

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6022 of 2020

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Basta Baski Son of Late Chanda Baski Resident of Village- Sathal Tola
Maini, P.s.- Rupauli, District- Purnia

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Govt. of Bihar, Patna
2. The Commissioner, Kosi Division, Saharsa
3. The District Magistrate cum Disciplinary Authority, District- Madhepura
4. The District Program Officer cum Enquiry Officer (ICDS), District- Madhepura
5. The Sub-divisional Officer, Uddakishunganj, District- Madhepura
6. The Circle Officer cum Presenting Officer, Circle Goalpara, District- Madhepura

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashank Chandra, Advocate
For the Respondent/s : Mr. Md. Nadim Seraj (Gp5)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

ORAL JUDGMENT

Date : 17-11-2021

In the instant petition, petitioner has sought for following reliefs:

“That this is an application praying for issuance of a writ in the nature of a Writ of certiorari, or any other appropriate Writ order, direction quashing the order contained in Memo No. 129-2 dated 05.02.2020, issued by the Respondent No. 2 (Annexure-11). By the impugned order dated 05.02.2020, the Respondent No. 2, has terminated the services of the Petitioner as Upper Divisional Clerk in the Office of Circle Officer, Goalpara, District – Madhepura, on the ground that the Petitioner had consumed liquor as a result of which the Petitioner was taken into Judicial Custody, thus by the aforesaid conduct the Petitioner has violated Rule-4 of the Bihar Government Servant Conduct Rules, 1976 (as amended in 2017). The Petitioner



further prays for a consequential Writ of mandamus, commanding the Respondents to reinstate the Petitioner back in service with all consequential benefits.”

Undisputedly, the petitioner has statutory remedy before the appellate authority. In not exhausting the statutory remedy of appeal, learned counsel for the petitioner pointed out that Sub-rule 4 of Rule 17 of Bihar CCA Rules, 2005 is in violation.

From the perusal of Annexure- 3 it is evident that there is compliance to the aforesaid provision.

Therefore, the present petition is pre-mature to entertain.

Apex Court in the case of State of *Jammu and Kashmir V. R.K. Zalpuri* reported in *AIR 2016 SC 3006* at para 20 held as under:

“20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation V. Dosu Aardeshir Bhiwandiwalla and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the



jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

In the light of the aforesaid decision, writ petition is premature.

In the present petition, petitioner has statutory remedy of appeal.

Accordingly, the petitioner is at liberty to file appeal before the appellate authority. The appellate authority is hereby directed to condone the delay in entertaining the appeal in terms of Section 14 of the Limitation Act, if any, and pass order within a period of six months from the date of receipt of the memorandum of appeal.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	24.11.2021
Transmission Date	

