

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24188 of 2013

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Rama Devi wife of late Vijay Kumar Sinha Resident of Mohalla Nageshwar Baghh, Gorachhni Road, Ram Bilash Kothi, Gaya, P.S. Buniyadganj, Distt Gaya.

.... Petitioner

Versus

1. The State Of Bihar, Through The Principal Secretary, Water Resources Department, Govt. Of Bihar, Patna.
 2. Chief Engineer, Water Resources Department, Govt. Of Bihar, Patna.
 3. Executive Engineer, Triveni Canal Construction Division, Narkatiaganj, West Champaran.
 4. Director Ram Enquiry Officer, Water Management Cum Irrigation Availability Reform Directorate, Irrigation Bhawan, Patna
 5. Superintending Engineer Cum Public Information Officer Irrigation Monitoring Cell, 316, Irrigation, Bhawan, Patna
- Respondents
- =====

Appearance :

For the Petitioner : Mr. Nand Kishore Prasad Sinha, Advocate
Mr. Sujeet Kr.Sinha, Advocate
For the State : Mr. S.Kr.Siha, AAG 13 and
Mrs. Sunita Kumari, AC to AAG 13.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 22-06-2018

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

2. The petitioner has prayed for quashing of the order dated 11.10.2010 (Annexure 11), whereby the Chief Engineer (Central) Water Resources Department, Government of Bihar, Patna dismissed petitioner's husband (herein after referred to as 'the employee') from service. Order has been passed in view of the fact that the employee remained absent from duty in unauthorized manner continuously for more than five years and thus action has been taken under Rule 76 of the Bihar Service Code.



3. Learned counsel for the petitioner submits that the impugned order suffers from gross procedural lacuna inasmuch as her husband has been deprived of vital right of communication of the proceedings initiated against him. He submits that the charge memo has not been served him, as such, he has been deprived of the his right as contemplated under Rule 76 of the Bihar Service Code.

4. Considering the submission of the learned counsel for the petitioner, this Court would take notice of the provisions contained in Rule 76 of the Bihar Service Code. Rule 76 of the Code, as it stands today, contemplates that action for dismissal/termination of a government servant can be taken if he/she remains absent from duty after following the procedure laid down in the Civil Services (Classification, Control and Appeal) Rules, 1935.

5. Submission of the learned counsel for the petitioner is that the delinquent employee was entitled to the opportunity of hearing and that the action could have been taken only after absence of the period of five years. Reliance has been placed on a Division bench decision of this Court rendered in case of **Sobhana Das Gupta Vs. The State of Bihar and another**, reported in 1974 **PLJR382** as well as a Single bench decision of this Court in case



of **Md. Saleem Vs. The State of Bihar and others**, reported in **1999 (1) PLJR 229**.

6. The respondent State has filed counter affidavit. Specific stand of the State is that while the petitioner's husband was posted as Junior Engineer in Triveni Canal Construction Subdivision, Kaurewa, camp Sikta under Triveni Canal Construction Division, Narkatiyaganj during the period 2003-05, he remained absent from duty in unauthorized manner since 28.8.2003. During this period he neither executed any Government work nor he performed election duty during Lok Sabha Election, 2004 which is in utter violation of the order issued by the competent authority. Stand of the respondents in the counter affidavit is that the delinquent employee was placed under suspension by Annexure 4 which is communication dated 25.4.2005 in contemplation of proceedings against the petitioner on the ground of unauthorized absence from the duty since 28.8.2013 (Annexure 4 to the writ petition). Respondents have also taken stand that the departmental proceeding was initiated against him under Rule 55 of the CCA Rules, 1930 vide resolution dated 24.5.2005, which is Annexure A to the counter affidavit filed on behalf of the respondents. A copy of the said resolution along with the charges and evidence were duly communicated to the



employee. As per the respondents he did not give his joining at the headquarter in compliance of the direction of the Executive Engineer contained in letter dated 25.4.2005 nor did he submit his written defence before the Enquiry officer in spite of valid service of notice even at his permanent address. Thereafter, respondents communicated the notice in a widely circulated newspaper on 26.6.2005 and 25.10.2005 which is evident from Annexure B series to the counter affidavit. Charge memo dated 23.5.2005 is also enclosed along with Annexure B series. It is pointed out by the respondents that in spite of such adequate notice, petitioner's husband did not turn up to give his joining at the headquarter and continued to ignore the suspension order as also the charges issued against him.

7. Learned counsel for the petitioner, on the other hand, submits that in fact no notice has not been served to her husband. It is also submitted that he filed response dated 22.7.2010 (Annexure 10) to the second show cause notice dated 25.6.2010 (Annexure 9) issued to him by the Disciplinary authority.

8. A unique stand has been taken by the petitioner's husband in his reply. He refused to comply with the order of suspension and continued to remain on unauthorized leave. He has stated that he has not been paid anything for the entire period of the



unauthorized absence. He has further stated that he has no knowledge of the notice issued in the news paper because due to poor financial position he did not buy any newspaper.

9. Clearly, the petitioner has violated the order of suspension and voluntarily absented himself from the departmental proceedings inspite of due notice. Having done so, the petitioner cannot be heard to say that there was violation of Rule 76 of the Bihar Service Code. Since adequate notice was issued to afford opportunity to her husband, though he voluntarily refused to avail the opportunity and while continuing on unauthorized leave, he passed away on 24.9.2014. Instant petitioner (wife) has been substituted in his place by order of this Court dated 27.4.2017.

10. The decisions in case of **Sobhana Das Gupta and Md. Saleem (supra)** relied upon by learned counsel for the petitioner are of no help to the petitioner having regard to the fact that notice was issued to the deceased employee but he chose not to avail the opportunity. Ignoring the departmental proceedings he remained on unauthorized absence which is clearly evident from the pleadings of the petitioner made in paragraphs 9 to 13 of the writ petition. It is quite obvious from the pleadings that the petitioner's husband was having knowledge of the entire departmental proceedings regarding his suspension and issuance of



the charge memo. State respondents have also stated in the counter affidavit that a copy of the same was communicated to him at his permanent address.

11. In view of the observations made herein above, this Court finds that the writ petition is devoid of merit and the same is dismissed.

12. Learned counsel for the petitioner submits that other admissible dues of the petitioner's husband such as provident fund should be paid to the petitioner.

13. If the petitioner submits a detailed claim with respect to the admissible dues before the authorities within a period of two weeks from today, respondent no.2 would be obliged to dispose of the same by a reasoned and speaking order. If any dues is found to be paid, the same would be paid to her within a period of three months from the date of receipt of her claim along with a copy of this order.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

