

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6354 of 2017

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1. Dr. Mamta Prasad, wife of Dr. Ashok Kumar Jaiswal, Resident of C/o Dr. Radha Prasad Jaiswal, Man Road, Bariyarpur, Munger, P.O.+P.S.- Bariyarpur, District- Munger, at present residing in House no.52, Shiv Laxmi Colony Police Line Road, Bhikhanpur, P.S.- Isachak, District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Department of Health, Government of Bihar, Patna.
2. The Secretary, Department of Health, Government of Bihar, Patna.
3. The Deputy Secretary, Department of Health, Government of Bihar, Patna.
4. The Under Secretary, Department of Health, Government of Bihar, Patna.
5. The District Magistrate, Samastipur.
6. The Civil Surgeon-cum-Chief Medical Officer, Samastipur.
7. The Civil Surgeon-cum-Chief Medical Officer, Bhagalpur.
8. The Deputy Superintendent, Sub-Divisional Hospital, Pusa, Samastipur.
9. The Incharge Medical Officer, Primary Health Centre, Goradih.
10. The Incharge Medical Officer, Primary Health Centre, Nathnagar, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bibhakar Tiwary

For the Respondent/s : Mr. MUJTABUL HAQUE-GP12

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 18-07-2018

1. Heard learned counsel for the petitioner and counsel appearing on behalf of the State.
2. In this case, the petitioner was issued charge Memo for initiation of departmental enquiry for being remained absent followed by a proper proceeding was initiated against her, accordingly the order of punishment has been passed and on account of remained absent failed to discharge her official duty.
3. The petitioner was appointed as a Doctor. A proceeding was



initiated against the petitioner for being absent at the work place, i.e., Samastipur for a long period and after holding the proper enquiry, the punishment of dismissal has been passed.

4. Counsel for the petitioner submits that the departmental enquiry was initiated for being absent from the work place but the period she remained absent has not been mentioned in the charge-sheet and nor in the final order. Further, he submits that she was transferred from Samastipur to Bhagapur where she was posted during departmental enquiry. The Enquiry Officer always sent the notice to the Samastipur address where she was not posted but she was posted at Bhagalpur, propriety lies on the part of Enquiry Officer that he should have sent the notice of enquiry to her Bhagalpur not to be addressed at the Samastipur where she was not there, and as such she failed to participate in the proceedings deprived of fair hearing during enquiry. She has also pointed out from the enquiry proceeding that Inquiry Officer had asked Civil Surgeon, Samastipur to provide the phone number of the petitioner but he had shown his inability to furnish the same and without giving any proper reason, the petitioner has been dismissed from service on the charge of remaining absent from the work place.

5. Counsel for the State has pointed out that notice was also published in the news paper even then the petitioner did not participate in the proceeding. Generally, person fails to take cognizance of notice



published in the newspaper. It is not a disputed fact that while she was posted at Bhagalpur, notices were sent to the Samastipur from where she was already transferred. In such circumstances, the Enquiry Officer was required to sent notice at the proper address and phone call could have been given but the Civil Surgeon the then posted, failed to provide the same, of course notice was published in the daily newspaper.

6. Taking holistic view of the mater, this Court is of view, fair enquiry should have been conducted by the Enquiry Officer, which has not been done only on that basis proper decision could have been taken in accordance with law. In such view of the matter, the order of punishment dated 08.12.2016 where by the petitioner has been dismissed is set aside. The authority, if so advised, may start de novo enquiry on the basis of chargesheet which has already been served to the petitioner.

7. With the aforesaid observation and direction, this writ petition is disposed of.

Sanjeev/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
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