IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3507 of 2023

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Kanhaiya Singh Son of Ram Ayodhya Singh Resident of Near Sahid Bhawan, Mahavir Tola, P.S.- Arrah Nawada, District- Bhojpur.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. Principal Secretary, Health and family Welfare Department, Government of Bihar, Patna.
3. Joint Secretary, Health Department, Government of Bihar, Patna.
4. Additional Secretary, Health Department, Grievance Redressal Cell, Government of Bihar, Patna.
5. Under Secretary, Health Department, Government of Bihar, Patna.
6. District Magistrate, Madhubani.
7. Civil Surgeon Cum Chief Medical Officer, Madhubani.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Rajiv Kumar Singh, Adv.
For the Respondent/s : Mr. Gyan Shankar, SC33

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
CAV JUDGMENT

Date : 20-11-2026

Heard learned counsel for the petitioner and learned counsel for the State.

2. Learned counsel for the petitioner submits that the present writ application has been filed for setting aside the order, dated 12.01.2023, passed by Joint Secretary, Health Department, Government of Bihar (Annexure-16), communicated through press regarding termination order from the service of the petitioner along with others and the petitioner's name appeared at Serial No.33 during the pendency of LPA No.1140 of 2019 without legal basis.

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3. Further prayer has been inserted by virtue of I.A. No.1 of 2023 by which the same order has been challenged vide Memo No.105 dated 23.01.2023 issued under the signature of Special Secretary, Health Department, Government of Bihar (Annexure-P/19).

4. Counsel further submits that the petitioner had joined his service as Medical Officer on 26.03.1988 at the PHC Dhuraiya at Banka and since then, he had worked at different places and presently, posted as Medical Officer at Sub-divisional Hospital, Jhanjharpur, Madhubani and performing his duty with quite satisfaction to the authorities. He further submits that the petitioner has unblemished career and has never been made any complaint against him. He further submits that due to illness of his wife, he has filed an application/representation to the authority dated 03.07.2010 requesting him to provide Voluntary Retirement from Service (VRS). On that day, the petitioner was more than 50 years of age and completed about 22 years of his service. The said representation has already been recommended by the Civil Surgeon-cum- Chief Medical Officer, Madhubani and sent to the Principal Secretary, Health Department, Government of Bihar vide letter No.3152 dated 30.07.2010.

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5. Counsel further submits that nothing has been done on his representation dated 19.10.2010 and subsequently, the Civil Surgeon has passed an order vide Memo No.3916 dated 19.11.2010 regarding handing over charge to the Deputy Superintendent, Sub-divisional Hospital, Jhanjharpur, Madhubani. He further submits that the petitioner has also represented before the Grievance Redressal Cell, Government of Bihar demanding VRS and thereafter, also sent representation to the Principal Secretary, Health and Family Welfare, Government of Bihar vide letter dated 01.08.2011. He further submits that the relevant documents were demanded and the petitioner has submitted his relevant documents on 29.03.2016 and again submitted rest of the documents on 30.04.2016, but no decision has been taken.

6. Counsel further submits that due to suffering of his wife, the petitioner wanted to seek VRS and at the time of filing the said the writ petition, the treatment of his wife was going on at Neuro Pshyachiatri Centre at Chitpur, Varanasi (U.P.). He further submits that by virtue of the charge-memo, due to his absence, punishment order has been passed against him against which the petitioner has preferred appeal, but the same was rejected by the authority. Thereafter, the petitioner

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challenged the said order through a writ petition, bearing CWJC No. 12145 of 2017, which was allowed and the impugned orders were quashed vide order dated 14.03.2018. Against the said order, the State has not preferred LPA. On being dissatisfied from non-disposal of representation of V.R.S., the petitioner filed another Writ Petition, bearing C.W.J.C. No. 10660 of 2018 before this Hon'ble Court and the same was disposed of on 26.02.2018 with a direction to the Principal Secretary, Health Department to dispose of the representation of the petitioner for grant of VRS and pass a final order within a period of four weeks from the date of the order. He further submits that since the order dated 26.02.2018 was not complied with, the petitioner filed contempt petition bearing MJC No. 1666 of 2018 which was disposed of vide order dated 05.09.2018 granting liberty to the petitioner to assail the aforesaid orders, dated 16.08.2018 and 04.09.2018.

