

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1798 of 2016

Dr. Maheshwar Prasad Gupta Son of Late Kedar Prasad Gupta, Resident of
Village - Kasba Mehsi, Police Station - Mehsi, District - East Champaran.

... .. **Petitioner**

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Health, New Secretariat, Patna.
3. The Regional Deputy Director of Health, Muzaffarpur.
4. The Civil Surgeon, Muzaffarpur.
5. The Civil Surgeon, Kishanganj.

... .. **Respondents**

Appearance :

For the Petitioner	:	Mr. Sarvadeo Singh, Advocate
For the Respondents	:	Mr. Anirban Kundu, SC 24

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 27-03-2019

Heard learned counsel for the petitioner as well as
learned counsel for the State.

The brief fact giving rise to the writ petition is that the
petitioner, who is a doctor and was serving as a Medical Officer
at Additional Primary Health Center, Tarajeever, Muzaffarur has
been denied payment of salary with effect from February, 2005.

It is his claim that he has made various
representations before the authorities and finally approached
this Court in C.W.J.C.No. 15314 of 2009. The same was finally
disposed of on 17.7.2012. Claim of the petitioner for salary was
left to be examined by the respondent authorities.

State has taken a stand in the said proceedings that the
petitioner has remained absent without any authorization for
various period and thereafter the issue was left to be examined



by the respondent authorities. The petitioner thereafter submitted a detailed representation annexing various documents in support of his claim including leave applications and other representations made for assignment of duty for the said period. Detailed representation of the petitioner, which is Annexure 3 of the writ petition, has finally been disposed of denying the claim of the petitioner by order dated 3.2.2014, issued by the Principal Secretary, Health Department, Government of Bihar, Patna (respondent no.2). In the order issued by the Principal Secretary claim of the petitioner has been rejected and reference is made to order dated 2.4.2013 purporting to be dismissal order of the petitioner.

Writ petition has been filed praying for setting aside order passed by the Principal Secretary dated 3.2.2014 as also uncommunicated dismissal order dated 2.4.2013 as the petitioner claims that even charge memo was never served on him. He asserts that no proceeding was conducted by the Enquiry Officer and even without issuing second show cause notice, order of dismissal has been passed in hot haste denying the petitioner's legitimate claim of salary of the entire period due to various extraneous consideration. Petitioner has not been paid salary after February, 2005.



Respondent State counsel has submitted that in respect of claim for salary from May, 2002 to February, 2005, salary shall be paid to the petitioner. For the period beyond February, 2005 he relies upon resolution dated 2.4.2013 of the Health Department, Government of Bihar dismissing the petitioner from service on the ground of his unauthorized absence since 28.2.2005. He submits that from bare perusal of the dismissal order it would be apparent that the order has been passed after following the entire procedure from the issuance of charge memo as well as issuance of second show cause notice.

This Court has gone through the order dated 2.4.2013 (dismissal order). From bare perusal of the same it is quite apparent that though it records that the enquiry report has been submitted but the details of the enquiry report, i.e. the date of the enquiry report is not contained in the order of dismissal. There is also a reference to the second show cause but the petitioner's assertion is that no such second show cause has been served on him.

In order to ascertain whether procedural requirement under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Bihar CCA Rules, 2005') was followed by issuance of charge memo



and conducting a proceeding in accordance with the procedure therein, the matter was adjourned on various dates.

Records of the proceedings are with the State counsel in Court today. Records do not contain any enquiry report. There is nothing on the record to show that the charge memo was ever served on the petitioner or the second show cause notice was ever served on the petitioner. In view of the aforesaid position emerging from records of enquiry the irresistible conclusion is that the order of dismissal dated 2.4.2013 is without complying with the procedural requirement under the Bihar CCA Rules, 2005. Therefore order dated 2.4.2013 is clearly unsustainable.

Learned counsel for the respondent State submits that the petitioner is also guilty of delay and laches as he has approached this Court after long delay.

Such submission of the State counsel is thoroughly misconceived. Order of dismissal as per the records has been communicated to the petitioner for the first time in the order of the Principal Secretary dated 3.2.2014. Writ petition has been filed on 25.1.2016. There is no inordinate delay in approaching this Court.

The fact that the petitioner has been kept out of



service for such a long period and has been harassed continuously by the respondent, is a mitigating circumstance which is required to be considered. The delay alleged therefore is not detrimental to the claim of the petitioner. Order of dismissal dated 2.4.2013 without serving charge memo on petitioner, without conducting enquiry and without serving second show cause is violative of the procedure under the Bihar CCA Rules, 2005. This Court would further add that non compliance with procedure prescribed under the Bihar CCA Rules, 2005 renders the entire decision making process leading to issuance of order of punishment dated 02.04.2013 unfair, arbitrary and violative of the principle of natural justice. The order of punishment dated 02.04.2012 is clearly unsustainable and is hereby quashed. As a result petitioner stands reinstated.

The issue therefore remains whether beyond February, 2005 what is the extent the petitioner would be paid his salary. The petitioner in this regard has submitted before the authorities various documents purporting to be his leave application and duty details. Same have been annexed along with his representation (Annexure 3), filed pursuant to order passed on his earlier writ petition, namely, C.W.J.C.No. 15314 of 2009. Claim of the petitioner for salary or regularization of



leave for the periods on the basis of his application and documents appended to the representation, have to be considered by the respondent authorities without placing reliance on the order of dismissal dated 2.4.2013.

In view of the nature of order that has been passed quashing order of punishment for want of procedural fairness, this Court would grant liberty to the respondent authorities to proceed against the petitioner after following the due process as provided under the Bihar CCA Rules, 2005. It would be open to the respondents to proceed on basis of earlier charge memo dated 11.3.2006.

Writ petition is allowed to the extent indicated hereinabove.

Claim of the petitioner for salary after February, 2002 based on documents annexed in his representation which has been taken note of hereinabove, must be decided by the respondent authorities expeditiously and without any undue delay, preferably within a period of four months from the date of receipt/production of a copy of this order.

(Madhuresh Prasad, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.04.2019.
Transmission Date	NA

