

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1798 of 2018
In
Civil Writ Jurisdiction Case No.8370 of 2017

1. The State Of Bihar
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Under Secretary Health Department, Government of Bihar, Patna.
4. The Deputy Secretary, Health Department Government of Bihar, Patna.
5. The Civil Surgeon, Rohtas.

... .. Appellant/s

Versus

Dr. Raghvendra Kumar son of Lare Parmeshwar Narain Singh, Resident of village-Morsand, P.S. Runnisaidpur, District-Sitamarhi.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Arvind Kumar, AC To SC 18
For the Respondent/s : Mr.Vaidehi Raman Prasad Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

8 18-07-2024 The appellants have assailed the order of the learend

single Judge dated 11.04.2018 passed in C.W.J.C. No. 8370 of

2017.

2. On 20th June, 2024 we had passed the following

order and it is as under :

*“It is a case of remand to disciplinary authority
to commence the proceedings from the defective stage. In
the present case, defective stage would be on receipt of the*



Enquiring Officer's report by the disciplinary authority. Sub- Rule 2 of Rule 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity. Bihar CCA Rules, 2005) reads as under:

"18. Action on the inquiry report. (2)

The disciplinary authority, after receipt of the enquiry report as per rule 17 (23) (ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose."

2. Prima facie, the alleged charge is relating to remaining unauthorized absence for more than one year. Contesting respondent being a Medical Officer his absence in the department or hospital resulted in public disruption during his alleged absence period and it is a serious misconduct. No doubt, on technicality contesting respondent has made out a case before the learned Single Judge insofar as quashing the penalty order. However, it was quashed on technicality to the extent of not following certain provisions of Bihar CCA Rules 2005. In such an even it is a case of remand having regard to the fact that alleged charge is relating to remaining unauthorized absence for more than one year. Medical service is an essential service in the State Government. If the contesting respondent remained unauthorized absence is true, in such an event penalty is warranted. Moreover Respondent-Doctor was class-1 officer. he has certain responsibility before remaining unauthorised absence for



more than one year. The Enquiring Officer has exonerated the contesting respondent whereas the disciplinary authority proceeded to ignore in giving finding on disagreeing with the Enquiring Officer's report and issuance of show cause notice, in other words, compliance to Sub Rule 2 of Rule 18 of the Bihar CCA Rules, therefore, it is technical issue and matter requires remand. Be that as it may, learned counsel for the contesting respondent seeks time to furnish necessary materials to show that contesting respondent has not committed any misconduct in respect of alleged allegation relating to remaining unauthorized absence for more than one year during the intervening period from the year 2001 to 2003. The contesting respondent is permitted to produce necessary material to show that he did not remain on unauthorized absence for the aforementioned period. If such material is placed on record, the same would be examined on the next date of hearing. If no material is placed on record in that event we are compelled to modify the order of the learned Single Judge and remand the matter to the disciplinary authority to proceed afresh from the stage of receipt of Enquiring Officer's report, in the light of the order of the Hon'ble Supreme Court's decision in the case of ECIL vs. Karunakaran reported in (1993) 4 SCC 727 read with Chairman-cum-Managing Coal India Ltd. vs. Ananta Saha and Ors reported in (2011) 5 SCC 142. {Para 47 to 50}."

3. Today, learned counsel for the respondent stated



that on 5th July, 2024 supplementary counter affidavit has been filed enclosing certain documents. We posed a question as to what is the intervening period of absence. In that regard, he has furnished Annexure-R/1. It is for a period of 3 days and leave has been sanctioned for 3 days. Thereafter, he continued to remain absent. He has also stated that he was continuously furnishing leave applications, however, the same was not sanctioned by the competent authority. In the absence of sanction of leave for such a long period, this Court cannot condone on judicial side. Therefore, matter is remanded to the disciplinary authority to commence the inquiry from the defective stage and conclude the same within a period of three months from the date of receipt of this order in light of observations made on 20th June, 2024 (cited supra).

4. The respondent is, hereby, directed to co-operate in the disciplinary proceedings in furnishing all those relevant records to the extent that there is no default on his part for remaining absence. Even if the leave is not sanctioned that is required to be regulated to that extent. If he furnishes any document and cites any provision of law under Bihar Service Code, the disciplinary authority/inquiring authority shall take note of and proceed to conclude the proceedings in passing final



order after due consideration of respondent’s version.

The L.P.A. stands allowed in part while modifying the
orders of the learned Single Judge.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

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