

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14145 of 2014

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Dr. Siyaram Roy Son of Sri Kedar Nath Roy Resident of Village- Bagar, P.S.-
Sikrahatta, District- Bhojpur (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Secretary, Department of Health, Govt. of Bihar, Patna.
4. The Additional Secretary, Finance (Personnel Claim Cell) Department, Govt. of Bihar, Patna. null null
5. The Joint Secretary, Health Department, Govt. of Bihar, Patna.
6. The Director-in-Chief, Health Services, Govt. of Bihar, Patna.
7. The Civil Surgeon-cum-Chief Medical Officer, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Harendra Prasad Singh, Adv & Mr.Santosh Kumar, Adv
For the Respondent/s :	Mr. Anirban Kundu SC-24 with Ms. Shally Kumari A.C to S.C-24

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 02-05-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for issuance of writ of certiorari for quashing the order as contained in Memo dated 22.02.2013 (Annexure-13) passed by the Director-in-Chief, Health Services, Government of Bihar, Patna by which services of petitioner has been dismissed.

3. Briefly stated, the facts of the case is that petitioner was appointed as Medical Officer, in Bihar Health Services in the year 1981 and was posted at the Dinara district of Rohtas as



Medical Officer.

4. Petitioner was thereafter transferred to additional Primary Health Centre, Shokhara, Barauni district Begusarai as Medical Officer in December 1986.

5. Petitioner as well as others were transferred by letter dated 13.12.1993 in a routine transfer and petitioner was transferred to referral Hospital, Madhupur, Deoghar. The transfer order also contained direction to Civil Surgeon to relieve the concerned Medical Officer within 15 days. Dr. Parmanand Choudhary was made Incharge of Additional Primary Health Centre on 01.08.1994. Petitioner came to know that relieving order has been issued by the Civil Surgeon and all Medical Officers including petitioner were relieved w.e.f. 30.05.1994.

6. Petitioner submitted his representation through Civil Surgeon, Begusarai on 14.08.1994 to sanction advance family allowance and advance pay and arrears of salary and three months salary for the period he had worked before he was relieved on 30.05.1994, but no payment was made, as such petitioner continued there.

7. Petitioner filed CWJC No. 9120 of 1993, which was heard by this Court and dismissed by order dated 05.12.1995.



There was no reason or occasion for petitioner not to join on his transferred place when his writ petition was dismissed and same attained finality. The relevant paragraphs of order dated 05.12.1995 passed in CWJC No. 9120 of 1993 is extracted below:-

“In the High Court of Judicature at Patna

CWJC NO. 9120 of 1993

Siya Ram Roy Vs. The State of Bihar and Others

2. 05.12.95 This is an utterly frivolous writ petition. The subject matter of challenge in this writ petition is alleged non-payment of travelling allowance to the petitioner for carrying out the order of transfer as considered in Annexure-I by which he has been transferred from Begusarai to Deoghar. It is not in dispute that the order of transfer is dated 31.12.1993. The petitioner's grievance is that the said order was not communicated to him immediately after it was passed nor was he relieved pursuant to the said order of transfer.

Be that as it may, now one thing is clear that the petitioner knows about the order of transfer and has also been relieved.

This Court is unable to accept that for non-payment of travelling allowance for travelling from Begusarai to Deoghar, he cannot join the transferred post. Therefore, this writ petition is dismissed.

The only observation which is made is that the petitioner's representation for payment of travelling allowance will be considered and disposed of by the respondent concerned by



speaking order within four weeks from the date of receipt/production of a copy of this order and the salary, if any is due to this according to the rule, may be made available to him on his joining the transferred post.

There will be no order as to cost.

*True Copy
07.12.95
Secretary”.*

8. Petitioner received a letter issued from Under Secretary (Cell) dated 09.03.2005 in May-2005 from the Health Department by which he came to know that a departmental proceeding has been initiated against him on 02.03.2005 and petitioner was asked to submit his show cause against the sole charge framed against him. The charge against the petitioner was that he did not join at the transferred post and remained absent from his duty for ten years on the pretext that a case was pending before the High Court.