7. Thereafter, the petitioner has challenged the said orders in third writ petition bearing CWJC No.20149 of 2018 before this Hon'ble Court with grievance that he has filed an application for VRS in terms of Rule 74(b) of the Bihar Service Code, but respondents have not taken action rather they have communicated through counter-affidavit about the pendency of

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the departmental proceeding against him.

8. Counsel further submits that in the said writ petition vide order dated 31.07.2019, the Hon'ble Single Judge has pleased to direct the authority concerned to serve the copy of this memo of charge, complete the proceeding in terms of Rule 17 of the Bihar CCA Rules, 2005 and complete the entire process within a period of six months from the date of receipt or production of a copy of this order and if the petitioner is exonerated, in such circumstance, the application for VRS will be considered and take decision within one month. He further submits that against the said order, the petitioner has preferred appeal bearing LPA No.1140 of 2019 challenging the order passed in CWJC No.20149 of 2018 dated 31.07.2019, but during pendency of the LPA, the respondent authorities have passed order of termination dated 12.01.2023 against the petitioner, along with others, through press communique without serving any notice/show cause to the petitioner personally by the Joint Secretary, Health Department, Government of Bihar (respondent No.3). The copy of said letter under press note is annexure-16, which is order impugned. Counsel further submits that by way of supplementary affidavit, he has placed the order passed in LPA No.1140 of 2019 dated

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15.03.2023 in which the direction was given to the authority concerned to take decision on his representation. He further submits that in the said LPA, the order contained in memo No.624 dated 16.08.2018 has been declared bad and not sustainable, hence, according to him, the decision of the authorities on the VRS is still to be taken.

9. In this regard, counsel submits that the petitioner has filed representation before the Principal Secretary (Annexure-18) and submitted his entire facts that the decision with regard to his VRS be taken in accordance with law.

10. In support of his argument, counsel relied on judgment of **Vijay Kumar Vs. The State of Bihar** reported in **2015(2) PLJR 625**. Further on the judgment of **Shamim Ahmad Khan Vs. State of Bihar and Ors.** reported in **2004(4) PLJR 554** and the decision of Hon'ble Supreme Court of India in case of **Union of India & Anr. Vs. Ashok Kumar Aggarwal** reported in **2014 (2) 286 (SC)** and submits that in the light of the decision of LPA and further in the light of different judgments, it becomes crystal clear that the decision of VRS has to be passed in his favour as all the legal ingredients are in his favour and the petitioner is entitled for the relief by virtue of setting aside the order of termination dated 12.01.2023.

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11. Learned counsel for the State, on the other hand, opposes the prayer and submits that in the present facts and circumstances, the petitioner has no case at all. Counsel submits that the decision of L.P.A. No. 1140 of 2019 is not in favour of the petitioner, rather, by virtue of decision of L.P.A, No. 1140 of 2019, the order dated 31.07.2019 passed by the Hon'ble Single Judge in CWJC No. 20149 of 2018 has been approved. It has also been approved by this Hon'ble Court that departmental proceeding second time may continue against him. Counsel submits that the petitioner is aggrieved *vide* order dated 31.07.2019 passed by the Hon'ble Single Judge in C.W.J.C. No. 20149 of 2018. But, in the L.P.A., it is the categorical finding of the Hon'ble Division Bench with regard to the petitioner is concerned that filing of application for VRS does not *ipso facto* vests the right to grant of relief of VRS, as it depends upon several factors, as one of the factors whether he is facing departmental proceeding. Counsel submits that in the light of the observation made by the L.P.A. Court in para 20, the petitioner is not entitled to get relief for which he has moved in the present writ petition, due to the reason that departmental proceeding was pending against him and the order passed by Hon'ble Single Judge in C.W.J.C. No. 20149 of 2018 has

