

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8499 of 2013

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Sanju Sinha W/o Late Krishto Singh Resident Of Village - Belchhi, P.O. - Bali
Belchhi, P.S. - Chandi, District - Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar through The Principal Secretary, Panchayati Raj Department, Govt. Of Bihar, Patna
2. The Divisional Commissioner, Patna Division, Patna
3. The District Magistrate, Nalanda
4. The District Panchayati Raj Officer, Nalanda
5. The Deputy Collector, Land Reform, Rajgir, Nalanda
6. The Sub Divisional Officer Cum Enquiry Officer, Rajgir, Nalanda
7. The Block Development Officer, Silaw, Nalanda
8. The Block Development Officer, Nagarnausa, Nalanda
9. The Block Development Officer Cum Conducting Officer, Ben, Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Singh, Advocate

For the Respondent/s : Ms. Anuradha Singh, SC-21

Mr. Rakesh Prabhat, AC to SC-21

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 21-06-2018

Heard learned counsel for the petitioner and the respondent State.

2. The writ petition has been filed by the petitioner praying for setting aside the order dated 29.01.2013/20.02.2013 passed on the petitioner's Service Appeal No. 180 of 2011 as also the order dated 21.09.2011 passed by the District Magistrate, Nalanda bearing memo no. 233 whereby the petitioner has been awarded punishment of dismissal from service with immediate effect.

3. During pendency of the instant writ petition the petitioner has passed away and in view of his death on 24.12.2014 his



wife namely, Sanju Sinha has been substituted in the instant proceedings as the petitioner in light of earlier order passed on Interlocutory Application No. 556 of 2015 by this Court on 07.01.2016.

4. The petitioner seeks quashing of the order passed by the Collector, Nalanda on the ground that the entire proceeding has been conducted *ex party* and without affording him opportunity of hearing. It is his submission that he has never received any notice in respect of the proceedings. He has placed reliance upon the notice dated 16.08.2011, Annexure 7 to the writ petition and submits that on perusal of the same it would be apparent that he has not been communicated the date on which the proceedings were to be conducted. He points out that in the last paragraph of the said notice, column meant for communicating the date has been left blank.

5. In view of the disputed issue of fact whether the petitioner was adequately put under notice so as to enable him to appear in the disciplinary proceedings conducted pursuant to issuance of 'Prapatra K' dated 02.04.2011, this Court had earlier directed the records of the proceedings be produced in the instant proceedings. Counsel for the respondents has placed the records as called for.

6. The brief background giving rise to 'Prapatra K' is that pursuant to the petitioner's posting on 26.07.2003 he joined the said place of posting one month later, in August, 2003 and thereafter has



been continuously absent from his duties and has never served. The petitioner after 2003 was therefore not paid any remuneration. It is only in 2010 that the petitioner after more than seven years filed the writ petition bearing C.W.J.C. No. 6839 of 2010. He was seeking a direction for payment of salary to the petitioner, arrears arising out of pay revision since April, 1997 and salary for some other period, prior to 2003. It appears that the petitioner had earlier been placed under suspension for which also subsistence allowance was claimed by the petitioner in the writ petition filed in the year 2010. The writ petition was disposed off by an order dated 13.01.2011. This Court had taken note of the fact that the LPC was issued in favour of the petitioner in December, 2009, the petitioner was granted liberty to place the details of his arrears due to him before the District Magistrate, Nalanda within a month. Upon such representation being filed, direction was issued to the District Magistrate to consider the same and after holding an enquiry in respect of entitlement of the petitioner pass an order for release of the admitted dues to the petitioner.

7. Pursuant to the directions issued by this Court in C.W.J.C. No. 6839 of 2010, the enquiry was conducted by the District Magistrate, Nalanda. The same has culminated in issuance of the order dated 26.03.2011. On finding the petitioner absent for the entire period after his submission of joining in August, 2003, i.e., for the period of 7 years 6 months and 27 days, the salary for the entire



period was denied to the petitioner and arrears Rs. 75, 584/-in respect of the period prior thereto which was found due and admissible to the petitioner was paid to him on 16.04.2011.

8. By the same order it was decided that in view of his unauthorized absence from service, proceedings be initiated against him in light of the provisions contained in Rule 76 of the Bihar Service Code for terminating his services on account of continuous leave/absence for such a long time.

9. In the enquiry conducted by the Collector pursuant to the order of this Court in C.W.J.C. No. 6839 of 2010, a clear and definite findings has been recorded regarding the petitioner's unauthorized absence for the period of 7 years 6 months and 27 days i.e., the period after which he has submitted his joining as Panchayat Sachiv in the month of August, 2003. It is relevant to mention here that pursuant to the same decision the petitioner has received the dues on account of salary found due and admissible prior to August, 2003. The petitioner was thus in knowledge of the said findings recorded by the Collector in order dated 26.03.2011 regarding the petitioner's unauthorized absence for 7 years 6 months and 27 days, however, the same was not challenged by the petitioner.

