

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.752 of 2018

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Anand Priyadarshi, Son of Late Bachan Prasad Bari, Resident of Village and
P.S.- Ram Nagar, District- West Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar, through its Principal Secretary, Department of
Agriculture, New Secretariat, Patna.
2. The Director, Agriculture, Government of Bihar, Patna.
3. The Additional Secretary, Agriculture Department, Government of Bihar,
Patna.
4. The Joint Director Sashy., Agriculture, Saharsa Division, District Saharsa.
5. The Joint Agriculture Director, Koshi Division, District- Saharsa.
6. The Deputy Director, Administration, Agriculture Directorate, Bihar.
7. The Sub-Divisional Agriculture Officer Supaul-cum-Conducting Officer,
District- Supaul.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ranjan Kumar Srivastava, Advocate
For the Respondent/s	:	Mr.Raghwanand, GA11
		Mr.Sanjay Kumar Tiwari, AC to GA11

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

6 17-10-2022 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner has been terminated by the impugned
order, which is dated 29.10.2016. The same is issued by the
Joint Director, Respondent No.4. He has preferred an appeal
against the order, which has also been rejected on 06.07.2017.
Appeal has been rejected by by the Director, Agriculture,
Respondent No.2. Both these orders are impugned in the instant
writ proceedings.



The brief factual background, leading to filing of the instant writ petition, is that the petitioner was absent from duties since 02.11.2010. It is an admitted position that from November, 2010, he has also not been paid salary. On the basis of his unauthorized absence for a long period a charge memo dated 25.08.2015 was issued to the petitioner. Notice was even issued in the newspaper on 04.09.2014. In response to the charge memo the petitioner has sent an undated reply which was received on 08.09.2015. The petitioner in his undated reply has raised a plea that he was unwell and required 15-20 days for appearing, to place his defense. Taking note of the petitioner's reply, the enquiry officer, in the proceedings dated 10.09.2015, has adjourned the matter for consideration to 01.10.2015. On 01.10.2015, when the matter was taken up, the petitioner again did not appear and, therefore, the matter was adjourned to 23.11.2015. Thereafter, the Office again issued a notice to the petitioner, through registered post on 28.10.2015, that the matter was next fixed on 23.11.2015. The petitioner again chose not to appear in the proceedings. It was under such circumstances that the petitioner has been visited with the impugned order of termination, on account of his unauthorized absence for nearly five years.



As per the averments made in the writ petition, the petitioner preferred an appeal before the Respondent No.2. The petitioner, in the appeal, has not raised any issue regarding quantum of punishment.

However, it is submitted by learned counsel for the petitioner, today in these proceedings, that the punishment was excessive and needs a relook, since the punishment is disproportionate to the misconduct being the unauthorized absence of nearly five years.

Since no such issue has been raised by the petitioner in the appeal, today petitioner cannot claim non-consideration of this fact by the Appellate Authority. While rejecting the petitioner's appeal.

Insofar as submissions regarding the proceedings being not in accordance with law, this Court would refer to the decision of Apex Court in the case of ***Board of Directors, Himachal Pradesh Transport Corporation and Anr. vs. K. C. Rahi*** reported in ***(2008) 11 SCC 502***, specifically Paragraph-8 thereof, whereby the Apex Court has laid down the law that when inspite of opportunity being granted the government servant refuses to avail the opportunity it will be considered as a waiver of the requirement of natural justice by the employee. In



the instant case, from the above noted facts, which are borne from the record, the petitioner inspite of opportunities and after adjournment on his request has chosen to stay away from the proceedings. He has also not submitted any written defence in response to the charge memo. The petitioner has thus waived requirement of natural justice and is estopped from alleging non compliance with the same.

This Court would thus find that no case is made out by the petitioner for interfering with the impugned order.

Writ petition is dismissed.

(Madhuresh Prasad, J)

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