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categorically held that second departmental proceeding may continue. Counsel submits that it is true that by virtue of the order passed by the Hon'ble Single Judge in C.W.J.C. No. 20149 of 2018, the petitioner has to participate in the departmental proceeding, but instead of participating in the departmental proceeding, he has opted to challenge the same in the L.P.A. Court and during pendency of L.P.A., no stay was granted in favour of the petitioner on the order passed by the Hon'ble Single Judge and petitioner has not opted to participate in the departmental proceeding. The officials have time and again issued process, but when petitioner has not participated thereafter, paper publication has been made and even after paper publication, petitioner has not responded and then only, a decision has been taken of termination from the service, which has been communicated to him as well as to the press also. He submits that initially, petitioner has challenged the press communication dated 12.01.2023, but subsequently, the said communication has been challenged by virtue of filing I.A. No.1 of 2023 in the present writ petition.

12. Learned counsel for the State further submits that here in the present case, the department has followed the observation made by the Hon'ble L.P.A. Court and due to

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pendency of the departmental proceeding, which has been approved by the Writ Court in C.W.J.C. No. 20149 of 2018 and subsequently, when challenged in the L.P.A No. 1140 of 2019. Court, the L.P.A. Court vide judgement dated 15.03.2023 has also affirmed the order of writ Court. The department has decided to take decision in the departmental proceeding and in the departmental proceeding, the petitioner was terminated therefore, there is no question of passing order on the VRS and, hence, this writ petition is fit to be dismissed.

13. Upon hearing the parties and perusal of the relevant documents, this Court deems it appropriate to quote the judgments on which the counsel for the petitioner relied upon. Firstly the judgment of this Hon'ble Court in case of **Vijay Kumar Vs. The State of Bihar (supra)** whose relevant paragraph 54- 59 reads as under:-

> *"**54.** The third case which has been clubbed by this Court would require no longer discussion and deliberation in view of the statuary provision made in Rule 74 of the Bihar Service Code, relevant portion whereof reads as follows:-*
>
> *"74(a)... ... ...*
>
> *(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*

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authority concerned retire from service on the date on which such a Government servant completes thirty years 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) ....

(iii) ... ..."

55. *Scope of Rule 74(b)(i) of the Bihar Service Code has been decided by this Court in C.W.J.C. No. 2900/2007 (Gauri Devi vs. the State of Bihar & Ors.) as also in the case of Dr. Shah Azad Siddiqui vs. the State of Bihar & Ors., reported in 2008(4) PLJR 194, wherein it has been held that the option lies with the employee to initiate the process of voluntary retirement and the only right given to the Government is that if the Officer is under suspension, such option of the employee for voluntary retirement can be denied. It has further been held that the Government could also refuse voluntary retirement only during the*

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notice period of three months, otherwise it would be a deemed retirement on expiry of three months notice. This Court in fact had taken the aforesaid view in the light of law laid down by the Apex Court in the case of Union of India & Ors. vs. Sayed Muzaffar Mir, reported in 1995 Supp. (1) SCC 76, B.J. Shelat vs. State of Gujarat & Ors., reported in AIR 1978 SC 1109, State of Haryana & Ors. vs. S.K. Singhal, reported in (1999)4, SCC 293, Tek Chand vs. Dile Ram, reported in (2001)3 SCC 290 and in the case of P. Lal vs. Union of India & Ors., reported in (2003)3 SCC 393.

