

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4926 of 2015

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Vijay Kumar Verma son of Bhola Nath Verma resident of in the house of Sri D.P. Verma Of Mohalla- D.N. Das Road, Langar Toli, P.S. - Kadam Kuan, District- Patna.

... .. Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary , Minor Irrigation Department , Bihar, Patna.
3. The Chief Engineer, Minor Water Resources Department , Bhagalpur.
4. The Executive Engineer, Minor irrigation Division, Jhajha,
5. The Executive Engineer, Minor Irrigation Sub -division, Jamui.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Sinha
For the Respondent/s : Mr.Gp27- Purnendu Singh

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 10-05-2019

Heard learned Counsel for the parties.

The writ petition has been filed assailing the order dated 12.6.2014, whereby the petitioner has been dismissed from service.

The brief background that emerges from the pleadings on record is that while the petitioner was working in the office of Executive Engineer, Minor Irrigation Sub Division, Jamui, he was issued an order of transfer from Jamui to Katihar. At that point of time he was working as Accounts Clerk. The records reveal that upon transfer being ordered, the petitioner never joined the



transferred place. From 20.7.2007 till 26.8.2013 he was continuously absent.

In the meantime, one show cause notice had been issued to the petitioner that he was not performing the works satisfactorily. On account of similar unauthorised absence the Assistant Engineer, Minor Irrigation Sub Division Jamui had earlier issued a show cause notice to the petitioner on 2.8.2006 which is Annexure A to the counter affidavit.

The petitioner's service career, as per the averments made in the counter affidavit, is not very clear as on 28.4.2006 he was also subjected to a departmental investigation and it was found that he had wrongly joined in Minor Irrigation Sub Division Jhajha in place of Minor Sub Division Jamui. It was on this ground that a proceeding was initiated against him on 16.8.2007.

The petitioner had already been continuing in unauthorised absence from the Department since 20.7.2007. Various letters were issued in respect of the charge on 14.9.2007 and 20.9.2007 and when all letters asking him to give his reply to show cause or hand over charge from his transferred place of posting failed to evince any response from the petitioner, the Department issued a notice in the daily newspaper ***Dainik Jagaran*** on 13.10.2007. The said notice is also on record in the



instant proceedings in the counter affidavit (Annexure G). The petitioner in spite of all efforts did not turn up. In view of the grave misconduct on account of non compliance with the transfer order as well his absence and in the circumstances that he did not respond to the various show cause/ communications of the department. The petitioner, by order dated 16.11.2009 was awarded punishment of withholding of three annual increment with non cumulative effect and censure for the illegality committed in the year 2006. The illegality was that he had joined at the wrong place of posting. The order of punishment dated 16.11.2009 has never been assailed by the petitioner in any proceeding even after filing of the counter affidavit, copy of which has been served upon petitioner's Counsel, when the matter was taken up last week. In spite of opportunity given on the last date when the matter was called out the same has never been assailed by the petitioner, nor any rejoinder has been filed.

Even after the said minor punishment was inflicted upon the petitioner he did not join the department and continued his unauthorised absence. Admittedly, for the first time after 20.7.2007 the petitioner has submitted his joining on 27.8.2013. The authorities thereafter corresponded as to whether the joining was to be accepted and how the services of the petitioner was to be



treated on account of long absence of more than six years. In the said background, the authorities have dismissed the petitioner from service under order dated 12.6. 2014 issued by the Chief Engineer Minor Water Resources Department, Bhagalpur.

The short submission made by the petitioner's Counsel is that the said order is unsustainable in law as being contrary to the procedure prescribed under Rule 76 of the Bihar Service Code.

Rule 76(b) of the Bihar Service Code provides as follows:-

“76(b). Where a Govt. servant does not resume duty after remaining on leave for a continuous period of 5 years, or where a Government servant after the expiry of his leave remains absent from duty, otherwise than on foreign service or on account of suspension, for any period which together with the period of the leave granted to him, exceeds a continuous period of 5 years, he shall unless the State Government otherwise determine be removed from service after following the procedure laid down in the Civil Services (Classification, Control & Appeal) Rules 1930 and the Bihar & Orissa Subordinate Services (Discipline & Appeal) Rules 1935.”

It clearly contemplates that even in case of unauthorised absence for five years or more the petitioner has to be proceeded against in accordance with the procedure prescribed under Bihar CCA Rule 2005.



From the pleadings on record the admitted position that emerges is that no proceeding was conducted against the petitioner and ignoring the procedure prescribed under **Rule 76(b)** of the **Bihar Service Code** the petitioner has been visited with the sever punishment of dismissal.

The respondents in their counter affidavit have taken a stand that after perusing the department letter and all necessary records available to the Chief Engineer, Minor Water Resource Department Bhagalpur, the petitioner has been removed from service.

Such a procedure is illegal and contrary to the procedure prescribed in Rule 76(b), taken note of hereinabove. The order of removal dated 12.6.2014 therefore is not sustainable in law.

It is submitted by petitioner's Counsel that during pendency of the instant proceeding the petitioner has already attained the age of superannuation.

This brings the Court to the issue as to how the department can now proceed against the petitioner for the absence for more than six years. The petitioner's Counsel has submitted that for valid reasons he was away as he had suffered an accident and was undergoing treatment. Those issues have never been



considered by the authorities and this Court would not like to go into those factual assertions made by the petitioner and to examine veracity of the said claim. The petitioner has admittedly been absent for more than six years. The principle of *no work no pay* will apply for entire period of absence of the petitioner from 20.7.2007 to 26.8.2013. The admitted position is that even after his joining on 27.8.2013 the petitioner has never performed any work in the department till attaining the age of superannuation on 30.6.2014. The petitioner in the circumstance is not entitled to any payment for the said period on the principle of *no work no pay*.

The order dated 12.6.2014, on the other hand, is not sustainable in law, as the same has been issued in violation of the procedure prescribed under the Bihar Service Code. The order dated 12.6.2014, is therefore, quashed. The respondent authorities would be at liberty to proceed against the petitioner in accordance with law in respect of the alleged unauthorised absence or on account of order of punishment dated 16.11.2009.

The writ petition is allowed to the extent indicated hereinabove. The petitioner on account of quashing of the order dated 12.6.2014 would be deemed to be in service till the age of superannuation and the entire period should be counted as being in service for all other purposes.



Writ petition stands allowed in the aforesaid terms.

(Madhuresh Prasad, J)

SNkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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