

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17870 of 2015

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Yagyadutta Arya Son of late Lakhan Lal Arya Resident of Mohalla- Manpur ,
P.S Buniyadganj, at and District Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Labour Commissioner, Labour Resources Department, Government of Bihar, Patna.
3. The Deputy Labour Commissioner, Labour Resources Department , Government of Bihar, Patna.
4. The Divisional Commissioner, Munger.
5. The District Magistrate, Munger.
6. The Director , Agriculture Labour, Bihar at Patna.
7. The Deputy Labour Commissioner, Begusarai.
8. The Superintendent of Labour, Munger.
9. The Block Development Officer, Shekhpura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Sinha, Sr. Advocate Mr. Bhola Kumar, Advocate
For the State	:	Mr. Nilotpal Sharma, AC to GP-21

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 20-12-2023

Heard Mr. Alok Kumar Sinha, learned Senior counsel appearing on behalf of the petitioner and Mr. Nilotpal Sharma, AC to GP-21 learned counsel appearing on behalf of the State.

2. The present writ petition has been filed for the following reliefs :-

"A. For issuance of a writ in the nature of certiorari quashing the Notification dated 05.04.2007 published in the newspaper issued by the respondent no. 2 whereby the petitioner had been dismissed from service.



B. For directing the respondents concerned to give all consequential benefit of service to the petitioner forthwith.

C. For passing any other order/s, command/s or appropriate writ/s, which your lordships deem fit and proper in the facts and circumstances of the instant case with cost."

3. While the petitioner was serving as Labour Enforcement Officer in the Sheikhpura Block, a departmental proceeding was initiated against the petitioner behind his back for his unauthorized absence for a period of six months. The petitioner has never received any notice about initiation of departmental proceeding and at the first time he was informed in the month of may, 2013 through his lawyer that he was dismissed from his service by the order dated 29.03.2007. The aforesaid letter has been sent to the lawyer of the petitioner in reply to his legal notice. The aforesaid letter dated 25.09.2007 was issued by the Labour Commissioner annexed whereby it was informed that the petitioner has been dismissed from his service in the terms of Departmental Order No. 12 dated 29.03.2007 contained in Memo No. 1159 dated 29.07.2007. The aforesaid reply to the legal notice, a copy of Gazette notification dated 05.04.2007 was also annexed whereby the petitioner has come to know that a departmental proceeding was initiated against him and vide order dated 16.05.2002 issued



by the Labour Director "*Prapatra-Ka*" and charges have been framed against the petitioner for negligence of duty but the copy of the charge-sheet has never been supplied to the petitioner. It is admitted position that without hearing the petitioner, a departmental proceeding was initiated and concluded against the petitioner on the basis of vague allegations and the petitioner was found partial guilty by the Conducting Officer, the Deputy Labour Commissioner, Begusarai who was conducting Officer of the proceeding. The petitioner was illegally dismissed from service by the Labour Commissioner, Labour Resources Department, Government of Bihar (respondent no. 2) without following the procedure of conducting departmental proceeding. No chargesheet, enquiry report and the dismissal order have been served to the petitioner and an ex-parte order has been passed and the same has not been communicated except publication in the newspaper and reply to the legal notice given by his lawyer.

4. It appears from the aforesaid notification that the period of unauthorized absence was not mentioned and on the other hand it is admitted that the petitioner had communicated the authority by wireless message for extension of leave on the ground of death of his wife. It appears that the petitioner has informed the authority and he was not unauthorized leave rather he was on leave and the authority has knowledge that due to death of his wife, the petitioner was on leave.



5. In the meantime, the Divisional Commissioner, Munger had issued a general transfer order and several Labour Enforcement Officer, Munger had been transferred and the petitioner was one of them but the petitioner was never informed about his aforesaid transfer from Sheikhpura to Sangrampur Block (2), Munger, so the petitioner had not reported in his joining place and it appears from the impugned notification that on 13.05.2006 a show cause notice was sent through speed-post on the address of Sangrampur. It is admitted position that the petitioner had never joined at Sangrampur due to lack of communication. It appears from the impugned notification that the second show-cause has not been given to the petitioner which is against the mandate of Article 311(2) of the Constitution of India.

6. The petitioner was dismissed in terms of Rule 14 (x) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') which is as follows :-

"14(x) removal from service which shall not be a disqualification for future employment under the Government."

7. But the authority has not complied the mandate of 14 of the Rules. In the enquiry report, the petitioner was only found partial guilty which is not sufficient reason for dismissal from service, secondly, the disciplinary authority has created a doubt



about the jurisdiction of the Enquiry Officer but ignoring all the irregularities and the petitioner has been dismissed from service.

8. Learned counsel for the State appears and submits that a departmental proceeding was initiated against the petitioner after follow all the formalities as required under the Rules and due process of law. The petitioner has been dismissed from service and there is no infirmity in the impugned order.

9. In view of the aforesaid and it appears from the aforesaid that there is violation of principle of natural justice and petitioner has not been given opportunity to participate in the proceeding and without following prescribed Rules, the petitioner has been dismissed from service.

10. Considering the aforesaid facts, notification dated 05.04.2007 (Annexure-3) has been set aside and the matter remanded back at the stage of the departmental proceeding and initiate a proceeding afresh after follow the due process of law and natural justice and after serving a copy of proceeding to the petitioner and conclude the same within a period of six months from the date of production of a copy of the order.

11. The writ petition is allowed.

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AFR/NAFR	NAFR
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(Rajesh Kumar Verma, J)