56. *As would be apparent from reading of the aforesaid judgments of Apex Court and this Court as well as the clear provision of Rule 74(b)(i) of the Bihar Service Code, there is no option to the State Government to refuse voluntary retirement on any ground except when the Government servant has been placed under suspension. In fact the concept of approval of the State Government comes only where the Government servant is under suspension.*

57. *Admittedly the petitioner of the third case, namely, Dr. Lalit Kumar was never placed under suspension till he had given a three months notice by his application dated 21.6.2012 (Annexure-2) seeking his voluntary retirement with effect from 1.10.2012 on the ground that he had already completed 30 years of service and more than 58 years of age. In such event his voluntary*

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retirement was automatic but the State Government kept the matter lingering and initially did not entertain his plea of voluntary retirement on the ground that his application was not forwarded through proper channel. Subsequently when he had sent his application through proper channel the same was rejected by an order dated 24.9.2013 which reads as follows:-

*57 पत्रंक-17/*विविध *2-06/12*

बिहार सरकार स्वास्थ्य विभाग

प्रेषक,

डा० गगन, विशेष कार्य पदाधिकारी।

सेवा में,

डा० ललित कुमार,

प्राध्यापक, रेडियोलोजी विभाग,

वर्द्धमान आयुर्विज्ञान संस्थान पावापुरी,

नालन्दा ।

पटना

दिनांक *24/9/13*

विषय:-स्वैच्छिक सेवानिवृति के सम्बन्ध में।

महाशय,

निदेशानुसार उपर्युक्त विषयक *प्राचार्य, वर्द्धमान* आयुर्विज्ञान संस्थान पावापुरी, नालन्दा के *ज्ञापांक* संख्या-*36* दिनांक *1.2.2013* द्वारा *अग्रसारित* आपके स्वेच्छा सेवा निवृति आवेदन के *प्रसंग* में सूचित करना है कि राज्य के चिकित्सा महाविद्यालयों में *प्राध्यापक पत्र* एवं चिकित्सक शिक्षकों का अभाव है। अतएव लोकहित में आपके स्वैच्छिक सेवानिवृति आवेदन *पत्र* को एतद द्वारा अस्वीकृत किया जाता है।

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विष्वासभाजन

ह०/-

*(*डा० गगन*)*

विषेश कार्य पदाधिकारी

58. *A question would, therefore, arise whether such order passed by the Government is in accordance with the provisions made in Rule 74 of Bihar Service Code? There would be no difficulty in holding that such rejection of the application of the petitioner for his voluntary retirement was in teeth of the provisions of Rule 74(b)(i) of the Bihar Service Code. As a matter of fact from the circular of the State Government dated 2.12.2013 on the subject of voluntary retirement it would be also found that such request of voluntary retirement could be rejected only on the ground of pendency of the departmental proceeding or any audit objection or his not qualifying twenty years of service. To that extent it would be relevant to quote the Government circular dated 2.12.2013 which reads as follows:-*

बिहार सरकार स्वास्थ्य विभाग

आदेश

पटना, दिनांक *2.12.13*

संख्या-*2/*कोर्ट-*86/13-1408(2)*

प्रायः यह देखा जाता है कि विभाग में ऐच्छिक सेवा निवृति के मामले के निष्पादन में काफी विलम्ब हो जाता है, फलस्वरूप माननीय उच्च न्यायालय में सरकार को विषम परिस्थिति का सामना करना पड़ता है ।माननीय उच्च न्यायालय द्वारा ऐसे कई

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मामलों में विभाग द्वारा तत्परता से निष्पादन करने की आवश्यकता पर बल दिया गया है।

2. बिहार सेवा संहिता के नियम-*74 (ख)* एवं वित्त विभागीय *परिपत्र* संख्या-*6190* दिनांक *27.4.1979* में निहित अनुदेशों के आलोक में *20* वर्ष की अर्हक सेवा *पूरी* करने अथवा *50* वर्ष को आयु *प्राप्त* कर लेने के उपरान्त यदि कोई चिकित्सक नियुक्ति *प्राधिकारी* को कम-से-कम तीन माह पहले लिखित सूचना देकर ऐच्छिक सेवा निवृति का आवेदन देते हैं तो आंतरिक स्वच्छता एवं अंकेक्षण आपत्ति आदि की सूचना *क्रमशः प्रशाखा 9* एवं *प्रशाखा 8* से *प्राप्त* कर तीन माह के अन्दर उस आवेदन का निष्पादन करना आवश्यक है। इसलिए यह आवश्यक है कि ऐच्छिक सेवा निवृति से संबंधित आवेदन *प्राप्त* होने के एक सप्ताह के अन्दर संचिका उपस्थापित कर *प्रशाखा 9* एवं *प्रशाखा 8* से आंतरिक स्वच्छता एवं अंकेक्षण आपत्ति की स्थिति *प्राप्त* कर ली जाय । *प्रशाखा- 9* एवं *8* तीन दिनों के अन्दर आंतरिक स्वच्छता तथा अंकेक्षण आपत्ति की स्थिति को अंकित कर संबंधित *प्रशाखा* में संचिका लौटा देंगे ।

