

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.8 of 2019

In

Civil Writ Jurisdiction Case No.8282 of 2017

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Raghawendra Jha, Son of Late Mahendra Jha, Resident of Village- Khojpur,
P.O. Babu Barhi, P.S. Babu Barhi, Distt. Madhubani.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Joint Secretary, Department of Health, Govt. of Bihar, Patna.
4. The Under Secretary, Department of Health, Govt. of Bihar Patna.
5. The Collector, Samastipur.
6. The Civil Surgeon, Samastipur.
7. The Medical Officer-in-Charge, Primary Health Centre, Rosera, Distt. Samastipur-cum-Drawing and Disbursing Officer, Additional Primary Health Centre, Kameshwar Nagar, District- Samastipur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Sanjay Kumar Jha, Advocate Mr. Abhay Shankar Jha, Advocate
For the Respondent/s	:	Mr. S.D.Yadav, AAG 9 Mr. Prem Ranjan Kumar, AC to AAG 9

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-02-2021

The core issue arising for consideration is as to whether the inquiry conducted against the delinquent employee, holding him guilty of the charge of remaining absent from duty for a period of five years and the consequential action of his dismissal from service, in exercise of the powers under Rule 76



of the Bihar Service Code is illegal or not.

Learned Single Judge found such action to be sustainable in law, notwithstanding the fact that the appellant continued to receive salary for certain period of his absence.

At the outset, it be observed that the appellant has not placed any material indicating his having marked his presence or worked at the place of his posting. Also there is nothing to show that for the entire period of absence he continued to receive his salary. In fact, in his writ petition, at paras 6 and 7, he admits to have received a show cause notice of initiation of disciplinary proceedings in relation to very same charge.

It is in this backdrop, we proceed to examine the merits of the matter.

Appellant was engaged as a Medical Officer, Health Department, Government of Bihar. Vide Notification dated 27th March, 2001, he was transferred from Additional Primary Health Centre Harsingpur, Benipur, Darbhanga to Additional Primary Health Centre, Kameshwar Nagar, Samastipur, where he took charge on 9th May, 2001. For the reason that at the place of his fresh posting he remained absent for several months, disciplinary action was initiated.



Preliminary inquiry revealed, as per the report of the S.D.O, Rosera, that since 1st July, 2002 appellant continuously remained absent from duty. Consequently, notice to show cause was issued on 25th November, 2003 to which the appellant replied. Finding his explanation not to be satisfactory, disciplinary proceedings under Rule 17 of the Bihar CCA Rules 2005 were initiated. The factum of such inquiry was made known to the appellant with the issuance of notice, through all modes, including publication in the daily newspaper 'Prabhat Khabar' dated 25th November, 2010. However, he chose not to participate, perhaps, for not having sufficient explanation of remaining absent from duty, continuously over a period of more than five years. The appellant was show caused to respond to the finding of inquiry. This was also done by publication in the daily newspaper. Despite the same, he chose to abstain and not participate or respond, this leaving no option with the disciplinary authority but to take appropriate action of dismissing him from service. Such action was with concurrence of the Bihar Public Service Commission as also the competent authority.

It is this order of dismissal dated 7th September, 2016 which was challenged by the appellant with the filing of a



writ petition on 12th June, 2017.

There is nothing on record to indicate that for the entire period of absence, appellant had received the salary. That apart, mere receipt of salary, in our considered view, be it for whatever period, is not indicative of the factum of the appellant having discharged his duties. Be that as it may, in our considered view that fact alone would not condone the appellant's action of absence or reflective of the appellant having served at the place of posting. Apathy in coordination *inter se* two Departments cannot be a reason to condone the appellant's action. Equally, suspension is not a condition precedent for initiation of the disciplinary proceedings and as such absence of action, on that count, would not render the proceedings to be void.

Despite repeated queries, save and except for oral assertions, learned counsel for the appellant could not satisfy his client having discharged duties at the place of his posting.

Significantly, appellant does not allege any malafides or bias in initiation of action by his employer. In fact, similar action stood initiated also against other similarly situated delinquent employees.

Reliance on the decision rendered by the Hon'ble



Apex Court in **Union of India and others Versus Dinanath Shantaram Karekar and others, (1998) 7SCC 569** is misplaced on facts. The appellant has not alleged that the newspaper does not have wider publication. In fact, appellant had himself responded to the initial show cause notice.

Similarly, reliance on the decision of Hon'ble Apex Court in **State of Uttar Pradesh and others Versus Saroj Kumar Sinha, (2010) 2 SCC 772**, is also of no significance, for we find the employer (the competent authority) to have fully complied with the procedure established by law. Notice was issued affording adequate opportunity and time enabling the appellant to respond and participate in the inquiry proceedings.

No other point stands raised by the learned counsel for the appellant.

There is no infirmity or illegality in the impugned order.

For the aforesaid reasons, the present Letters Patent Appeal is dismissed challenging the order dated 22nd November, 2018 passed in CWJC No.8282 of 2017, titled as Raghawendra Jha Vs The State of Bihar, dismissing the writ petition filed by the appellant challenging the order of dismissal dated 7th September, 2016 issued under the signature of Under Secretary



to the Government, Department of Health (Annexure-4 to the writ petition) under the provision of Rule 76 of the Bihar Service Code.

Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

sujit/-

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