IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1786 of 2018

In

Civil Writ Jurisdiction Case No.1641 of 2016

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1. The State of Bihar
2. The Principal Secretary, Health Department, Government of Bihar, Patna
3. The Secretary, Department of Health, Medical Education and Family Planning, Government of Bihar, New Secretariat, Patna.
4. The Civil Surgeon-Cum-Chief Medical Officer, Sasaram
5. The Medical Officer, Sadar Hospital, Sasaram.
6. The Regional Deputy Director, Department of Health, Medical Education and Family Planning, Sasaram

... ... Appellant/s

Versus

1. Dr. (Smt) Swarn Lata Sinha, Wife of Sri Raj Kishore Sinha, Resident of Rupantar Matri Sewa Sadan, Tilatand, P.O. and P.S. Katrash, District-Dhanbad, Jharkhand, At Present residing at St. Pole School Campus, kachitalaw Gardanibagh, P.S.-Gardanibagh, District-Patna
2. The Bihar Public Service Commission, Bailey Road, Patna through its Chairman.
3. The District Provident Fund Officer, Sasaram.
4. The Director, General Provident Fund, Pant Bhawan Bailey Road, Patna.
5. The Chairman, Bihar Public Service Commission, Bailey Road, Patna
6. The Account General (Bihar), Virchand Patel Path, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mrs. Binita Singh, S.C.-28
Mr. Apurv Harsh, A.C. to S.C.- 28

For the Respondent/s : Mr. P.K. Shahi, Sr. Advocate
Mr. Sanjeev Kumar Mishra, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-05-2019

Re: I.A. No. 9683 of 2018

Heard Smt. Binita Singh, learned Standing Counsel for the appellant-State of Bihar and Shri P.K. Shahi, learned senior counsel for the respondent-writ petitioner.

2. The appeal is reported to be delayed by 140 days.

3. We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 9683 of 2018 stands allowed accordingly.

Re: I.A. No. 9682 of 2018

This is an application for stay of the impugned order dated 3rd of July, 2018 passed in C.W.J.C. No. 1641 of 2016.

2. Since we are disposing of the appeal itself today, this application also stands disposed of.

Re: L.P.A. No. 1786 of 2018

This appeal questions the correctness of the impugned

judgment dated 3rd of July, 2018 in C.W.J.C. No. 1641 of 2016, whereby the learned Single Judge has allowed the writ petition of the respondent-petitioner and has quashed the order dated 1st of October, 2015, whereby the punishment order was imposed on the respondent-petitioner.

2. The facts in detail have already been set out in the judgment of the learned Single Judge. In brief, the respondent-petitioner was proceeded against in departmental proceedings for unauthorized absence and ultimately the proceedings which were initiated on 31st October, 2002 culminated in the passing of the punishment order. In between, litigation had taken place with regard to which reference has been made in the pleadings of the writ petition, but the same is not necessary for the present controversy keeping in view the submissions advanced.

3. The defence taken by the respondent-petitioner in the writ petition was that she had already tendered an application for voluntary retirement on 1st of September, 2000 and, therefore, the said application for voluntary retirement entitled her to be treated as a retired Government servant in respect of whom no disciplinary proceedings could have been either initiated nor any punishment awarded. Thus, the fulcrum of the defence and the point for consideration keeping in view

the bone of contention between the parties was founded on this defence of the respondent-petitioner as to whether having voluntary retired from service could she have been proceeded against in the disciplinary proceedings. The said contention has been accepted by the learned Single Judge holding that the voluntary retirement application stood accepted in law and, therefore, the respondent-petitioner having retired from service, the action taken by the appellants was not in conformity with the rules.

4. The question as to whether the voluntary retirement application was in order or not has been canvassed by the learned counsel for the appellant relying on Rule 74 (b)(i) of the General Conditions of Service contained in Bihar Service Code. The same is extracted hereinunder:-

> "74(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:
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> 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."

5. Learned counsel for the appellant contends that the application which has been moved by the respondent-petitioner and is Annexure-9 to the writ petition is an application disclosing her desire to retire forthwith from 1st of September, 2000 and the application was also moved on the very same day. It is, therefore, submitted that prior three months' notice had not been given and consequently, the application was not in conformity with the aforesaid rule. Hence, the same cannot be treated to be an application as desired under law and consequently any presumption of the validity of the application by the learned Single Judge is misplaced. It is urged that the application being itself invalid and not in the form as prescribed, the same could not have been construed to be an application under the aforesaid rule for the purpose of deeming the respondent to have voluntary retired.

