

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4143 of 2019

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Vindeshwari Prasad Sah Son of late Dhelaie Sah Resident of Line Bazar, P.O. Purnea, P.S. Khazanchi Hatt, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director-in-Chief, Health Services, Bihar, Patna.
4. The District Magistrate, Katihar, District- Katihar.
5. The Civil Surgeon-Cum-Chief Medical Officer, Katihar, District- Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. S. B. K. Manglam
Advocate

Mr. Anita Kumari
Advocate

For the Respondent/s : Mr. S.D. Yadav
AAG9

Mr. Anil Kumar Verma
AC to A.A.G. - 9

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 06-03-2019

Heard the learned counsel for the petitioner and the State.

The petitioner has approached this Court for setting aside and quashing the entire departmental proceeding which has been initiated against him, by invoking the provisions of Section 76 of the Bihar Service Code for having remained unauthorizedly absent from duty for more than 5 years.



Mr. S. B. K. Manglam, learned advocate for the petitioner has tried to impress upon this Court that the charge, in itself is defective as in the charge-sheet only, there are two dates from which the petitioner is said to be unauthorizedly absent. This vitiates the charge as having been framed without proper application of mind. The second ground on which the aforesaid contention has been raised is the correspondence between the concerned Civil Surgeon-cum-Chief Medical Officer and the Under Secretary, Department of Health, whereby it has come to the fore that the petitioner had remained absent from the year 2005 and not before that. Thus, it has been submitted that the charge is unsustainable factually.

On the first blush, this argument is quite attractive. Nonetheless, since the petitioner has participated in the departmental proceeding and the enquiry report has already been submitted which is yet to be acted upon by the disciplinary authority, this Court does not deem it appropriate to entertain the aforesaid argument of setting aside the departmental proceeding. It would be open for the disciplinary authority to look into the entire aspect of the matter, which will



include the explanation offered by the petitioner by way of second show-cause reply and thereafter to take a decision over the issue.

Under such circumstances, this Court is of the firm view that the writ petition with respect to the first prayer made on behalf of the petitioner for setting aside the entire departmental proceeding is premature and need not to be entertained.

Mr. Manglam thereafter made further prayer that during the period when the petitioner was facing the departmental proceeding and for which period he had not been suspended, he would be deemed to be under duty and therefore is required to be paid his salary.

The aforesaid question of fact has to be considered by the concerned respondents who shall respond to the aforesaid prayer made by the petitioner.

The petitioner, therefore, is directed to make representation before the Principal Secretary, Health, indicating that he had not been placed under suspension and had been subjected to departmental proceeding in which he has



participated and therefore he would be entitled to be paid for the aforesaid period.

Without expressing any opinion on the aforesaid assertion of the petitioner, this Court directs that should such an application be filed by the petitioner before the Principal Secretary, Department of Health, Government of Bihar, Patna within a period of three weeks, the same shall be disposed off by a reasoned order, preferably within a period of three weeks thereafter.

With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	08.03.2019
Transmission Date	

