

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10360 of 2011

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1. Shailendra Prasad Mishra S/O Late Ramendra Pd. Mishra R/O Adityapuri (New Aitwarpur) P.O.- Kurthaul, Distt.- Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary Industries Department, Bihar, New Secretariate, Patna
2. Director Technical Development, Bihar, New Secretariat, Patna
3. Director Industries, Bihar, New Secretariat, Bihar, Patna
2. 4. Joint Secretary Industries Deptt., New Secretariat, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sourendra Pandey, Advocate
Mr. Nalin ViloChan Tiwary, Advocate
For the Respondent/s : Mr. Sushil Kumar Singh, AC to AAG-10

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 19-08-2017

Challenging the order passed by the competent authority as contained in Memo No.3008, Annexure 1 dated 3.8.2009, by which the suspension of the petitioner was confirmed with a rider that he shall not be paid salary for the period except for the subsistence allowance already paid and recording a warning in his service-book, petitioner challenges the said punishment imposed in this writ petition.

Facts go to show that a charge-sheet was issued to the petitioner and in the charge-sheet issued, two allegations were levelled. As far as the first allegation is concerned, the enquiry



officer has exonerated the petitioner with regard to this allegation and it is only with regard to the second allegation that the petitioner is found guilty and the impugned action taken. As far as the second allegation is concerned, the charges are that on 19.9.2008 nine employees working in the Department were absent. The petitioner is said to have regularized their absence without calling for explanation from them and it is submitted that he regularized the absence without asking for explanation and notice to them. Only on the aforesaid allegation, the impugned action has been taken. A perusal of the enquiry report available on record goes to show that the Enquiry Officer with regard to charge No.1 holds the same 'not proved' and with regard to regularizing the leave of nine employees on 19.9.2008, the Enquiry Officer holds that even though the petitioner under the Rules is competent to sanction and regularize the leave, but it is said that he has violated the mandate of two Circulars which contemplate that in case the absence of an employee is regularized, explanation should be sought for before regularizing the leave. However, neither in the charge-sheet there is any reference of violation of any such Circular nor is the Circular produced in the enquiry and put to the petitioner to give his say in the matter and elicit his defence as to why he violated the Circulars. The Enquiry Officer further in his suggestion gives a statement to say that



primarily the Circulars are not followed henceforth it would be imperative to be followed.

Taking note of these circumstances, it is clear that the charges levelled against the petitioner with regard to Charge No.2 are held to be proved on the basis of violation of a Circular. The Circular itself was never part of the enquiry proceedings and there is no specific allegation in the charge-memo that the petitioner violated the Circular. Even the particulars, number and date of the Circular are not mentioned. That apart, even if it is assumed and admitted that the petitioner did violate the Circular, the fact remains that on a single date, on 19.9.2008, the petitioner acted in contravention of the Circular and for the same the impugned punishment has been imposed. Learned counsel appearing for the petitioner argues that even on admitted position, this act of the petitioner, which is a solitary act, would amount to carelessness or negligence in discharge of duty and it cannot be termed as a 'misconduct' by any stretch of imagination. In support of his contention, learned counsel relies on a judgment of the Hon'ble Supreme Court in the case of Union of India & Ors. vs. J. Ahmed, AIR 1979 SC 1022, and (2006) 4 SCCB.P.L. vs. N. Srinivasan wherein the principle laid down by the Hon'ble Supreme Court is that a solitary instance of negligence or carelessness in discharge of duty in absence of there being mala



fide or lack of bona fide or habitual commission of such act cannot be termed as misconduct for which disciplinary action can be taken.

In view of the principle laid down by the Hon’ble Supreme Court in the cases referred to hereinabove, this application is allowed and the impugned order dated 3.8.2009 quashed.

(Rajendra Menon, CJ)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.8.2017
Transmission Date	N/A