6. Learned counsel further submits that the proceedings which have been initiated are in accordance with rules keeping in view the provisions of Rule 43(b) of the Bihar Pension Rules and consequently even otherwise the order impugned without taking notice of the impact of the aforesaid provisions deserves to be set aside.

7. Learned counsel for the respondent-petitioner, however, contends that in view of the law laid down by the Apex Court in the case of **Dinesh Chandra Sangama Vs. State of Assam,** reported in **A.I.R. 1978 Supreme Court 17** the application moved for voluntary retirement was in order and the same has rightly been treated to be a valid application by the learned Single Judge. It is, therefore, contended that the entire disciplinary proceedings were invalid and consequently quashing of the punishment order is justified.

8. Having considered the submissions raised and on a perusal of the records of the writ petition, we find that this particular aspect of the application having been filed on 1st September, 2000 has been clearly pleaded in Paragraph 17 of the writ petition. There is no denial of the aforesaid fact in the counter affidavit. To the contrary, we find that in the Inquiry Report during the disciplinary proceedings this fact of the

moving of the application has been noted and it is, therefore, obvious that the application for voluntary retirement had been filed by the respondent-petitioner before the concerned authority. It is undisputed that no orders were passed thereon and it remained with the respondents without any order and the respondent superannuated. It is in this background, what we find is that once it is established that the application had been moved then merely because the period of three months had not been mentioned in the said application, the same would not render it invalid *ipso facto* and the same would mature after the expiry of three months. The existence of the application, therefore, does not get evaporated merely because the period had not been mentioned therein. Had the appellants chosen to pass any order on the said application, then things would have been otherwise. As noted above, there is nothing on record to indicate that the application had been dealt with or any order passed thereon, but in the background aforesaid, it cannot be said that the application was incompetent or was otherwise invalid and not in conformity with law. The application matured after the expiry of three months and it is admitted to the appellants that the inquiry which was commenced against the respondent-petitioner was in the year 2002, which is almost after two years thereafter. It is

also worth noting that the inquiry proceedings are alleged to have commenced on account of some inspection made by a Minister in the year 2000 itself. There is no explanation as to why the appellants chose to initiate the proceedings after almost two years within which time it was always open to them to have passed appropriate orders. The order of suspension was passed long after on 24.07.2001. Had there been any order of suspension between the period of three months, which was the maturity period of the said application, then too it could have been said that the appellants were entitled to pass orders under the proviso to the rule quoted above. Even that was not done. This inaction on the part of the appellants, therefore, disentitles them to raise any such plea on the given facts of this case. We are supported in our view by another Division Bench judgment of the Allahabad High Court in the case of **Surendra Narain Singh Vs. Deputy Inspector General of Police**, reported in **1995 (4) SCT 716 (Allahabad), decided on 31st January, 1995** where the following ratio has been laid down after following the ratio of the judgment of the Apex Court in the case of **Dinesh Chandra Sangama** (supra).

9. Paragraphs 6, 7 and 8 of the said judgment are reproduced hereinunder:-

"In a string of judicial precedents it has been held that a request for premature retirement does not require a specific order accepting it by the concerned authority before an employee can be deemed to have retired from service. In other words, unless a particular Rule says otherwise, on the expiry of the period of the notice for premature retirement, the employee seeking it shall be deemed to have retired, unless, in the meanwhile, specific order has been passed, to the contrary, whether on account of contemplated disciplinary proceedings or otherwise.

7. In a recent judgment, the Supreme Court in Union of India v. Sayed Muzaffar Mir, 1995(1) SCT 497 (SC): (1995) 1 UPLBEC 146 held, while interpreting Rules 56(c) of the Fundamental Rules, that where the Government servant seeks premature retirement, the same does not require any acceptance and comes into effect on the completion of the notice period. A similar view was expressed in two earlier judgments of the Supreme Court in Dinesh Chandra Sangama v. State of Assam, MANU/SC/0320/1977: AIR 1978 SC 17: 1977 Lab IC 1852 and B.J. Shelat v. State of Gujarat, MANU/SC/0346/1978: (1978) 2 SCC 202.

8. Applying the rationale as enunciated by the Supreme Court in the judicial precedents referred to, it cannot but follow that the request of the appellant for premature retirement must be

deemed to have stood accepted on the expiry of the three months' period of notice from the date thereof, that is, February, 1989. This being so, the subsequent orders of suspension and of dismissal passed against the appellant have inevitably to be held to be void."

10. Consequently, for all the reasons above and the findings of the learned Single Judge, we do not find any merit in the appeal, which is hereby rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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