

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7837 of 2024

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Shailesh Kumar Paswan, S/o Ram Yatan Paswan Resident of Ward No. - 04,
Village - Atasaray, Post and Police Station - Islampur, District - Nalanda,
State - Bihar, Pin - 801303.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industries, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Director, Department of Industries, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Girijish Kumar, Advocate
For the Respondent/s : Mr. Standing Counsel (21)

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 08-07-2024 On the basis of result on merit in Second Graduate Level Combined Competitive Examination, 2014, the petitioner was appointed and posted as Industrial Extension Officer in the pay-level 07 under the Department of Industry, Government of Bihar. The petitioner duly joined his service at District Industry Centre, West Champaran (Bettiah). On 28th of June, 2021, the petitioner sent a letter to the Director of Industries, Bihar, Patna, stating, inter alia, that due to his family problem he was not in a position to carry out his work as Industrial Extension Officer. Accordingly, he prayed for acceptance of his voluntary retirement. Subsequently, on 4th of April, 2022, he submitted another letter to the Director of Industries, Bihar, Patna that he



was compelled to file an application for voluntary retirement on 28th of June, 2021 and stopped going to office w.e.f. 1st of July, 2021, due to serious illness of his mother. Since then, her mother had recovered gradually from her ailment and he submitted himself to join the service revoking his earlier prayer for voluntary retirement. The concerned authority did not take any action either on the letter dated 28^h of June, 2021 or 4th of April, 2022. On the contrary, a transfer order was released vide a Notification No. 2708 dated 29th of June, 2022 from the office of Director of Industries, Bihar, Patna and the petitioner was transferred from Buxar to Khagria.

2. It is submitted by the learned Advocate for the petitioner that the aforesaid order dated 29th of June, 2022 presupposes the decision of the Government/respondents that the application for voluntary retirement dated 28th of June, 2021 submitted by the petitioner was not accepted by the respondents. Accordingly, he went to his new place of posting but he was not permitted to join. This prompted him to write a letter to the Director of Industries on 30th of August, 2022 reviewing his prayer for rejecting the letter dated 28th of April, 2021 and permitting to him to join and continue to work as before.

3. Subsequently, by a Notification No. 205 dated 27th



of January, 2023, the petitioner's application for voluntary retirement dated 28th of June, 2021 was accepted.

4. In the instant writ petition, the petitioner has made the following prayers:--

“(i) For quashing the letter issued by the respondent no.3 dated 27.01.2023 by which the resignation of the petitioner from the post of Udyog Vikash Padadhikari, Department of Industries was accepted with effect from 28.06.2021.

(ii) For commanding and directing the respondent nos. 1 and 3 to accept the joining of the petitioner in the Department of Industries Industry immediately.

(iii) For commanding and directing the respondent nos. 1 and 3 to withdraw the letter issued by the respondent no.3 dated 27.01.2023 by which the resignation of the petitioner from the post of Udyog Vikash Padadhikari i.e. Industrial Extension Officer, Department of Industries was accepted.

(iv) For commanding and directing the respondent nos. 1 and 3 to accept the application dated 30.08.2022 filed by the petitioner and to treat his absence from the duty from 01.07.2022 till 30.08.2022 as a leave without pay.

(v) For commanding and directing the respondents to treat the service of the petitioner in continuity without any break in service.

(vi) For commanding and directing the respondents to make the payment of salary to the petitioner since 04.04.2022 when petitioner filed the application before the Respondent no.3 for withdrawing the offer of resignation submitted before Respondent no.3



vide letter 28.06.2021.

(vii) And pass such other order/orders, writ/writs, direction/directions as deem fit and proper in the facts and circumstances of this case.”

5. I have heard the learned Advocate appearing on behalf of the petitioner and the State-Respondents.

6. It is submitted by the learned Advocate appearing on behalf of the petitioner that the petitioner has filed the instant writ petition praying for quashing of the letter dated 27th of January, 2023, by virtue of which the resignation of the petitioner from the post of Industrial Extension Officer was accepted w.e.f. 28th of June, 2021. The letter dated 28th of June, 2021 cannot be accepted by the Director of Industries by a letter dated 27th of January, 2023 because of the fact that after 28th of June, 2021, the petitioner issued at least two letters on 4th of April, 2022 and 30th of August, 2022 for rejection of his letter dated 28th of June, 2021 and allow him to join the service revoking his prayer for voluntary retirement dated 28th of June, 2021.

7. In support of his contention, the learned counsel for the petitioner refers to a decision of the Hon'ble Supreme Court in the case of ***J.N. Srivastava v. Union of India & Anr.*** reported in ***(1998) 9 SCC 559***.

8. In the aforesaid report, an employee gave three



months notice for acceptance of his voluntary retirement which was going to expire on 31st of January, 1990. However, the department accepted his letter and directed to him to retire voluntarily by an order dated 2nd of November, 1989. Subsequent to such letter issued by the authority, the petitioner/appellant wrote a letter to withdraw his voluntary retirement proposal on 11th of December, 1998.

9. On such factual background, it is held by the Hon'ble Supreme Court:-

“It is the well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by Hon'ble Supreme Court relying on its previous decision in the case of Balram Gupta v. Union of India [1987 Supp SCC 228.”

10. On the same issue, the learned counsel for the petitioner refers to another decision of the Hon'ble Supreme Court in the case of **Srikantha S.M. v. Bharath Earth Movers Ltd** reported in **(2005) 8 SCC 314**.

11. In the instant case, indisputably the petitioner sent a proposal for voluntary retirement on 28th of June, 2021, however, the said proposal was not accepted by the respondent authority.



12. On the other hand, the petitioner was transferred from one place to another along with other employees having same rank and post. Thus, the petitioner's proposal for voluntary retirement was not accepted on 29th of June, 2022 when the order of transfer of the petitioner was published.

13. Subsequently, on 30th of August, 2022, the petitioner filed an application before the Director of Industries, Bihar, Patna withdrawing his proposal for voluntary retirement. The said proposal for voluntary retirement cannot be accepted by an order dated 27th of January, 2023 when the petitioner expressed his desire of continuing his service by 30th of August, 2022.

14. In view of such circumstances, the decision taken by the Respondent No. 3 accepting the letter dated 28th of June, 2021 filed by the petitioner for his voluntary retirement is liable to be quashed and set aside.

15. Before I part with. I would like to record that the petitioner himself has admitted that he stopped going to his office and discharging his official duty from 1st of July, 2021. Therefore, he is not entitled to get his salary from 1st of July, 2021 till his date of joining.

16. The Respondent No. 3 (The Director, Department



of Industries, Government of Bihar, Patna) is directed to allow the petitioner to join his service at his new place of posting within 15 days from the date of communication of this order.

17. The instant writ petition is, thus, disposed of.

(Bibek Chaudhuri, J)

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