

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 5389 of 2019

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Ramawatar Yadav S/o Late Parmeshwar Prasad Yadav @ parmeshwar Yadav
Resident of Vill.- Machidih, P.s.- Tarapur, Anchal- Tarapur, Distt.- Mungher

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of P.H.E.D., Govt. of Bihar, Patna
2. The Engineer in Chief cum Special Secretary P.H.E.D., Bihar, Patna
3. The Chief Engineer P.H.E.D., Bhagalpur Zone, Bhagalpur
4. The Superintending Engineer P.H.E.D., Bhagalpur
5. The Executive Engineer P.H.E.D., Bhagalpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : M/s Anupa Nand Jha, Anil Kr Tiwary, Advocates
For the Respondent/s : Mr Arvind Ujjwal, SC IV

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 29-08-2022

Heard learned counsel for the petitioner and the respondents.

2 The petitioner is aggrieved by order dated 17.01.2014 bearing Memo No 10 issued by Respondent No 2, the Engineer-in-Chief -cum- Special Secretary, Public Health & Engineering Department (for brevity, *PHED*), Bihar whereby and whereunder (1) the petitioner has been terminated from service by an order issued under Rule 14 (xi) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, (2) for the period



of his unauthorized absence from 29.06.2008, the petitioner has been held not to be entitled to any pay on the principle of no work no pay and (3) an amount of Rs 18,35,528/- has been found recoverable from the petitioner for which it has been decided to proceed after obtaining advice from the Law Department. The petitioner has also sought quashing of appellate order dated 02.02.2018 since his appeal against the order of punishment dated 17.01.2014 has been rejected.

3 The brief factual background is that while posted as Junior Engineer in PHED, Bhagalpur Circle since 1985, the petitioner was transferred to Bihar Rajya Jal Parishad, Patna under notification dated 24.11.2004. The petitioner was also relieved but he did not submit his joining. The same led to his suspension and filing of writ petition against the order of transfer in CWJC No 8757 of 2005. The writ petition was disposed of with liberty to avail remedy of representation before the appropriate authority. On consideration of his representation, petitioner was transferred to the post of Estimator, PHED, Siwan vide Memo dated 18.08.2005. This transfer was also assailed by the petitioner by filing CWJC No 13066 of 2005. The writ petition was dismissed and Letters Patent Appeal No 1304 of 2005 was preferred by the petitioner which was also dismissed on 05.01.2017. The petitioner



did not join at PHED, Siwan till 27.06.2008. Thereafter, since 29.06.2008, he has remained absent from duty after giving an application for casual leave.

4 The petitioner also filed CWJC No 17114 of 2009 claiming payment of arrears of salary allegedly due since 28.06.2005. The same was disposed of with liberty to the petitioner to avail remedy of representation before the appropriate authority. Having failed to obtain any relief from the authorities, the petitioner, thereafter, has resorted to one contempt proceedings arising out of MJC No 1020 of 2012 alleging non-compliance of order passed in CWJC No 17114 of 2009. During the MJC proceedings, this Court called for the original records and directed the Principal Secretary to pass a reasoned order after giving the petitioner an opportunity of personal hearing.

5 It is the specific stand of the State that the petitioner was served with many notices apart from initiation of proceedings. The Executive Engineer, PHED, Bhagalpur, where the petitioner was earlier posted, had reported that material valued at Rs 17,17,703/- was found to be short during petitioner's posting there. For the non-submission of accounts and deficiency of material in stock, the petitioner was proceeded against by charge memo dated 16.04.2009.



6 Since the petitioner continued to be unauthorizedly absent, another departmental order dated 17.06.2011 was issued appointing the enquiry officer and the charge of unauthorized absence since 27.06.2008 was added. The enquiry officer submitted enquiry report vide letters dated 07.01.2012 and 20.03.2012 finding most of the charges, except Charge No 3 and Charge No 8 to be proved.

7 Regarding Charge No 8 (unauthorized absence), the enquiry officer opined that a report be sought for from PHED, Siwan for further action. The Executive Engineer, PHED, Siwan, under communication dated 15.11.2011, reported that the petitioner, after joining on 27.06.2008 as Estimating Officer, has again absented himself just two days thereafter, i e, 29.06.2008, for which show cause dated 10.11.2008 was issued. Instead of replying to the show cause, the petitioner made endeavours to submit an antedated application for casual leave which application was received in the office on 10.12.2008.

8 The report dated 15.11.2011 clearly states that the petitioner's whereabouts are unknown, he appears in the office every now and then just to submit an application for salary and that, in the circumstances, information had been given to the Director, Information and Public Relations Department,



Government of Bihar under letter dated 30.06.2011 issued by the office of the Executive Engineer, PHED, Siwan for publication of notice in the newspaper. The press release regarding petitioner's unauthorized absence since 29.06.2008 was also issued on 08.09.2012 in the Hindi daily newspaper "Aaj" and, thereafter, in the "Rastriya Sahara" on 09.09.2012 for second show cause from the petitioner. The notice was also published in Pratiyush Naw Bihar but the petitioner did not appear.

9 Thus, after complying with the principles of natural justice, the impugned order of punishment has been passed. The petitioner has not cooperated in the proceedings. Since the petitioner did not file his second show cause against the enquiry report in spite of opportunity and paper publication, the disciplinary authority has passed the order of punishment dated 17.01.2014. Against the punishment order, the petitioner had earlier filed CWJC No 4901 of 2014. The same was disposed of on 28.07.2017 with liberty to the petitioner to pursue his pending appeal. The appeal was rejected on 02.02.2018.

10 It is also admitted by the petitioner that a Miscellaneous Case No 1 of 2017-2018 has been instituted being certificate proceedings for recovery of the amount of Rs



18,35,528/-. The petitioner has stated that he has appeared in the said proceedings and filed his reply.

11 In the writ petition, the petitioner has stated that he was not served with a copy of the enquiry report. The petitioner, however, has not controverted the assertions made in the counter affidavit that, in spite of several communications and paper publications, he did not file his second show cause after submission of the enquiry report. Having failed to avail the opportunity, the petitioner cannot be permitted to contend that the order is in contravention of principles of natural justice. Since the opportunity in compliance with the principles of natural justice was not availed, it would be presumed that the petitioner had waived his right as per law settled by the Apex Court in the case of *Board of Directors, Himachal Pradesh Transport Corporation & Another -Versus- K C Rahi*, since reported in (2008) 11 Supreme Court Cases 502.

12 This Court would, therefore, find that the petitioner has not pointed to any infirmity in the procedure adopted by the authorities. The background of the petitioner's unauthorized absence since 27.06.2008 needs also to be considered. This Court would also find it relevant to consider that during six years of unauthorized absence, the petitioner had continuously been filing



one case after another. This is petitioner's sixth proceedings before this Court.

13 On a consideration of these facts and since no procedural infirmity has been made out, this Court is not inclined to interfere with the impugned order of punishment dated 17.01.2014. The appellate order dated 02.02.2008 affirming the punishment also does not require any interference.

14 Writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.09.2022
Transmission Date	NA

