

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14090 of 2018

=====

Deepak Dwivedi, Son of Dr. H.M. Dubey, Resident of 47 B/5, Ganesh Nagar,
Mauryabad, Allahabad, Uttar Pradesh, Presently resided at P.S. Ram Krishna
Nagar, District-Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, General Administration Department, Bihar, Patna.
2. The Additional Secretary to the Government of Bihar, General Administration Department, Bihar, Patna.
3. The Under Secretary to the Government of Bihar, Minority Welfare Department, Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Tripurari Nath Amastha, Advocate
For the Respondent/s : Mr. Dhurendra Kumar, A.C to GP-5

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 07-12-2022

The petitioner seeks quashing of the order of termination dated 02.06.2016 and consequential direction for his reinstatement.

2. The petitioner was appointed as an Assistant after emerging successful in the process of selection under Advertisement No.110 of 2010, conducted by the Bihar Staff Selection Commission. He was posted in Home (Special) Department, Bihar, Patna, under officer order dated 03.03.2014. One month later, he was transferred to the office of the Resident Commissioner at Bihar Bhawan in New Delhi. On 10.10.2014, he was transferred to the Minority Welfare Department, where he



claims to have submitted his joining. Soon thereafter, he suddenly fell ill and proceeded on leave after giving an application for leave on 24.10.2014. In view of continued absence thereafter on one pretext or the other, charge memo was framed against the petitioner under Memo No.1174 dated 22.01.2016. The charge memo indicates the entire period of alleged unauthorised absence. The petitioner has submitted his written statement of defence.

3. The substance of petitioner's defence was that perhaps he has contracted repeated infection which appears to be on account of his transfers in the course of service.

4. In view of the petitioner's response, the Government constituted a Medical Board for examining the health of the petitioner. He claimed to be seriously ill and unable to appear before the Medical Board and refused to appear before the Medical Board. Again date was fixed on 09.03.2016. Petitioner again refused to appear. On 08.03.2016, the petitioner has submitted an application again, refusing to appear before the Medical Board. He has made a request that he be subjected to Medical Board after he is cured. He has stated that if the authorities are not satisfied, then his application may be treated as a resignation letter.

5. The petitioner's counsel has submitted that on account of illness, the petitioner was compelled to stay away from



his duties. It is further submitted that the repeated requests of the petitioner for being continued on leave, supported by documents, have not been considered by the authorities. In spite of petitioner's explicit representation through his letters that he is unable to join his services or appear before any Medical Board as he is undergoing medical treatment, the authorities have repeatedly insisted on his joining or subjecting himself to Medical Board. The termination, keeping in view the above facts and documents, is clearly untenable. The termination is also legally unsustainable as the same is without affording any opportunity of personal hearing to the petitioner. The impugned order of termination dated 02.06.2016 is apparently punitive. In view thereof, the same cannot be said to have been issued under Section 10 of Bihar Secretariat Service Act, 2007 (hereinafter referred to as "the 2007 Act").

6. Learned State Counsel, on the other hand, submits that after his appointment as Assistant, the petitioner was initially posted at the office of the Resident Commissioner in Bihar Bhawan, New Delhi on 03.04.2014. This is the only posting on which the petitioner has worked. On 10.10.2014, he was transferred to the Minority Welfare Department of the Government of Bihar, whereafter he left after making an application for leave



on ground of illness and remained absent. His services were thus returned to the General Administration Department by the Minority Welfare Department. He was then asked to give his explanation, to which he responded with a plea of undergoing medical treatment at Allahabad, his native place. His plea was rejected by the Department on 14.07.2015, allowing him 15 days' time to resume his duties, failing which disciplinary action may be taken for terminating his services.

7. The petitioner refused to obey the said order, whereafter again an opportunity was given, vide letter dated 20.08.2015, allowing him further 15 days' time, failing which it was clearly stipulated that the authorities would presume that he is not interested in working. The petitioner continued to give applications in support of his continued absence by raising a plea of illness and medical treatment at Allahabad. On 02.09.2015, he submitted his joining in the General Administration Department along with a Doctor's certificate declaring him fit to resume duties. The petitioner on 09.09.2015 was posted in the Election Department, considering the exigency of election work.

8. The petitioner again gave an application for casual leave for two days and left without joining in the Election Department. The petitioner was again directed by letter dated



11.09.2015 to join his duties by 15.09.2015 in the Election Department, failing which steps would be taken for his dismissal from service. Again he started sending applications for leave with medical reports. The petitioner's conduct shows a pattern of repeated defiance of administrative orders regarding posting. He has been on unauthorised and defiant leave and careless towards his assigned duties. Accordingly, his applications for leave have been rejected and vide Department's letter dated 14.12.2015, decision was taken to frame charges against him, though the petitioner has been sending casual leave applications and applications in support of his medical treatment. Various communications sent by the Department have been returned with a report of the Postman that "the petitioner could not be met".

9. In the circumstances, the Department even constituted a Medical Board to verify/ascertain his claim of being medically unfit, he refused to appear before the Medical Board for being examined in spite of repeated opportunities being granted to him. In the circumstance, the authorities have found the petitioner's conduct to be unsatisfactory and undesirable in the administrative set up.

10. Under the 2007 Act, there is a provision that an Assistant, as the petitioner, initially is appointed on probation for



two years from the date of appointment. It also provides that the period of probation may, if the appointing authority may deem fit, be extended but for total period which may not in any case exceed three years. Even in the extended period, the service is found to be unsatisfactory, service is liable to be terminated. It is in exercise of this power that the petitioner's service, having regard to the facts and circumstances, has been found to be unsatisfactory. The petitioner has rightly been terminated. The petitioner was still a probationer as per the 2007 Act under which he was appointed. The impugned order therefore does not require any interference.

11. Writ petition is dismissed.

(Madhuresh Prasad, J)

PNM

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.12.2022
Transmission Date	N.A.

