

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18385 of 2011

=====

Dhanpal Rai Son Of Late Panchu Rai Resident Of Village - Raidih, Police
Station- Bihta, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Engineer, South, Tube-Well Division, Minor Irrigation
Department, Government of Bihar, Patna.
3. The Superintending Engineer, Minor Irrigation Tube-Well Division, Arrah
4. The Executive Engineer, Minor Irrigation Tube-Well Division, Arrah
5. The Assistant Engineer, Tube-Well Sub-Division, Koilwar, District- Arrah
6. The Junior Engineer, Minor Irrigation Tube-Well Division, Arrah

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Manish Kumar No-2
For the Respondent/s : Mr.Ajay Bihari Sinha GA8
Mr. Suryakant Kumar, AC to GA8

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 18-04-2019

Heard learned counsel for the petitioner and counsel for
the State.

In this case, the petitioner is praying for quashing of the
order contained in Memo No. 1016 dated 28.7.2008, whereby and
whereunder, the Chief Engineer has held that the petitioner will
not be entitled to the salary for the period he remained absent
unauthorizedly as well as the period of unauthorized absence will
be treated to be break in service.

The petitioner is the Tube-well Operator, was posted in
Bihar Sharif, Sadar in the district of Nalanda and, at the relevant



time, he was working as Tube-well Operator in the district of Arrah, was receiving salary but, all of a sudden, in the year 2004, his salary was stopped, whereby and whereunder, the petitioner send a legal notice to the officials for the reason of non-payment of salary as he and his family members were facing financial crisis. Inasmuch as, he has filed several representations for the payment of salary and, he, in support of his working regularly, has also placed reliance on the Log Book which was inspected from time to time but, wrongly the salary was not paid to him. Later on, he has received a letter contained in Memo No. 708 dated 30.5.2007 under the signature of Chief Engineer, South, Tube-well Division, Minor Irrigation Department, Patna asking the petitioner as to why a departmental proceeding be not initiated against him along with the copy of charge-sheet. In the Memo of Charge, the first charge has been made that on account of negligence, the Tube-well was burnt, the second charge was that he has not extended cooperation in collecting the material for repair of defect of pump, third allegation has been made that he has refused to join the Wahiyar. He filed explanation, stating therein that he was always attending his work but, all of a sudden, on 22.11.2004, the Pump suddenly stopped working which he informed in writing as well as orally, later on, the mechanic came, repaired the pump. Against the charge



no-2, he has stated that he always extended cooperation, the same can be verified from the persons of the locality, inasmuch as, it will be clear from the Log Book, with regard to third charge, he has explained that he had not joined the new place of posting as the condition of the tube-well was so bad that it has turned useless, in turn, the Enquiry Officer asked the Department to file its comment and, thereafter, the enquiry report was submitted and, on that basis, the Chief Engineer passed the order of punishment vide Memo No. 504 dated 26.2.2008 as censure for the year 2007-08, stoppage of two increments with non-cumulative effect and third transfer from Arrah to Mohania Division which the petitioner challenged in C.W.J.C. No. 10212 of 2008 which was heard, partly allowed, again, the petitioner filed a writ application, C.W.J.C. No. 435 of 2007 for arrear of salary which was disposed of on 14.7.2011 in which the petitioner was granted opportunity to challenge the same in accordance with law.

As it is very much clear that the initiation of proceeding and punishment was challenged by the petitioner with partial success including he has made a prayer for payment of salary in C.W.J.C. No. 435 of 2007 which has been allowed. The finding of the Enquiry Officer cannot be challenged as the same has already been tested untinkered, in such circumstances, this Court cannot



give any separate finding with regard to discharge of duty at the place of posting but, the subsequent order which shows that he will not be entitled to salary for the period of unauthorized absence, cannot be interfered by this Court as finding of Enquiry Officer remained unassailed but, the second part i.e. there will be break in service is nothing but, a serious punishment, will have a serious consequence in future in the matter of entitlement of pensionary benefit either in pension, gratuity or leave encasement. So, this part of the order is set aside. However, the period of absence will be tried to be adjusted if any leave is available to the petitioner.

With the aforementioned observation, this writ application is disposed of.

Whatever the petitioner is entitled, that must be released to him expeditiously.

(Shivaji Pandey, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.04.2019
Transmission Date	

