

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19144 of 2013

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Khalikur Rahman Son Of Late Motiur Rahman At And Post - Lakhanpur
Maheshpatti, Police Station - Ujiyarpur, District - Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Cabinet Secretary, Cabinet Secretariat, Rajbhasha Department,
Government Of Bihar, Patna
3. The Director Urdu, Urdu Directorate, Cabinet Secretariat, Rajbhasha
Department, Government Of Biha
4. The Deputy Director Urdu, Urdu Directorate, Cabinet Secretariat, Rajbhasha
Department, Government
5. The District Magistrate, Samastipur
6. The District Urdu Officer, Samastipur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shivendra Kishore, Sr Advocate
Mr. Nafisuzzoha, Adv.
For the Respondent/s : Mr. Ravi Ranjan, AC to SC-22.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 19-01-2023 Heard Mr. Shivendra Kishore, learned senior counsel
for the petitioner and Mr. Ravi Ranjan, learned AC to SC-22 for
the State.

2. Petitioner was appointed on the post of Translator
on 14.03.1987 and was posted at Collectorate, Samastipur. On
29.06.2007, the petitioner was transferred from the Collectorate,
Samastipur to Mohanpur Block, Gaya where the petitioner did
not join. Again the petitioner was transferred from Gaya to
Kusheshwar Asthan, Darbhanga *vide* letter dated 30.01.2008
(Annexure-9) but there also, the petitioner did not join. A show-



cause was issued to the petitioner *vide* Annexure-12 stating therein that the petitioner remained absent from his service for more than five years and further that the petitioner was working as In-charge Principal, M.R. Janta College, Samastipur during those period. Accordingly, the petitioner was required to submit his explanation within fifteen days. In pursuance thereof, the petitioner submitted his explanation *vide* Annexure-13 dated 02.04.2013 denying the allegation that the petitioner was working in the College as In-charge Principal.

3. However, the petitioner has accepted that he has contributed his service to the College in public interest for streamlining the educational facilities/system in the College.

4. The Secretary, Government of Bihar (Annexure-1) after taking into consideration the explanation/reply filed by the petitioner has come to the conclusion that the petitioner remained absent from his service as translator w.e.f. 08.08.2007 and accordingly, the period of absence is more than five years and has dismissed the service of the petitioner under Rule 76 (b) of the Bihar Service Rule.

5. Learned senior counsel for the petitioner submits that the petitioner has been dismissed without holding any regular inquiry under Civil Services (Classification Control and



Appeal) Rules, 2005 as contemplated in Rule 76(b) of the Bihar Service Code.

6. Learned senior counsel relies upon a judgment of this Court passed in the case of ***Dr. Asha Rani v. The State of Bihar*** as reported in ***2012(4) PLJR 876*** and submits that if the employee remained absent from duty for more than five years, such employee cannot be removed from service by asking show-cause but the employee could only be removed from the service after following procedure laid down for removal/dismissal of an employee under Civil Services (Classification Control and Appeal) Rules, 2005. Learned counsel relies upon paragraphs-7 and 8 of the said judgment and submits that in the similar circumstances order of punishment was quashed by this Court and the matter was remitted to the authority for holding a full-fledged inquiry.

7. Learned counsel for the State agrees that at no stage the departmental proceeding was initiated against the petitioner and he has been dismissed from service after issuance of show-cause.

8. I have heard learned counsel for the parties and perused the relevant Rules i.e., Rule 76(b) of Bihar Service Code. The Bihar Service Code contemplates holding of regular



enquiry under Civil Services (Classification Control and Appeal) Rules, 2005 for imposing major punishment including dismissal from service. Proper inquiry in terms of Rule has not been conducted by the Respondent Authorities and the petitioner has been dismissed from service which is a major penalty without any full-fledged inquiry.

9. In view of the aforesaid facts and the law laid down by this Hon'ble Court in the case of ***Dr. Asha Rani (Supra)***, I find force in the submission of the learned counsel for the petitioner. Accordingly, the impugned order (Annexure-1) is set aside with liberty to the Respondent Authorities to initiate proper proceeding in terms of Bihar Civil Services (Classification Control and Appeal) Rules, 2005 and take decision accordingly.

(Anil Kumar Sinha, J)

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