

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15220 of 2005

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Manju Devi Wife of Late Rajesh Kumar Mishra, Resident of Village Ramdiri, P.S.
Matihani, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General-cum-Inspector General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Central Range, Police Gandhimaidan,
Patna.
4. The Senior Superintendent of Police, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Rajan Ghoshrave

For the State : Mr. Parthasarthy, (G.A.-11)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 28-08-2018

The original petitioner was appointed on 22.06.1984 and had then continued to work as a Constable, however, by the impugned order dated 17.07.1989, the services of the petitioner has been terminated under Rule 76 of the Bihar Service Code on the ground that in case an employee remains absent from service continuously for five years then such a government servant shall cease to be in the service of the Government.

The learned counsel for the petitioner has submitted that firstly the said Rule 76 of the Bihar Service Code has been held to be ultra vires by a Division Bench of this Court in the case of ***Sobhna Das Gupta vs. State of Bihar*** reported in ***1974 PLJR 382***. It is next submitted that the facts of the present case are even otherwise



different in as much as the petitioner is alleged to have been absent with effect from 06.01.1987 till the passing of the impugned order dated 17.07.1989, as admitted by the respondents in their counter affidavit, which period does not sum up to five years, hence Rule 76 could not have been applied in the present case. It is next submitted that it is a trite law, as has been laid down by the learned Division Bench of this Court in a judgment reported in **1991 vol. 2 PLJR 148 (Shiv Nath Upadhyay vs. the State of Bihar & ors.)**, that even if a person remains absent for several years, such a government servant cannot be dismissed from service without initiating a proper departmental proceeding. In the present case, admittedly no departmental proceeding has been held and merely on the basis of Rule 76 of the Bihar Service Code, which has already been declared ultra vires, the petitioner has been dismissed from service by the impugned order dated 17.07.1989 and thereafter the appeal of the petitioner has also been dismissed by an order dated 09.2.1999 and his memorial appeal has also been dismissed by the impugned order dated 06.09.2005.

I find force in the submissions made by the learned counsel for the petitioner for the reason that firstly the basis on which the petitioner has been dismissed from service is non-existent inasmuch as Rule 76 of the Bihar Service Code has already been declared ultra



vires. Secondly, the petitioner could not have been dismissed from service without at least asking for a show cause from him especially in view of the fact that his services could not have ceased in light of Rule 76 of Bihar Service Code on account of same having been declared ultra vires. Admittedly no show cause has been sought for from the petitioner herein. Moreover, a full fledged regular departmental proceeding was required to be conducted before inflicting punishment on the petitioner herein.

For the reasons mentioned herein above, I find that the order of dismissal dated 17.07.1989 is perverse and *de hors* the law of the land, hence is set aside. Consequently, the appellate order dated 09.2.1999 and the memorial order dated 06.09.2005 are also bound to fall as a result of setting aside of the dismissal order dated 17.07.1989, hence the same are also quashed.

The writ petition is allowed.

It is needless to state that the original petitioner and his legal heirs would be entitled to consequential benefits.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.09.2018
Transmission Date	

