

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.384 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 4766 of 2013
Along with
Interlocutory Application No.1799 of 2015

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Dr. Jayant Kumar, son of Ambika Prasad Sharma, resident of village - Rajabad,
P.O. - Hilsa, District- Nalanda, at present dismissed Medical Officer, Sripalpur,
Koilarwar, District- Bhojpur.

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Department of Health,
Government of Bihar, Patna.
2. The Director -in-Chief, Health Services, Department of Health, Government of
Bihar, Patna.
3. The Regional Deputy Director, Health Services, Patna Division, Patna.
4. The Chief Medical Officer-cum-Civil Surgeon, Bhojpur.

.... Respondents

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Appearance :

For the Appellant : Mr. Pramod Mishra, Advocate
Mr. Arun Kumar, Advocate

For the Respondents : Mr. Madhuresh Prasad, G.P.-12

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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: 13-07-2016

Re.: Interlocutory Application No.1799 of 2015

The application is for condonation of delay of 22 days
in filing of the present Letters Patent Appeal.

2. For the reasons mentioned in the application, we find
that sufficient cause is made out for condonation of delay.
Consequently, we condone the delay in filing of the present Letters
Patent Appeal.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.384 of 2015

The present Letters Patent Appeal is directed against an order passed by the learned Single Bench of this Court on 14th of May, 2014 whereby the writ application filed by the appellant against the order of his removal remained unsuccessful.

2. The appellant was charge-sheeted for remaining absent from duty on 23rd August, 2003. The appellant did not submit any reply to the charge-sheet nor produced any defence witness during the course of enquiry proceedings. On 13th of July, 2004, by virtue of a notice in the print media, the appellant was directed to report for duty within 15 days. The suspension of the appellant was revoked on 01.12.2005 but still, the appellant did not join his duties. Again another notice was sent on 22nd April, 2006 as to why his services be not terminated on account of misconduct proved in the enquiry conducted against him. It was also made clear that if no reply is received within 15 days, then appropriate action on the basis of the charge-sheet shall be taken against him. It was on 20th of July, 2011, the appellant submitted that he has not received copy of the enquiry report formally. Therefore, on 14th of October, 2011, the second show cause notice along with copy of the enquiry report was issued to the appellant. He submitted his reply



on 03.11.2011 in response to such show cause notice. He stated that from 24th December, 2001 till 28th April, 2009, he was under treatment and therefore did not work for the Department. While considering the enquiry report and the reply filed, the competent authority found that the appellant has remained away from duty without any leave from 24th December, 2001 till 28th April, 2009. For the interregnum period, he had not applied for any leave or sought leave for his treatment. Since the absence period was found to be of more than 8 years, therefore, it was said to be violation of Rule 76 of the Bihar Service Code. In view of the said finding, he was ordered to be dismissed by the State Government.

3. In the writ application directed against the order of dismissal, the only argument raised before the learned Single Bench was that the copy of the enquiry report was not supplied to him, but in the present appeal, it is also argued that on account of his medical treatment, the appellant was absent, therefore, liberal view should have been taken rather than dismissal of the service of the appellant.

4. We have heard learned counsel for the parties and find no merit in the present appeal. The appellant, a Medical Practitioner, absented from duty without any information or leave. The absence was of long period of almost 8 years. The appellant did not respond to the press publication or to the show cause

notices. Ultimately, on his communication that he has not been served with the enquiry report, a show cause was served upon him on 14.10.2011 which finds mention in the reply submitted by the appellant on 03.11.2011. Thus, copy of the enquiry report and his reply was considered by the competent authority when the order of dismissal was passed.

5. A person, who has been employed for providing treatment to the suffering humanity has avoided his responsibility for almost 8 years. Such a person, who does not respond to the call of duty, has to be dealt with severely. Therefore, the action taken by the Department cannot be said to be suffering from any irregularity or illegality, which may warrant interference in the present Letters Patent Appeal. The same is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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