

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8282 of 2017

=====

Raghawendra Jha Son of Late Mahendra Jha, Resident of Village-Khojur,
P.O.-Babu Barhi, P.S.-Babu Barhi, District-Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Department of Health, Government of Bihar, Patna.
3. The Joint Secretary, Department of Health, Government of Bihar, Patna.
4. The Under Secretary, Department, of Health Government of Bihar, Patna
5. The Collector, Samastipur
6. The Civil Surgeon, Samastipur.
7. The Medical Officer-in-Charge, Primary Health Centre, Rosera District
-Samastipur, Cum Drawing and Disbursing Officer, Additional Primary
Health Centre, Kameshwar Nagar, District-Samastipur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Abhya Shankar Jha, Adv. Mr. Sanjay Kumar Jha, Adv.
For the Respondent/s	:	Mr. R.B.N. Singh, AC to GA10 Mr. P.K. Singh, AC to GA10

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 22-11-2018

Heard learned counsel for the parties.

In this case, the petitioner is challenging the order of dismissal vide Memo No. 936(9) dated 7.9.2016 issued under the signature of Under Secretary to the Government, Department of Health under the provision of Rule 76 of the Bihar Service Code.

The petitioner was posted at Samastipur and it was found that he remained absent from the year 2003 as he was not found present at the place of posting. In pursuance thereof, on the basis of letter dated 1559 dated 11.4.2003 and the letter of Civil Surgeon vide letter no. 1270 dated 15.5.2003, a departmental



proceeding was initiated vide resolution no. 1290 (9) dated 4.11.2010. The Enquiry Officer sent a notice to the petitioner as well as the notice was published in the press communique but, he did not take cognizance and did not appear before the enquiry proceeding, ex-parte enquiry was conducted by the Enquiry Officer and submitted enquiry report contained in letter dated 7.1.2011, the charges leveled against the petitioner was found proved and, on that basis, the second show-cause notice was issued and again the same was published in the newspaper by way of press communique, even then, the petitioner did not take care to reply the second show-cause and, ultimately, the order of dismissal has been passed in exercise of power under Section 76 of the Bihar Service Code.

Learned counsel for the petitioner submits that before initiation of proceeding, the petitioner was never put under suspension nor the salary was stopped, he continued to receive payment and the presumption is that he was discharging the duty at the respective place of posting.

It is very strange that the payment was made to the petitioner but, this Court is not passing any order in this regard but, one thing is clear that a valid departmental proceeding was initiated, notice was not only given through postal department but



also the notice was published in the press communique and the same procedure was followed in the second show-cause.

In that view of the matter, this Court does not find any merit in the present writ application and the same is, accordingly, dismissed.

(Shivaji Pandey, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.11.2018
Transmission Date	

