issue. Moreover, in the present case, the appellant, while he was on deputation to National Highway Authority for the purpose of absorption of his service in the National Highway Authority, was protracted by lending authority – Government. Due to frustration, appellant was compelled to submit resignation and it was accepted.

5. In the light of these facts and circumstances, whatever the resignation submitted by the appellant and its acceptance is required to be read as Voluntary Retirement. The same shall be converted and accepted by the concerned official respondent and proceed to determined pensionary benefits and fixation of pension.

6. Learned Single Judge has not appreciated that



appellant is fulfilling the criteria for the purpose of retiral benefits read with the pension in the light of the fact that he has rendered number of years of service. He should have also appreciated that resignation was not on account of voluntary on the other hand it was due to frustration to the extent that State Government failed to give consent for his absorption in the National Highways Authority for quiet long time. To that extent, order of the learned Single Judge dated 04.02.2021 is not in order.

7. Accordingly, order of the learned Single Judge dated 04.02.2021, passed in C.W.J.C. 5045 of 2017 stands set aside.

8. The concerned authority – State is hereby directed to, convert resignation issue to that of voluntary retirement calculate retiral benefits and fix the pension of the appellant and disburse monetary benefits within a period of four months from the date of receipt of this order.

9. If any retiral benefits have been paid, the



same shall be adjusted.

10. CWJC No. 5045 of 2017 and the present  
L.P.A. No. 199 of 2021 stand allowed.

**(P. B. Bajanthri, J)**

**(S. B. Pd. Singh, J)**

Nirajkrs/-

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