

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19068 of 2013

Daya Brajeshwar Daya S/O Late Shri Bhuwaneshwar Dayal Resident Of
Vishwa Bhawan, Jamal Road, P.S. - Gandhi Maidan, Dist. - Patna, Presently
Residing At Flat No. 702, Shipra Apartment, Kaushambi, Ghaziabad - 201010

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Health, Medical Education and Family Welfare
Department, Govt. Of Bihar, Patna
3. The Secretary, Family Welfare Department, Govt. Of Bihar, Patna
4. The Under Secretary, Department Of Health, Govt. Of Bihar, Patna
5. The Joint Secretary, Health Department, Govt. Of Bihar, Patna
6. The Director, Department Of Health, Govt. Of Bihar, Patna
7. The Principal, Anugrah Narayan Medical College, Gaya

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanchay Srivastava, Adv.
Mr. Arpit Anand, Adv.
Mr. Sushant Srivastava, Adv.

For the Respondent/s : Mr. Sita Ram Yadav, GP-26
Mr. Jitendra Kumar, AC to GP-26

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 23-01-2023

This writ application has been filed for following
reliefs:-

“(I) For issuance of an appropriate Writ,
Order/s, Direction/s in the nature of Certiorari to
quash the resolution contained in Memo No.
17/Misc.1-42/2000(Sec)-80(17) Patna, dated
24.01.2013 issued under the order of the Governor



of the Bihar whereby and where under the petitioner has been dismissed from Govt. service for absence of the petitioner from his official duty for more than five years.

(II) For issuance of an appropriate Writ, Order/s, Direction/s to the Respondents to quash the Departmental proceeding against petitioner for the charges of unauthorised leave of petitioner for more than five years.

(III) For issuance of any appropriate Writ, Order/s, Direction/s to the Respondents to reinstate the petitioner in services to his post with all consequential benefits including due promotions with due date and its monetary benefits.

(IV) For issuance of any appropriate Writ, Order/s, Direction/s to the Respondents to grant any other relief/s for which the petitioner is found entitled to.”

2. Short facts of the case, as mentioned in the writ application, are that vide Memo No. 368(17) dated 30.04.2010, a departmental proceeding was initiated against the petitioner due to



gross negligence, defiance of the order of the government and remained unauthorisedly absent from duty without permission of the authority concerned. Despite all efforts made for participation in the departmental proceeding, neither petitioner appeared before the conducting officer nor submitted his reply to the charges. The Enquiry Officer found the charges against the petitioner proved, and accordingly, he submitted his enquiry report. Thereafter, another press communique was published on 31.12.2011 in a daily Hindi newspaper "*Rashtriya Sahara*" wherein petitioner was asked to submit his reply / application within 15 days from the date of its publication. In compliance of the aforesaid press communique, petitioner submitted his representation dated 28.01.2012. Thereafter, Health Department issued a letter to the petitioner at his new address, bearing letter no. 253(17) dated 17.02.2012, whereby second opportunity was given to him to represent himself before the authority concerned and submit his reply to the second show cause within one week, but the petitioner failed to submit his reply to the second show cause within stipulated period and as a result, the department of Health, Govt. of Bihar, vide letter no. 587(17) dated 25.04.2012 (Annexure 'J' to the counter affidavit) sent the proposal of punishment of dismissal from service to the BPSC, Patna, which was approved by the BPSC, vide letter no.



1237 dated 29.08.2012 (Annexure 'K' to the counter affidavit) and accordingly, the petitioner dismissed from service, vide resolution of the Health Department, Government of Bihar, (Annexure-1 to the writ application) due to unauthorisedly absence from duty for more than five years on the Board's charges under Rules 14, 17 and 18 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'C.C.A. Rules').

3. It is contention of the petitioner that the order of punishment of dismissal from service has been passed without considering the 2nd show cause reply of the petitioner. Impugned order is violative of principle of nature justice and against the statutory provisions, as contained in Rule 18(3) and (4) of the C.C.A. Rules.

4. It is submitted by learned counsel for the petitioner that petitioner, in response to the second show-cause notice, submitted his reply dated 31.03.2012 through speed post, which is at Annexure – 17 to the writ application. It is further submitted that from bare perusal of memo dated 17.02.2012, it appears that same was signed on 17.02.2012 and dispatched from department on 27.02.2012, which was finally dispatched through post on 29.02.2012, as per postal department receipt. The said letter was



received almost after 15-20 days from the date of dispatch and same was replied by the petitioner within a period of 15 days, as mentioned in the reply to the counter affidavit (Annexure 25).

5. However, learned counsel for the State submits that in spite of repeated reminders when the petitioner failed to file his reply to the 2nd show cause within time, the order of punishment was passed.

6. Considering the fact that it is not in dispute that order of punishment has been passed without considering the reply to the show cause filed by the petitioner. The impugned order i.e. resolution contained in Memo No. 17/Misc.1-42/2000(Sec)-80(17) Patna, dated 24.01.2013 issued under the order of the Governor of the Bihar (Annexure – 1 to the writ application) is set-aside and quashed.

7. It is made clear that since this Court has quashed the order of punishment dated 24.01.2013 (Annexure – 1) on the ground of it being violative of principle of natural justice and against the statutory provisions of C.C.A. Rules, the respondents authorities are at liberty to pass a fresh order after considering the second show cause reply dated 31.03.2012 (Annexure 17 to the writ application) dealing with the defence taken therein by a



reasoned and speaking order within a period of three months from the date of receipt / production of copy of this order.

8. The writ application is allowed with aforesaid observation and direction.

(Prabhat Kumar Singh, J)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.01.2023
Transmission Date	N/A

