

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10528 of 2014

=====

Mushafir Paswan Son of Late Sohrai Paswan resident of Village and Suhawanpur,
P.S- Ishlampur, District- Nalanda at present clerk circle office, Katarisarai, P.S-
Katarisarai, Distt- Nalanda Petitioner

Versus

1. The State of Bihar through the Secretary Human Resources Development
Department, Government of Bihar, Patna.
 2. The Collector, Cum- District Magistrate, Nalanda.
 3. The Additional Collector, Establishment, Nalanda.
 4. The Child Development Project Officer, Ben, Nalanda.
 5. The Circle Officer, Katarisara, District- Nalanda Respondents
- =====

Appearance :

For the Petitioner : Mr. Amit Shankar, Advocate and
Mr. Dileep Kr.Jha, Advocate

For the Respondents : Mr. Dharmendra Kumar, AC to AAG 9

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date: 24-11-2017

Counsel for the petitioner and the State are present.

The petitioner has prayed for setting aside order dated 21.1.2014 (Annexure 5), passed by the District Magistrate, Nalanda (respondent no.2), by which he has been terminated from the re-employment as clerk in the Circle Office, Katrisarai, District Nalanda (respondent no.5).

The petitioner was superannuated on 30.11.2011 from the post of clerk in the office of the Child Development Project Officer, Ben, Nalanda (respondent no.4). He was re-employed in the Circle Office, Katarisarai, District Nalanda vide order dated 7.12.2011 (Annexure 1), issued by the respondent no.2 which was extended for further one year or till 65 years of age, whichever is earlier, vide



order dated 25.2.2013 (Annexure 2). However, he was terminated from service vide order dated 21.1.2014 on the ground of his unauthorized absence from the office from 7.3.2013 to 4.1.2014.

Counsel for the petitioner submits that the petitioner was suffering from Jaundice and was under treatment since 7.3.2013 to 11.9.2013. Further, his wife and eldest son died during the relevant period. The petitioner submits that he sent an application to this effect to the Circle officer, Katarisarai as well as the District Magistrate, Nalanda through the speed post on 13.9.2013. A copy of the application, speed post and the doctor's certificate are contained in Annexure 3 series.

Counsel for the State, on the other hand, denies the receipt of any speed post. He submits that on obtaining the report from the Circle officer, Katrisarai dated 4.1.2014, contained in Annexure F to the counter affidavit, order of termination was issued by the respondent no.2.

It appears from the order dated 19.2.2011, passed by the Secretary, Social Welfare cum Director, ICDS, Bihar, contained in Annexure A to the counter affidavit, when the petitioner was absorbed in the office of the Child Development Project Officer, his date of birth was 2.11.1951. From perusal of Annexure C, order dated 23.2.2013, passed by the respondent no.2 in light of resolution of the Personnel and Administrative Reforms Department,



Government of Bihar, petitioner’s re-employment had been extended for a year or till he attains 65 years of age, whichever is earlier. As per report of the C.O. dated 4.1.2014, he is not in the re-employment as he was unauthorizedly absent from the office since 7.3.2013. Petitioner’s contention of sending the leave application to the CO office through the Speed post is also a disputed question of fact. Besides this, now he is more than 65 years of age and not eligible for reemployment and any relief in the instant proceedings as there is no other claim in the instant proceedings. In that view of the matter, this Court, sitting in the writ jurisdiction, cannot pass any order for re-employment of the petitioner. The writ petition stands dismissed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
Uploading Date	28.11.2017
Transmission Date	28.11.2017

