

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

**Civil Writ Jurisdiction Case No.9148 of 2012**

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Awadhesh Prasad Sharma, Son of Late Chamari Singh, Resident of Village-  
Parsawan, P.S. Pandarak, Dist.-Patna

.... .... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Social Welfare, Bihar, Patna
2. The Principal Secretary, Department of Social Welfare, Bihar, Patna
3. The Joint Secretary, Department of Social Welfare, Bihar, Patna
4. The Deputy Secretary, Department of Social Welfare, Bihar, Patna
5. The Director, Social Security Directorate, Department of Social Welfare, Bihar, Patna
6. The Enquiry Officer-Cum-Joint Secretary Social Welfare, Directorate, Bihar, Patna
7. The District Magistrate, Khagaria

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Arun Kumar Arun, Advocate  
: Mr. Siyaram Pandey, Advocate  
For the Respondent/s : Mr. Pawan Kumar, AC to GA1

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH**

**ORAL JUDGMENT**

**Date: 04-03-2016**

Heard learned counsel for the petitioner and the State.

2. The petitioner was holding the post of Assistant Director, Social Security, Department of Social Welfare at Khagaria. He was departmentally proceeded for 8 charges. On conclusion of departmental proceeding, only charge no.2 and 5 were partially proved and charge no. 3 and 8 were proved. On consideration of the materials on record, the disciplinary authority punished by reverting him to his basic pay scale.

3. The petitioner submits that the charge was that the

petitioner had remained for unauthorized absence for 2-3 days. The petitioner submits that in fact he had not remained unauthorized leave, rather he duly filed an application for casual leave. He further submits that on 02.06.2009, he left for Patna on the direction of superior authority to be present in the meeting there. He next submits that the witness was not examined nor the presenting officer led any evidence.

4. Counsel for the State submits that the enquiry officer looked into the documents annexed to the charge-sheet.

5. It is not in dispute that any witness was examined or any document exhibited. The enquiry officer ought not to have arrogated to himself the role of a prosecutor and fished out materials for recording his findings.

6. In the result, the enquiry report as well as the impugned punishment would not sustainable in law and set aside. Since the petitioner has retired, it will be open for the department to proceed in terms of Rule 43 (b) of the Bihar Pension Rules.

7. With the aforesaid liberty, this application stands disposed of.

**(Samarendra Pratap Singh, J.)**

Uday/-

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