

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.454 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 15543 of 2012**

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Ashok Kumar Singh, Son of Late Lalan Singh, Resident of Village- Karbasin, P.O- Karbasin, P.S- Azimabad, District- Bhojpur (Ara)

.... Appellant/s

Versus

1. The State of Bihar, Through The Principal Secretary, Water Resources Department, Government Of Bihar, Patna.
2. The Chief Engineer (North), Tube- Well Division, Minor Water Resources Department, Muzaffarpur.
3. The Superintending Engineer, Tube- Well Division, Chapra.
4. The Executive Engineer, Tube- Well Division, Chapra.
5. The Assistant Divisional Officer, Tube- Well Division, Chapra.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Radha Mohan Pandey, Advocate
Mr. Chandra Shekhar Verma, Advocate

For the Respondent/s : Mr. Sanjay Prasad, AC to AAG 4

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 26-07-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 24th October, 2013, whereby the writ application challenging the order of termination dated 8th July, 2010 was not interfered with.

The appellant was Chowkidar in Tubewell Division, Chapra, Department of Minor Water Resources, Govt. of Bihar. He abstained from duties from 1st September, 1997. A notice in the daily newspaper *Dainik Jagran* dated 23rd October, 2003 was published for securing his attendance but the appellant did not report for duty.



Departmental proceedings were initiated against the appellant when a charge-sheet was served upon the appellant on 16th February, 2008 that the appellant is absent from duty continuously from 01.08.1997. The appellant submitted reply on 17th March, 2008 admitting his absence but sought extraordinary leave on medical grounds. Thereafter, an Enquiry Officer was appointed who submitted his report on 19th February, 2009. The appellant did not appear in the departmental proceedings nor produced his defence. On receipt of the enquiry report, a second show cause notice was issued to the appellant on 03.03.2009 but the appellant did not submit any reply. Another letter was issued on 09.03.2009 which was returned by the Post Office for the reason that the addressee does not reside in the village. But since the appellant did not respond nor joined duties, therefore, the order of termination was passed.

Learned counsel for the appellant vehemently argued that the reply to the show cause notice had not been considered by the competent authority and that there was sufficient reason for the appellant not to report for duty as he was suffering from tuberculosis. He also consulted Mental Hospital, Ranchi but his family members decided to consult one Dr. Ashok Kumar Prasad at Ranchi.

The fact is that the appellant remained absent from duty from 01.08.1997 and has not contested the departmental proceedings in which the charges are proved. The mere fact that the appellant has

filed reply to the charge-sheet will not mean that charges are not proved. In fact, the reply to the charge-sheet was admission of absence but with some explanation. It was for the appellant to appear in the departmental proceedings and support his explanation but he chose not to appear before the authorities conducting the proceedings. Therefore, explanation of his absence could not be taken into consideration. Since the absence from duty is proved, therefore, there could not be any other consequence except termination of service.

The learned Single Bench has examined the impugned order terminating the services and found no merit in the claim of the writ applicant. We have gone through the records of the writ application and found that there is no error in the findings of the learned Single Bench which may warrant any interference in this Letters Patent Appeal.

The appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

mrl.

AFR/NAFR	NAFR
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