

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.198 of 2018
IN
Civil Writ Jurisdiction Case No. 23800 of 2012**

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Pramod Kumar Prasad Son of Sri Baijantri Prasad Sinha Resident of Village-Basantpur, P.S.Muffasil, District- Bhojpur, Presently residing at Flat No. 301 Hope Apartment, Anandpuri, West Boring Canal Road, P.S. Sri Krishna Puri, District-Patna.

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary to the Governor and Honorary Secretary, Bihar State Council for Child Welfare, Raj Bhawan, Patna.
3. The Administrative Officer, Bihar State Council for Child Welfare, Raj Bhawan, Patna
4. The Special Officer on Duty and Administrator , Bihar State council For Child Welfare, Raj Bhawan, Patna.
5. The Principal, Anganwadi Training Centre, Bindwara Morh, Munger.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prashant Sinha

For the Respondent/s : Mr. GYAN PRAKASH OJHA- GA7

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 18-07-2018

It appears from perusal of the impugned judgment passed by the learned Writ Court that after the initial punishment of the petitioner was challenged before this court in C.W.J.C. No. 10577 of 1999 and this Court remanded the matter back to the disciplinary authority for holding a regular departmental inquiry and till then the validity of the impugned order was made subject to result of the proceeding, the disciplinary authority served a proper charge-sheet leveling altogether five charges against the petitioner.



2. In the departmental proceeding conducted against the petitioner, it was found that the charges were that of serious in nature, the petitioner had remained absent for 754 days in total three years of service. Before the learned Writ Court it was contended on behalf of the petitioner that he was not made available certain documents particularly the Letter No. 123 dated 21.09.1998 which according to the petitioner has prejudiced his case but on proper examination of the plea taken on behalf of the petitioner and in view of the judgment of the Hon'ble Supreme Court in the case of *State Bank of Patiyala & others vs. S.K. Sharma* reported in **1996 (3) SCC 364 = AIR 1996 SC 1669**, the learned Writ Court came to a conclusion that no prejudice has been caused to the petitioner by not supplying the document in question. It was found that the petitioner has been given opportunity to cross-examine the witnesses and also to examine the witnesses, he was served with a copy of the inquiry report and pursuant thereto he had submitted his explanation which was duly considered by the disciplinary authority and final order was passed. The learned Writ Court has taken note of the entire period during which the petitioner remained unauthorizedly absent from duty.

3. It was argued on behalf of the petitioner that after the order of termination was set aside by the learned Writ Court on the ground of non-service of the copy of the inquiry report, he was not



reinstated in service which was obligatory on the part of the management. The learned Writ Court found that this Court had in its order passed in the writ application recorded that the validity of the impugned order shall abide by the result of the proceeding and therefore the plea of the petitioner that the reinstatement should have followed as a matter of course cannot be accepted.

4. Yet another ground raised on behalf of the petitioner before the Writ Court was that the order of punishment is very excessive. In order to test this plea the learned Writ Court went through the pleadings and found that the petitioner was absent for 754 days, every time he filed an application for leave and left the Headquarter without awaiting for the outcome of his leave application. Finding the long period of unauthorized absented during the period of three years the learned Writ Court took a view that the punishment cannot be said to be shockingly disproportionate to the status of guilt.

5. Before us once again learned senior counsel representing the appellant has contended that pursuant to the order passed by this Court in the first writ application the petitioner was required to be reinstated in service and then only he could have been proceeded afresh. It is submitted that the petitioner has not been given a reasonable opportunity of defending himself.

6. We are not convinced with the submissions made



before us on behalf of the appellant, on facts there is no dispute that this petitioner was appointed as an Accounts Clerk at Anganwadi Training Center, Ishakchak, Bhagalpur on 02.06.1987 but it transpires from the pleadings available on the record as also from the impugned order that right from beginning the petitioner had been taking casual leave for sometime, he used to continue even after the period of casual leave was over just by applying for extension of the casual leave and there were enough materials on the record to demonstrate that the petitioner had been absenting unauthorizedly. The learned Writ Court has examined the entire materials and held that after issuance of a charge-sheet a regular departmental inquiry has been held and the petitioner has been given proper opportunity to defend himself. As regards non-supply of documents as also the plea of requirement of reinstatement the learned Writ Court has rightly refused to entertain the plea of the petitioner.

7. We do not find any merit in the appeal, it is dismissed accordingly.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-
Ved/-

AFR/NAFR	NAFR
CAV DATE	NA
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