

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5769 of 2019

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Dr. Shameem Shohreay Afaque, aged about 67 years, Male, Son of Choudhary Mushtaque Hassan, R/o Village Choti Balia, Upper Tola, P.S. Balia, District-Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Health, Bihar, Patna.
2. The Joint Secretary, Department of Health, Bihar, Patna.
3. The Director, Health Services Directorate, Bihar, Patna.
4. The Chief Medical Officer-cum-Civil Surgeon, Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Sinha, Adv.

For the Respondent/s : Mr. S. D. Yadav, AAG-9

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 17-04-2019

Supplementary affidavit has been filed during the course of the argument. Let it be taken on record.

2. The petitioner had earlier approached this Court *vide* C.W.J.C. No. 13725 of 2017 seeking a direction to the respondent authorities to pass an order on his request for sanctioning his leave and which representation of the



petitioner had not yet been responded to.

3. A Bench of this Court, in the aforesaid case, *vide* order dated 24.03.2018 directed the respondents to dispose off the representation of the petitioner and consequently, the order impugned dated 28.09.2018 has been passed by the Joint Secretary, Department of Health, Govt. of Bihar, Patna.

4. Certain period of leave of the petitioner was requested by him to be sanctioned for monetary consequences. It appears that the petitioner was subjected to a departmental proceeding and during such proceeding, he was under suspension. The proceeding concluded by holding the petitioner guilty, but he was subjected to only censure and for the period of suspension from 26.05.1994 to 02.08.1996, he was held to be on leave without pay. The aforesaid fact appears from the order dated 24.08.2009 contained in Memo No. 787(9), which has been annexed as Annexure-5 to the writ petition.

5. In the representation which was filed before the concerned authority for which a direction had been



issued by this Court to dispose off such representation, a request was made for sanctioning the leave for the aforesaid period. The order impugned, in paragraph 2 thereof, indicates that the aforesaid period of absence from duty, which was held by a competent authority to be leave without pay, has been held to be unauthorized absence of the petitioner. On face of it, it has been urged, the aforesaid decision of the concerned respondent in passing the order is patently incorrect.

6. The petitioner does not appear to have any grievance with respect to holding the period between 05.11.1985 to 08.01.1986 as extraordinary leave.

7. So far as leave from 14.12.2010 to 28.09.2012 is concerned, the concerned respondent, viz., the Joint Secretary, Department of Health, Govt. of Bihar, Patna by the order impugned has held that the evidence furnished on behalf of the petitioner with respect to his being on duty within such period, awaiting his posting, was not acceptable and a separate decision with respect to that absence is to be taken by the Department shortly.



8. Mr. Pankaj Kumar Sinha, the learned Advocate for the petitioner, has, therefore, submitted that one part of the order impugned is incorrect which can be demonstrated from an earlier order passed by the competent authority and no decision as yet has been taken on the leave from 14.12.2010 to 28.09.2012.

9. In any view of the matter, one part of the order is incorrect and the order with respect to the other prayer is inchoate, with a possibility of rejection of the aforesaid request of the petitioner for treating the leave from 14.12.2010 to 28.09.2012 as unauthorized absence of the petitioner.

10. No Mandamus but can be issued with respect to an order which is still inchoate and only on the presumption of the petitioner that in *futuro*, his prayer shall not be allowed; nonetheless in the present case, since major part of the order appears to have been passed without application of mind, inasmuch as an earlier order was not taken into account for holding a particular period of leave as unauthorized, when the same was treated as extraordinary



leave by the component authority, the order gets vitiated in general.

11. Mr. S. D. Yadav, learned AAG-9, however submits that only after taking instructions, he may be in a position to communicate as to what decision has been taken with respect to the leave of the petitioner for the period 14.02.2010 to 28.09.2012.

12. The aforesaid prayer though appears to be logical and genuine, but no good purpose would be served in awaiting the filing of the counter affidavit.

13. Since one part of the order, as argued on behalf of the petitioner and as demonstrated through an order passed by the competent authority, to be completely without any basis, this Court deems it appropriate to set-aside the order and direct the concerned respondent to revisit the representation of the petitioner and pass a fresh order in accordance with law, taking into account all the grounds urged in the present petition.

14. Thus, the impugned order dated 28.09.2018 is set-aside.



15. The petitioner is directed to make a fresh representation, detailing his existing grievances, before the concerned respondent within a period of four weeks from today, annexing all the evidence and documents in support of his contention and the concerned respondent, on receipt of such representation, shall pass a reasoned order in accordance with law within a further period of six weeks thereafter.

16. With the aforesaid observation and direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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