

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14398 of 2015

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Manoranjan Kumar Son of Late Bhagwan Das, Resident of Mohalla - Lalji Tola,
Police Station - Gandhi Maidan, District - Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Public Health and Engineering Department, Government of Bihar, Patna.
2. The Principal Secretary, Public Health and Engineering Department, Government of Bihar, Patna.
3. The Deputy Secretary, Public Health and Engineering Department, Government of Bihar, Patna.
4. The Chief Engineer, Public Health and Engineering, Government of Bihar, Patna.
5. The Regional Chief Engineer, Public Health Engineering Range, Patna.
6. The Superintending Engineering, Public Health Engineering, Division (Anchal) Arrah.
7. The Executive Engineer, Public Health Pramandal, Aurangabad.
8. The Assistant Engineer, Public Health, Pramandal, Navinagar, Aurangabad.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Nagendra Pd. Yadav

For the Respondent/s : Mr. SC17-ARBIND KUMAR NO. II

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 22-12-2015

Heard learned counsel for the petitioner as well as counsel
for the State.

2. The Petitioner seeks quashing of the memo, dated 07.07.2015 issued under the signature of Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna whereby he has been dismissed from the service under Rule 14(xi) of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

3. The petitioner was appointed as Junior Engineer in the year 1995 in the office of Zonal Chief Engineer, Public Health



Engineering Department, Government of Bihar, Patna. He was transferred and posted at P.H Division, Sasaram as an Estimator for which he was relieved from his earlier posting on 19.07.2011. The petitioner, who was unauthorizedly absent from duty from 01.04.2011, did not join his transferred place. A departmental proceeding was initiated against him for unauthorized absence from his duty.

4. The department vide Memo no. 344 dated 28.07.2011, appointed one Shri Binod Kumar Singh, Executive Engineer, Arra as enquiry officer. Five charges were framed under Prapatra (K) also dated 28.07.2011. As the petitioner remained absent during proceeding, the enquiry officer completed the enquiry ex-parte and submitted his report on 05.12.2011 holding him guilty of all the charges. The petitioner was asked second show-cause vide letter no. 47 dated 27.01.2012. As the petitioner did not respond, reminders were issued vide letter no. 401 dated 17.07.2012, letter no.477 dated 29.08.2012 and letter no. 41 dated 04.02.2013. However, all letters returned with note that petitioner did not live at Nabinagar. In the meantime, the Executive Engineer, P.H. Division, Aurangabad vide his letter dated 16.08.2013 informed that the petitioner was transferred to P.H. Division, Sasaram vide notification dated 30.06.2011, but he did not submit his joining. Another charge-sheet was issued vide letter



no. 587 dated 30.12.2013. The petitioner appeared before the enquiry officer, but was unable to submit satisfactory evidence justifying his absence in duty for such a long period. The enquiry report was submitted vide letter no. 455 dated 17.06.2014 with respect to the second show-cause as well. The petitioner was issued show-cause along with the copy of the enquiry report for explanation, but again he did not respond. As such, a notice was published in daily newspaper “Dainik Jagran” dated 17.10.2014. Thereafter the Engineer-in-Chief vide letter dated 23.01.2015 requested the Senior Superintendent of Police, Patna to verify the permanent address of the petitioner, which was recorded in the official records of the Department. It subsequently transpired that the petitioner was not living on the said address nor he informed the Department of the change of his address. The petitioner was noticed on 25.03.2015 by the Department. Again a notice was published in Hindi Daily Newspaper “Hindustan” Patna on 01.04.2015 for his explanation (Annexure-L). The petitioner, however, did not respond, the Department vide order no. 409 dated 07.07.2015 dismissed him from service. The petitioner, only thereafter appeared before the P.H. Sub-Division Office, Nabinagar, Aurangabad on 29.07.2015.

5. The petitioner submits that he was suffering from Psychotic Depressive type of Mental disorder. In support of his



submission, he has produced Psychological Test Report of Dr. M. Jalil, a Mental Disease Specialist, retired Clinical Psychologist & Psychotherapy, Ranchi on advice of Dr. U.N. Chaudhary, Medical Officer, Ranchi Manshik Arogyashala, Kanke, Ranchi. Learned counsel submits that the petitioner was undergoing treatment at Ranchi, as such he could not file his show cause reply to the charges. He periodically visited Dr. U. N. Chaudhary for his check-up between 07.04.2011 to 10.04.2015. The last Psychological test was conducted on 10.04.2015, which did not report any indication of Psychotic thinking or persistent of emotional disorder. He was granted certificate of fitness by Dr. U.N. Chaudhary on 10.04.2015 (Annexure-5/1), whereafter he gave his joining vide Memo dated 03.07.2015. The petitioner further submitted that the impugned punishment is disproportionate to the offence committed by him, as he was under Mental disorder. The petitioner next argued that he could not participate in the departmental enquiry, as he was under Medical treatment at Ranchi. He further submits that in the impugned order of punishment is excessive and harsh in the situation.

6. I have heard the counsel for the parties. I find that the petitioner was proceeded departmentally for unauthorized leave since April, 2011 onwards. He appeared only once before the enquiry officer in June, 2014 and thereafter failed to respond in spite of paper

publication, which was made once in Dainik Jagaran and thereafter in daily Hindustan.

7. I find there is no procedural irregularity in completing the departmental proceeding and sufficient opportunity was given to the petitioner to appear in the proceedings. However, the petitioner chose to remain absent without informing his whereabouts for all these four years, as such I am not inclined to set aside the departmental proceedings and grant one further opportunity to petitioner for an enquiry under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

8. The petitioner in alternative submits that the impugned order of punishment is disproportionate to the offence committed by him. He submits that he remained unauthorized leave, as he was undergoing treatment of mental disorder under Dr. M. Jamil and Dr. U.N. Chaudhary of Ranchi, a mental disease specialist.

9. I find substance in the submission of the petitioner. I too find that the punishment imposed on the petitioner in the facts and circumstances of the case is harsh and excessive. There is no allegation of any moral turpitude or misconduct or of misbehaviour save and except for being on unauthorized absent without any information for 3-4 years. The petitioner deserves a lesser punishment than one inflicted under Section 14 (xi) of Bihar Government Servants

(Classification, Control & Appeal) Rules, 2005.

10. In the result, this writ application partly succeeds, so far as quantum of punishment is concerned, which is accordingly set aside for consideration of lesser punishment.

(Samarendra Pratap Singh, J.)

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