3. संबंधित *प्रशाखाओं* के *प्रभारी* अवर सचिव को यह व्यक्तिगत जिम्मेदारी दी जाती है कि हर *15* दिन पर वे अपने अधीनस्थ *प्रशाखाओं* में *प्राप्त* स्वैच्छिक सेवा निवृत्ति से संबंधित आवेदनों एवं संचिकाओं की स्थिति की जानकारी *प्राप्त* करें और उसपर समय-सीमा के अन्दर त्वरित कार्रवाई करें ।

4. संबंधित सभी *नियंत्री* पदाधिकारी को भी यह निदेश दिया जाता है कि ऐच्छिक सेवा निवृति से संबंधित सभी आवेदनों पर अपने स्पष्ट मंतव्य के साथ एक सप्ताह के अन्दर विभाग को *अग्रसारित* कर दें।

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5. यदि जाँच के *क्रम* में यह पाया जाता है कि ऐच्छिक सेवा निवृति *प्राप्त* करने वाले चिकित्सा पदाधिकारी पर कोई विभागीय कार्यवाही संचालित है या अंकेक्षण आपत्ति. लंबित है या उनकी अर्हक सेवा नियमानुसार *20* वर्षों की नहीं है फिर भी उनके आवेदन को निस्तारित करते हुए उन्हें यह सूचना दे दी जायेगी कि आपके आवेदन को इस कारण निरस्त कर दिया गया है ।

6. अगर ऐच्छिक सेवा निवृति के संबंध में *प्राप्त* अभ्यावेदनों के निष्पादन में किसी भी तरह का विलम्ब दृष्टिगोचर होता है तो विलम्ब के लिए व्यक्तिगत जिम्मेवारी निर्धारित करते हुए नियमानुसार उनपर कार्रवाई की जायेगी ।

7. प्रस्ताव में *प्रधान* सचिव, स्वास्थ्य का अनुमोदन *प्राप्त* है ।

ह०/-
संजय कुमार
सरकार के संयुक्त सचिव ।

59. *A question would arise that if the petitioner's application dated 21.6.2012 was kept pending for fifteen months before its being rejected on 24.9.2013 who is responsible for such delay? Secondly, the paucity of teachers in the Government Medical College being not a ground referable to the provisions of Rule 74(b)(i) of the Bihar Service Code such rejection in fact wholly uncalled for and per se illegal. In the considered opinion of this Court Rule 74(b)(i) of the Bihar Service Code does not brook of any two interpretation and in fact this aspect of the matter*

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stands well settled in the line of catena of decision of the Apex Court and of this Court as referred above that the provision of voluntary retirement by way of three months notice is automatic and the incumbent cannot be refused the privilege of voluntary retirement save and except when he has been placed under suspension. In fact even pendency of the departmental proceeding and/or audit objection as per Circular of the department quoted above cannot be made a ground in view of the provisions made in Rule 74(b)(i) of the Bihar Service Code."

13.1 Further in the judgment of this Hon'ble Court decided in case of **Shamim Ahmad Khan Vs. State of Bihar and Ors.** (supra) whose relevant paragraph nos. 21 & 22 reads as under:-

21. *For examining the constitutional validity of the rule, the court framed two questions, the first/question was as follows:*

"The first question for consideration, therefore, is:

"Does it amount to removal of a Government servant from service within the meaning of Article 311 of the Constitution, where a Government servant is continuously absent from duty for 5 years, and as a consequence thereof is treated no longer to be under Govern-ment employment."