9. Petitioner submitted a detailed reply on 18.03.2005 to the Enquiry Officer to fix a date for his appearance and contended that he was ready to co-operate in departmental proceeding. The departmental proceeding was concluded and Enquiry Officer submitted his report on 05.02.2007 to the Disciplinary Authority.

10. Petitioner was issued second show cause notice dated 30.01.2008 and in his reply dated 09.02.2008, petitioner



denied the charges and allegations made against him and contended that he is innocent but on the basis of enquiry report petitioner was dismissed from service by order dated 04.06.2009.

11. Petitioner filed CWJC No. 8107 of 2009 for setting aside the dismissal order and this Court by order dated 08.11.2010 set aside the order of dismissal on the ground of violation of principles of natural justice during departmental proceeding. However, liberty was granted for initiation of fresh proceeding from the stage of framing of charge. It was further held that if respondents want to initiate fresh proceeding same should be concluded within four months and if no fresh order is passed petitioner shall be reinstated in service with all consequential benefits.

12. Pursuant to order dated 08.11.2010 petitioner send the letter to the department and also Civil Surgeon, Begusarai and pursuant to said order a fresh proceeding was started but same was not concluded within the time granted by this Court and as petitioner was not reinstated in service, he filed Contempt application MJC No. 5214 of 2011, in which respondent-authorities came with an order of reinstatement dated 05.02.2014 by which petitioner was reinstated in service



w.e.f 08.04.2011 with all consequential benefits. Supplementary show cause with a photocopy of order dated 22.04.2013 was filed by which petitioner was dismissed and contempt petition was disposed of with a liberty to petitioner to challenge the same in an appropriate proceeding.

13. It has been further submitted that fresh proceeding was initiated against the petitioner vide order dated 10.02.2011 by which Ram Kumar Pandey, Additional Secretary, Department of Health was appointed Enquiry Officer, which was communicated to the petitioner by Speed Post from Patna Secretariat on 26.03.2011 which was received by one of member of joint family of petitioner at Bhojpur on 01.04.2011. Petitioner thereafter send a detailed reply to the Enquiry Officer by Speed Post on 09.04.2011 that charge memo was received on 01.04.2011 by one of the member of joint family in Bhojpur whereas petitioner was residing at his place of posting in Barauni and petitioner had requested to fix a date of enquiry and to intimate him on his cell phone. However, no information was conveyed to petitioner about the next date of enquiry.

14. Petitioner came to know from paper publication on 10.04.2011 and on 11.04.2011 about date in departmental enquiry. Petitioner send a letter to the Enquiry Officer by



registered post that he was not knowing about any earlier date of enquiry and requested to fix a date of enquiry and to intimate him at his present address. Petitioner appeared in person on 18.04.2011.

15. The Enquiry Officer submitted his report dated 04.05.2011 and a copy of enquiry report was sent to petitioner's village address in Bhojpur through Speed Post dated 28.03.2011 and same was received on 26.08.2011. Petitioner submitted his reply dated 30.08.2011 through registered post and denied the findings of the enquiry officer as charge to be proved. Petitioner has been dismissed vide memo dated 22.04.2013.

16. A counter affidavit has been filed on behalf of respondents in which it has been stated that in the light of order dated 08.11.2010 passed in previous writ petition being CWJC No. 8107 of 2009, fresh departmental proceeding was initiated by resolution of Health Department, Government of Bihar, issued vide memo dated 10.02.2011. The Enquiry Officer fixed the date of hearing of the departmental proceeding on 03.03.2011 at 3:30 pm and again on 10.03.2011 at 3:30 pm, information of which was given to the petitioner by Speed Post but petitioner did not appear before the Enquiry Officer. There is presumption in law particularly under Section 27 of the General



Clauses Act, 1897 and Section 114 of the Evidence Act, 1872, that the addressee has received the material send by post.

17. When petitioner failed to appear before the Enquiry Officer a press communique was issued vide memo dated 05.04.2011 by which petitioner was informed by Enquiry Officer to file his written statement and after said publication in Press petitioner appeared before the Enquiry Officer on 18.04.2011 and he was given a personal hearing and petitioner submitted his written statement.