10. In view of the provisions contained in Section 76 of the Bihar Service Code the authorities were under an obligation to ensure compliance with the procedure laid down for conducting the



disciplinary/departmental proceedings and only after allowing opportunity of hearing to the petitioner, the petitioner could be dismissed from services on account of his continuous unauthorized absence. Accordingly, consequent upon the decision of of the Collector in his order dated 26.03.2011 a charge memo was issued to the petitioner on 02.04.2011 asking him to respond to the charge of his continuous unauthorized absence from 25.08.2003. By issuance of charge-memo dated 02.04.2011 (Annexure 4) the proceedings were initiated against the petitioner for his unauthorized absence.

11. Counsel for the petitioner submits that prior to the order issued by the High Court in the earlier proceedings no action whatsoever has been taken. He submits that even thereafter, when the proceedings have been initiated, he has never been noticed in the proceedings. He submits that up till issuance of the final order of punishment by the disciplinary authority under his order dated 21.09.2011 i.e. memo no. 233 issued by the District Magistrate, Nalanda awarding punishment of dismissal from service with immediate effect, the petitioner was never given any opportunity of hearing in as much as none of the notice alleged to have been issued against the petitioner, were served on him.

12. The respondent State has filed the counter affidavit in the matter and has also placed before this court the record relating to the proceedings conducted against the petitioner and by referring to



the submission he has pointed out that several notices were issued to the petitioner right from issuance of the charge memo under 'Prapatra K' which was communicated through the letter dated 02.04.2011. The proceedings before the Enquiry Officer takes note of three notices which have been issued to the petitioner.

13. The first being the charge memo dated 02.04.2011. The same has been communicated to the petitioner on 06.04.2011. The second notice was issued to the petitioner under memo no. 1368 dated 21.04.2011. The same has also been served on the petitioner communicating the next date i.e., 28.04.2011. On 28.04.2011 the third notice has been issued to the petitioner under memo no. 1563 dated 13.05.2011. Despite issuance of all these notices and the service report in respect thereof on the record as is evident from perusal of the record, the petitioner has chosen not to appear in the enquiry proceedings conducted against him.

14. Relying upon the case as presented by the Presenting Officer on behalf of the Department, the enquiry report dated 21.06.2011 has been prepared by the Enquiry Officer and finding the charge of unauthorized absence from 25.08.2003 to be proved, the Enquiry Officer therefore, has imposed the penalty under Rule 76 of the Bihar Service Code against the petitioner. The Disciplinary Authority has thereafter issued the second show cause notice to the petitioner on 24.06.2011 enclosing the copy of the enquiry report and



other documents.

15. Counsel for the petitioner has denied and disputed this assertion of the respondents in the counter affidavit. He submits that no second show cause notice was ever served to him by the disciplinary authority after submission of the enquiry report. The said submission of the petitioner is being noticed only to be rejected in as much as the same is apparently not correct. Even after submission of the enquiry report the second show cause notice was served on him. The same is apparent from the record of the proceedings which have been shown to this Court by the respondents. The respondents have also issued a reminder to the petitioner pursuant to issuance of the second show cause notice. The reminder is dated 16.08.2011 and has been sent to the petitioner communicating the date being 28th of August, 2011.

16. From the records of the enquiry report it is evident that the second show cause notice was also served on the petitioner in as much as the same bears the receiving and signatures of the wife of the original writ petitioner who by virtue of the substitution in the instant case is now the petitioner. Bare perusal of the record of the proceedings produced by the counsel for the State shows that the same Sanju Kumari, (wife of the original writ petitioner) who has filed the affidavit in the instant proceedings in Interlocutory Application No. 556 of 2015, has received the notice issued to the petitioner. The said



Sanju Sinha, is now claiming to be the beneficiary of the dues claimed by the petitioner. Thus, there was valid service of notice upon the writ petitioner.

17. This Court would find with reference to the records of the proceedings produced in the instant case and the documents enclosed in the counter affidavit filed by the State that through out the proceedings right after issuance of charge memo dated 02.04.2011 the petitioner was having full knowledge of the proceedings conducted against him. The allegation of the petitioner that no notice was served on him is therefore actually incorrect. The petitioner has also presented a service appeal bearing Service Appeal No. 180 of 2011. The same has been given due consideration by the appellate authority, the Commissioner Patna Division, Patna and it has been rejected by a reasoned order dated 29.01.2013.

18. In view of the findings arrived at by this Court on the basis of record of the proceedings of the departmental enquiry as also the averments made in the writ petition, this Court has arrived at a conclusion that the petitioner was having due knowledge of the entire proceedings and inspite of that he has not appeared in the proceedings. The petitioner cannot claim any benefit in the instant proceedings by virtue of his non-participation in the Departmental proceedings, despite the fact that he was having due knowledge of the same. Challenge to the impugned order on the ground of no notice,



therefore has to be rejected.

19. The writ petition is devoid of any merit and the same is dismissed.

(Madhuresh Prasad, J)

Prakash/-

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CAV DATE	
Uploading Date	
Transmission Date	