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> ***22.*** *The court then proceeded to consider two decisions of the Supreme Court, one in Jai Shankar vs. State of Rajasthan, AIR 1996 SC 492 in which regulation 13 of Jodhpur Service Regulations came up for consideration and the other in Deokinandan Prasad vs. State, AIR 1971 SC 1409 [: 1971 PLJR 458 (SC)] in which the court considered the import of the earlier decision in Jai Shankar's case. On a consideration for the Supreme Court decisions in Jai Shankar and in Deoki-nandan Prasad this court came to hold "that treating an employee to have ceased to be in Government employ amounts to removal from service" and further that removal from service without giving an opportunity of being heard was to go against Art. 311 Constitution. (emphasis added)*

and further in the judgment of Hon'ble Supreme Court of India decided in case of **Union of India & Anr. Vs. Ashok Kumar Aggarwal (supra) whose relevant** Paragraph 25 reads as under :-

> ***25.*** *Placing reliance upon the earlier judgments in Mulraj vs. Murti Raghunathji Mahaaraj AIR 1967 SC 1386 Surjit Singh & Ors. etc. etc., vs. Harbans Singh & Ors. etc. etc. AIR 1996 SC 135; Delhi Development Authority vs. Skipper Construction Company (P) Ltd. & Anr., AIR 1996 SC 2005; and Gurunath Manohar*

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Pavaskar & Ors. VS. Nagesh Siddappa Navalgund & Ors., AIR 2008 SC 901, this Court in Manohar Lal (D) by LRs. vs. Ugrasen (D) by LRs. & Ors., AIR 2010 SC 2210 held that any order passed by any authority in spite of the knowledge of order of the court, is of no consequence as it remains a nullity and any subsequent action thereof would also be a nullity.

14. Upon consideration of the judgments referred to hereinabove, this Court finds that, for the proper adjudication of the matter, the observations made by the Hon'ble Division Bench of this Court in LPA No. 1140 of 2019, decided on 15.03.2023, are of considerable relevance and are reproduced hereinbelow:

"22. In view of the aforesaid discussions, this Court does not find any reason to interfere in the order under appeal. However, the writ petitioner-appellant is at liberty to assail the outcome of the departmental proceeding before the competent authority/court and in case of quashment of the resultant outcome or exoneration, the application for voluntary retirement of the writ petitioner – appellant shall be considered afresh in accordance with law after taking into consideration the fact that the unauthorized absence from 26.12.2005 to 18.05.2010 is no more in existence on account of the order of this Court dated 14.03.2018 passed in C.W.J.C. No. 12145 of 2017

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in the earlier round of litigation, hence order under challenge in the writ petition as contained in Memo No. 624 (3) dated 16.08.2018 has no leg to stand in the law and accordingly held to be bad and not sustainable.

23. In view thereof, the present appeal does not require any interference and the same stands disposed off with certain modification observed hereinabove."

15. From the aforesaid observations made by the Hon'ble Division Bench, it is evident that liberty was granted to the appellant to challenge the outcome of the departmental proceedings before the competent authority/court. It was further observed that, in the event of the consequential order being quashed or the appellant being exonerated, his application for voluntary retirement would be considered afresh. The State was also directed to take a decision in respect of the departmental proceedings. It is a settled principle that a decision on an application for voluntary retirement (VRS) cannot be taken without taking into consideration the pendency and outcome of the departmental proceedings. In the present case, this Court finds that the departmental proceedings have culminated in the imposition of a punishment upon the petitioner. Consequently, in view of the aforesaid observations of the Hon'ble Division Bench, the question of reconsideration of the petitioner's

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application for voluntary retirement does not survive at this stage.

16. For the aforesaid reasons, this Court finds no legal infirmity in the impugned order warranting interference. Accordingly, the present writ petition stands dismissed.

(Dr. Anshuman, J)

Prakashmani/-

AFR/NAFR	NAFR
CAV DATE	22.09.2026
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