

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13723 of 2008

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Baban Chaudhary

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Teg Bahadur Singh
Mr. Nirmala Kumari
Mr. Purnendu Nr.Singh

For the Respondent/s : Mr. (Aag2)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

6 10-02-2017 Heard both sides.

The petitioner filed this writ petition for quashing the order dt. 03.06.2007 (Annexure-3), by which the service of the petitioner was terminated on the ground that he was on unauthorized leave. The petitioner further seeks quashing of Annexure-6, the Appellate Order and Annexure-7, the order passed by the DGP on his memorial, confirming the order as contained in Annexure-3 terminating the service of the petitioner.

The petitioner was working as a constable in the district of Madhubani. A departmental proceeding was initiated against the petitioner on the charge that while he was posted in police line, he was asked to join in Bheja Police Station on 10.12.2006 at 7.00 am, but he fled away with the aforesaid letter. On enquiry, the



SHO of Bheja P.S. informed that the petitioner did not join in the police station. In the charge-sheet, it is further stated that the petitioner is habitual deserter of the police and earlier on many occasions the petitioner was inflicted punishments for his overstay without information to the concerned authority.

On the basis of the enquiry report the Superintendent of police, Madhubani, vide his order as contained in Memo No. 1640 dated 03.06.2007, dismissed the service of the petitioner. The petitioner also filed appeal before the DIG, Darbhanga stating the fact that the petitioner was on leave duly sanctioned by the authority, but this fact was not considered and his appeal was dismissed vide order as contained in Memo No. 1123 dated 11.12.2007 and the memorial of the petitioner was also dismissed vide Memo No. 2849 dated 26th June, 2008.

The learned counsel for the petitioner assails the order and submitted that the petitioner submitted his show cause as well as appeal and memorial. He has specifically stated that the petitioner was on leave on 10.12.2006 and he joined his service after availing four days' leave. He went on leave because his son fell ill but this fact was not considered. It is further submitted that the petitioner made very specific assertion about the fact that he gave application for grant of four days' leave but he was granted 8



days' leave vide para 5 of the writ petition and the same was replied by answering respondent in para 5 of the counter affidavit. The Additional S.P., Madhubani has specifically stated that the statements made in para 5 and 6 are true and not denied. Learned counsel further submits that the order inflicting punishment of dismissal is very harsh and the same does not commensurate to the charge. Even during pendency of the departmental proceeding, the petitioner was suspended and no subsistence allowance was paid. This fact has also not been denied by the answering respondent in his counter affidavit.

The learned counsel for the State, however, tried to justify the order impugned but could not answer the facts and admitted in his counter affidavit that the petitioner was on leave and no subsistence allowance was paid to the petitioner during the departmental proceeding while he was suspended. Learned counsel for the State prayed for time but could not be able to justify such prayer, in view of the fact that he has already filed counter affidavit admitting the statements made by the petitioner in the writ petition.

After hearing both sides and perusal of records, I find that the petitioner was on leave duly sanctioned by the Sergeant Major on 10.12.2006 and for that he was prosecuted. The



petitioner took plea that he was on leave duly sanctioned by the authority concerned, but neither the S.P nor the Appellate Authority nor DGP considered this facts in their orders. Therefore, I find that the order of termination as well as order in appeal and memorial confirming the order of termination is bad for non-consideration of the facts that the petitioner was on leave duly sanctioned by the authority but the same period was considered to be unauthorized absence and during the suspension period the petitioner was not paid any subsistence allowance, the order is vitiated and cannot be allowed to stand.

Having considered the facts and discussion made above, the order dated 03.06.2007 (Annexure-3), order dated 11.12.2007 (Annexure-6) and order dated 26.06.2008 (Annexure-7) are quashed. Accordingly, the Writ Petition is allowed. The matter is remitted to the disciplinary authority to pass order afresh in accordance with law.

(Prabhat Kumar Jha, J.)

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