

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17683 of 2010

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Annant Kumar Rai, son of Late Bilat Rai, resident of Village- Goh, P.S.- Goh,
District.- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar through Home Secretary, Government of Bihar, Patna.
2. The Director of Prison, Bihar, Patna.
3. The Inspector General of Prison, Bihar, Patna.
4. The Superintendent of Sub-Jail, Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Bhagat, Advocate
For the Respondent/s : Mr. M. N. H. Khan, SC 1
Mr. Md. Irshad, AC to SC 1

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 10-08-2017

Challenging the orders passed by the Director General of Prison and the Home Secretary as contained in order no.1986 dated 11.06.2009 and 2725 dated 26.09.2010 respectively, the petitioner, who was working as a Jail Warden in the District Jail, Saharsa, has filed this writ petition. It seems that on account of certain personal reasons, petitioner proceeded on leave for four days between 05.11.2007 to 08.11.2007 and thereafter, according to the petitioner; on account of his illness, he could not join his duty. Be that as it may be, on account of his unauthorized absence and due to the fact that he did not discharge his duties as per directions of Superintendent of Jail, the impugned order has been passed by which the period in question during which the petitioner was absent was treated as break in service and salary and



various other benefits accruing for the said period has been denied to the petitioner. *Inter alia* contending that the order of break in service is a major punishment, it could not be passed without hearing the petitioner and as opportunity of show cause and reply has not been provided to the petitioner, complaining violation of the principles of natural justice in taking the impugned action, this writ petition has been filed.

Respondents have filed a counter affidavit which goes to show that on account of report received from the Inspector General of Prison with regard to unauthorized absence of the petitioner, the impugned action has been taken.

However, it is admitted position that before taking the aforesaid action, no proper enquiry was conducted and proper opportunity of hearing was also not granted to the petitioner and various grounds raised by him in his communications made from time to time explaining his absence and illness suffered have also not been taken note of. Learned counsel for the petitioner relied upon a decision of this Court in the case of **Shamim Ahmad Khan Versus State of Bihar & Ors. 2004 (4) PLJR 554**, in support of his contention to say that the action taken without opportunity of hearing is unsustainable.

I find much force in the aforesaid contention of the petitioner.



Break in service has the effect of taking away the entire past service of the petitioner, including his right to seniority and pension for the aforesaid period and, therefore, it would be nothing but a major punishment and the same cannot be imposed upon the petitioner without conducting a proper enquiry as contemplated in the services rules applicable in the matter. Therefore, the writ petition is liable to be allowed on this ground alone.

Accordingly, the writ petition is allowed. The impugned order passed by the competent authority and the appellate authority are quashed. The respondents would have liberty to take fresh action in accordance with law, if advised. However, the petitioner shall be entitled to consequential benefits of this order, subject to respondents taking action in the matter.

The writ petition stands allowed and disposed of.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.08.2017
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