

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.387 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 18644 of 2012**

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Deepak Kumar Rai, S/o Sri Jawahar Rai, Resident of Village - Sumbha Deorhi, P.S. Singhia, District – Samastipur.

.... Petitioner - Appellant

Versus

1. The State Of Bihar through Secretary, Law Deptt., Bihar, Patna
2. The Registrar, Civil Court, Darbhanga

.... Respondents - Respondents

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Appearance:

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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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: 07-09-2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by Single Judge of this Court dated 31.01.2014 whereby writ application challenging the termination of the services during probation period on 27.05.2009 remained unsuccessful.

3. The appellant was appointed as peon in the Civil Court Darbhanga and joined on 27.03.2008. The appellant remained continuously absent from duty from 15.11.2008 and when after

serving two notices for directing the appellant to join duties, the appellant did not join, then his services were terminated on 27.05.2009. The order reads as under:

“Shri Deepak Kumar Rai a Class-IV employee appointed vide Order No. 40G of 2008 dated 17.03.2008 and joined on 27.03.2008 on probation. He has been continuously absent since 15.11.2008. In view of report of the Sarishtedar and Registrar, his services are no longer required.

Accordingly, the service of Shri Deepak Kumar Rai from Govt. Services stands terminated with effect from 27.05.2009.

4. The appellant submitted a representation on 31.07.2012. Such representation was rejected on 28.08.2012 by passing the following order by the Registrar, Civil Courts, Darbhanga.

“You joined service on 27.03.2008 and remained absent for a period of 23 days from April to July’2008, 3 days each in the month of August and September’2008, one day in October and 19 days in November’2008 and continuous absent since 15th November, 2008 without giving any prior information.

A registered notice with specific direction to join was sent to you on 13.01.2009 which was received by your brother on 14.01.2009.

Again as per direction of the Hon’ble High Court contained in Letter No. 5648/Admn. (Misc.)

dated 02.05.09 notice was issued to you on 13.05.09 through special messenger which was received by your mother on 15.05.2009, wherein it was made clear that if you fail to join immediately, you may be terminated from service but still you did not join till 27.05.09 and accordingly vide order no. 82/G dated 27.06.2009 your service was terminated.

This fact was intimated to Hon'ble Court through this office Letter No. 1611/G dated 28.05.2009.

Accordingly, considering the above facts your application is not liable to be considered.”

5. In the writ petition, the challenge was to the aforesaid order on the ground that the services of the appellant have been terminated on account of misconduct for remaining absent from duty but without conducting enquiry proceedings. Therefore, his services could not have been terminated on account of misconduct even during probation. Learned Counsel for the appellant refers to Supreme Court Judgment reported as (2002) 1 SCC 520, Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences.

6. We have heard learned counsel for the parties and found no merits in the present Letters Patent Appeal. There is no dispute in respect of the fact that the appellant remained absent from duty callously with effect from 15.11.2008 and did not join his duty



even after he was served upon a notice dated 12.01.2009 and thereafter another notice was served on 13.05.2009 calling upon the appellant to join duties and again he did not join his duty. Thereafter, the order of termination as mentioned above was passed.

7. The services of the appellant were terminated during probation period. The probationer who absented from duty is not proved to have satisfactory conduct within probation period and, therefore, his services cannot be confirmed. The appellant has worked for almost eight months and was absent from duty even during such period. Subsequently, he abstained from duty from 15.11.2008 and did not join even after receipt of notice by brother and mother of the appellant. The absence from duty is not a misconduct for which enquiry was required to be conducted. The services have not been terminated on account of misconduct but due to lack of satisfactory work within the probation period. It is not stigmatic action as sought to be argued by the learned counsel for the appellant.

8. In the judgment referred by learned counsel for the appellant, the services were terminated during the probation period after an enquiry was conducted and on the basis of findings recorded

in the enquiry, the order of termination was passed. The court held that the order is stigmatic. In the present case, admittedly, the appellant has absented from duty continuously from 15.11.2008 and have not reported for duty even after two notices were served. Therefore, the order of termination of services was rightly passed during the probation period.

9. In these circumstances, the order passed is fair and reasonable and in accordance with principles of natural justice. In view of the above, we do not find any merit in the present Letters Patent Appeal.

10. Accordingly, the present Letters Patent Appeal is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Mishra/-

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