18. The Enquiry Officer after considering materials available on record submitted enquiry report dated 04.05.2011 by which he held that charges against petitioner to be proved. A second show cause notice dated 21.06.2011 was issued to the petitioner with a copy of the enquiry report asking him to submit his reply, but petitioner did not respond to the above show cause dated 21.06.2011 then a reminder dated 19.08.2011 was send to him through Speed Post.

19. Petitioner submitted his reply to the second show cause on 05.09.2011 and thereafter again send a representation to the Additional Secretary on 12.09.2011 and after due consideration and with consultation and approval of BPSC, petitioner was dismissed from service by order dated



22.04.2013.

20. Learned counsel for the petitioner has relied on the following decisions:-

- (i) (2012) 2 SCC 773
- (ii)(2015) 15 SCC 184
- (iii)2014 (3) PLJR 695
- (iv)2008(4) PLJR 602
- (v)2014(2) PLJR 458(SC)
- (vi)2007(4) PLJR 45(SC)
- (vii) (2011) 5 SCC 607
- (viii)(2012) 4 SCC 407
- (ix) (2006) 11 SCC 147

21. After hearing both the parties and perusing the materials available on record, this Court has impression that petitioner deliberately disobeyed his order of transfer and he never intended to join at his transferred place. Transfer of an employee appointed to the class or category of transferrable post from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency is public administration.

22. The Government servant holding a transferrable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate



any of his legal rights. Who should be transferred where, is a matter for the appropriate authority to decide.

23. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires.

24. Petitioner was a Government Servant and his conduct so far has not been fair and the plea taken by the petitioner shows that he has adopted belligerent attitude and kept the litigation alive for more than ten years merely on technical grounds.

25. After dismissal of writ petition filed by the petitioner and said order attaining finality, it was incumbent upon him to join his transferred place of posting and non joining amounts to misconduct and disobeying Government order and



petitioner was liable to be proceeded departmentally.

26. Justice means justice to both sides. Principles of natural justice cannot be extended to such extent resulting in injustice to other side. The writ court cannot ignore the conduct of petitioner who is a Government employee and working on a transferrable post defying the order of transfer with such impunity and bizzare manner.

27. In **Board of Mining Examination and Chief Inspector of Mines v. Ramjee** since reported in (1977) 2 SCC 256, the Court has observed that natural justice is not an unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The courts cannot look at law in the abstract or natural justice as a mere artefact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the court that the party visited with adverse order has not suffered from



denial of reasonable opportunity, the court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

28. Reference in this connection may be made to the judgment of the Apex Court in the case of **C. Jacob Vs. Director of Geology and Mining and Another** since reported in **(2008) 10 SCC 115**, which reads as follows:-

“When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for the purpose of pension. That will be a travesty of justice.

Where an employee unauthorisedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches the court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced



sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back wages.”

29. The sole charge framed against the petitioner was that he was transferred by notification dated 31.12.1993 issued by the Department of Health by which he was transferred from Additional Primary Health Centre, Shokhara (Begusarai) to Madhupur (Deoghar) but he never submitted his joining on the transferred place and remained unauthorized absent for ten years.

30. In his reply to the said charge, nothing convincing has been stated by the petitioner and irrelevant and scandalous statement has been made by the petitioner in his reply to the show cause notice. Petitioner even did not restrained himself from casting aspersions on the order passed by this Court in his writ petition, which was dismissed. Said aspersions are contemptuous. No valid reasons has been stated by the petitioner for not joining on his transferred place after his writ petition was dismissed and direction was made that he will get his salary and other dues after joining on his transferred place. Denial of petitioner to join on his transferred place on frivolous



grounds which were negated by this Court amounts to admission of charge. Charge admitted needs no proof. Sufficient opportunity was granted to the petitioner during enquiry proceeding but he deliberately and deceitfully avoided his appearance before the Enquiry Officer only to prolong the enquiry proceeding.

31. The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.-

32. This Court does not find any reason to interfere in the order passed by the competent authority dismissing the



petitioner from service on proved misconduct. This Court also does not find that the punishment imposed is disproportionate to the proven misconduct.

There is no merit in this writ petition and the same is accordingly, dismissed, without cost.

(S. Kumar, J)

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AFR/NAFR	AFR
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