

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3524 of 2011

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Dharmendra Kumar Singh S/O Late Jitendra Singh Resident of Vill. Deorarh
Khurd, P.S- Kudara, District- Kaimur (Bhabhua)

.... Petitioner

Versus

1. The State of Bihar through the Director General of Police, Bihar at Patna.
2. The D.I.G. Shahabad Renge, Dehri on Sone, Rohtas.
3. The Superintendent of Police, Buxar at Buxar.

.... Respondents

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Appearance :

For the Petitioner : Mr. Tejnarayan Singh, Advocate
Mr. Pranav Kumar, Advocate
For the Respondents : Mr. Rakesh Prabhat, AC to SC21

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 04-01-2018

Heard learned counsel for the petitioner and
learned counsel for the State.

Petitioner who came to be appointed as Constable on compassionate ground, is aggrieved by order, as contained in Memo No. 185, dated 16.01.2007, vide Buxar District order No. 82/2007, issued under the signature of Superintendent of Police, Buxar, whereby the petitioner has been dismissed from service with effect from 12.01.2007 due to his repeated unauthorized absence from duty.

An appeal preferred by the petitioner to the Director General of Police, Bihar has also been dismissed and the order passed in appeal has been communicated to the petitioner vide Memo No. 522 dated 26.02.2009, as contained



in Annexure-4 to the writ application. The petitioner seeks quashing of the appellate order as well.

The only submission of learned counsel representing the petitioner is that prior to passing of the order of dismissal, the petitioner was not served with any notice to show cause, and therefore, the order of dismissal is in violation of principles of natural justice.

Learned counsel submits that the petitioner was suffering from jaundice. He had produced the medical prescriptions of Dr. A.K. Das, and the reports of the diagnostic Centre, which are part of Annexure-3(A) and 3(B) to the writ application. He further submits that while it is true that after his appointment on compassionate ground as a police constable he was not confirmed, but he was getting the regular pay scale and other benefits attached to the post, and therefore, in any case, when his service was being dispensed with, a notice was required to be served upon him.

On the other hand, learned counsel representing the State submits that departing from the normal Rules of appointment the petitioner was appointed on compassionate basis just to take care of the family of the employee who had died in harness. The petitioner, however, once appointed did



not show his willingness to serve the disciplined police force and when he was sent for basic training, the petitioner went on absconding from 14.03.2006 to 19.07.2006 and was returned on completion of training. During this period, the petitioner never made known the reasons for his absconding and what he is submitting now about his suffering from jaundice was not informed to the employer as no request for leave was ever made by the petitioner on any cogent ground.

Again, when the petitioner was posted during the Durga Puja festival on duty with effect from 05.10.2006, he did not return to join the head office, while his companion Hawildar Awadhesh Singh submitted his joining in police line at Buxar on 08.10.2006, the petitioner remained absconding for 82 days and submitted his joining on 30.12.2006. It is in these circumstances the petitioner was dismissed from service.

Learned counsel submits that a member of the police force need to be disciplined and cannot be allowed to abscond from his duty on his sweet will. The principles of natural justice is not to be applied by way of a straight jacket formula, rather the application of this principle has to be made keeping in mind the larger public interest and where it comes



to secure the larger public interest, the principles of natural justice, that too in the facts of the present case, would be an empty formality which need not be resorted to in case of a temporary employee who was yet to be confirmed. The discipline in the police force is of paramount importance and the conduct of the petitioner in remaining absent from the basic training and then again repeating the same unauthorizedly give rise to a conclusion that he was not interested in pursuing his duty. It is all the more as the petitioner was not confirmed and he was fully aware of his own conduct being an absconder from his duty. The medical certificates, according to learned counsel for the State, would not inspire much confidence because those certificates were never produced or sent by the petitioner while he was absconding from duty.

Having heard learned counsel for the parties and upon perusal of the record, I would find substance in the submission of learned counsel representing the State. The principles of natural justice cannot be put in a straight jacket formula. The larger public interest, if so requires, would weigh more over and above the individual interest of the petitioner. The facts would show that the petitioner not only



remained absconding for about 128 days while he was sent for basic training, he repeated the same conduct by remaining absent unauthorizedly for 82 days when he was sent to perform his duty during Durga Puja festival. During all this period he did not take trouble to inform his employer about his whereabouts and the reasons for his absconding from duty. He was also not a confirmed employee is an admitted fact, therefore, in the facts and circumstances of this case, I am not inclined to exercise my extraordinary writ jurisdiction under Article 226 of the Constitution of India. It is well settled that a relief under Article 226 of the Constitution is also a discretionary relief and in an appropriate case the court can refuse to exercise its jurisdiction when the facts of the case so requires.

No illegality or infirmity may be found with the order impugned in the writ application. The Writ Application is therefore devoid of merit. It is, accordingly, dismissed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CA V DATE	NA
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