

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7576 of 2008

Sikandar Yadav, son of Late Yasodhar Yadav, resident of village- Tarwara,
P.S. Jamalpur, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Development Department, Government of Bihar, Patna.
2. The Commissioner, Darbhanga Division, Darbhanga.
3. The District Magistrate cum Collector, Darbhanga.
4. The Sub-Divisional Officer, Sadar, Darbhanga.
5. The Deputy Collector, Land Reforms, Biraul, Darbhanga.
6. Block Development Officer, Hanuman Nagar, Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jagannath Singh, Advocate Mr. Gajendra Prasad Yadav, Advocate
For the State	:	Mr. Sarvesh Kumar Singh, AAG-13 Mr. Arya Achint, J.C. to AAG-13

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 28-07-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioner has prayed for
following reliefs:-

“i) For issuance of appropriate direction, order or writ in the nature of Certiorari quashing the order of dismissal of the petitioner from service contained in memo no. 2114 dated 20.12.06 passed by the Collector, Darbhanga.

ii) For issuance of appropriate direction, order or writ in the nature of Certiorari quashing the order of dismissal of appeal passed by the Commissioner, Darbhanga Division, Darbhanga on 1.11.2007 in Case No. 30/2007.

iii) For issuance of appropriate direction, order or writ in



the nature of mandamus commanding the respondent authorities particularly the Collector, Darbhanga to reinstate the petitioner in service from the date of his dismissal and to pay all consequential benefits to the petitioner.

iv) For grant of any other relief or reliefs to which the petitioner entitled.”

3. Petitioner was selected and appointed as Panchayat Sewak in the year 1999. Petitioner was transferred to Hanuman Nagar Block from Bahadurpur under Darbhanga District on 29.06.2002. His services were relieved on 11.03.2002. In stead of joining at transfer post and place, he remained unauthorized absent during the intervening period from 01.03.2003 to 30th December, 2005. He was subjected to departmental enquiry and it was concluded in imposition of penalty of dismissal from service on 29.12.2006. Feeling aggrieved and dissatisfied with the order of dismissal, he preferred appeal in which he suffered an order before the appellate authority on 01.11.2007. Thus he has presented this petition.

4. Learned counsel for the petitioner submitted that the petitioner was not in receipt of charge-memo. The official respondents proceeded to hold *ex parte* enquiry. Second show cause notice was issued without enclosing copy of the



enquiry report. It is submitted that disciplinary authority has considered extraneous material relating to criminal case which is not part and parcel of charge-memo. It is submitted that in the criminal case petitioner was acquitted on 04.03.2013. At the outset learned counsel for the petitioner submitted that disciplinary authority has not followed the provisions relating to imposition of major penalty under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

5. Per contra, learned counsel for respondent resisted the aforesaid contentions stating that the petitioner has not cooperated in the enquiry proceedings. Therefore, it is *ex parte* on the alleged charges relating to remaining unauthorized absent for a long period during intervening period from 01.03.2003 to 30th December, 2005. If the petitioner was suffering from certain illness in that event he has not furnished documentary evidence to establish that he was in patient and he could not approach his immediate superior to apprise that he was suffering from certain serious illness. On the other hand, now he is furnishing medical certificates issued by Dr. Arvind Kumar and Dr. Krishna Nand lal which are relating to certificate that petitioner was under treatment of the aforesaid doctors. This reveals that petitioner was not suffering from serious illness so as to apprise his immediate superior assigning reasons and also



furnishing relevant medical certificate and leave application from time to time for remaining unauthorized absent for the period 01.03.2003 to 30th December, 2005.

6. Having regard to the conduct of the petitioner, the petitioner cannot take shelter that there are certain discrepancies in the enquiry proceedings. Therefore, there is no infirmities in the order dated 29.12.2006 and 01.11.2007.

7. Heard learned counsels for respective parties.

8. Undisputed facts are that the petitioner remained unauthorized absent from 01.03.2003 to 30th December, 2005. Such remaining unauthorized absent it is after transferring him from Hanuman Nagar Block to Bahadurpur vide Communication dated 08.07.2002 and he was relieved on 11.03.2002. Probably the petitioner in avoiding transfer and posting remained unauthorized absent for the reasons that today he has furnished three certificates relating to the fact that he was taking treatment with two doctors and at the same time he has not apprised this Court that he was admitted to a hospital so as to remain unauthorized absent for a long period. Moreover, during the period from 01.03.2003 to 30th December, 2005 and further till 29.12.2006, the date on which he was dismissed from service and further when he preferred appeal before the



appellate authority the petitioner has not apprised either the disciplinary or appellate authority that he was suffering from chest ailment and not furnished any documentary evidence.

9. Today, learned counsel for the petitioner admitted that petitioner was not admitted to a hospital as an inpatient.

10. In the light of these facts it is not proper at this distance of time to remand the matter to disciplinary authority to hold a fresh enquiry from the defective stage, namely, in furnishing charge-memo. Further, reasons that charge-memo itself was not communicated to the petitioner as is admitted by the learned counsel for the State. Further, no documentary evidence has been maintained by the official respondents in respect of issuance of show cause notice for petitioner appearance before the enquiry authority. The enquiry officer also not recorded anywhere that on a particular date show cause notice was issued from time to time to the petitioner and further recording that petitioner remained absent in the enquiry proceedings. These are all serious lacuna. However, imposition of major penalty of dismissal has been ordered and it was confirmed by the appellate authority for remaining unauthorized absent and it is not a case of misappropriation of



any government fund which warrants major penalty of dismissal. Of course, remaining unauthorized absent for about two years and nine months is a serious charge.

11. Having regard to the fact that petitioner has worked from the year 1999 to 2003 for about four years. The order of dismissal dated 29.12.2006 is modified to compulsory retirement in the light of Apex Court's decision passed in **Civil Appeal No. 4059 of 2015 decided on 30th June, 2022.**

12. Accordingly, order of disciplinary authority and appellate authority are modified to penalty of compulsory retirement w.e.f. 29.12.2006. The petitioner shall be paid any dues on account of compulsory retirement. Such a decision shall be taken by the disciplinary authority/appointing authority and pass speaking order as to whether petitioner is entitled to any monetary benefits. If he is entitled, the same shall be extended.

13. Accordingly, the present petition stands disposed of.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.08.2022
Transmission Date	

