

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16792 of 2023

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Ganesh Mallik son of late Shiv Charan Malik, resident of Village-Dihpagra,
P.O. Dihpagra, P.S.-Dalsingh Sarai, District- Samastipur, Bihar.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.
2. The Shashtra Seema Bal through the Director General Force Headquarters, SSB, New Delhi.
3. The Inspector General (Frontier), Headquarters, SSB, Gorakhpur, Uttar Pradesh.
4. The Commandant, 22th Battalion, SSB, Sonapur, District-Kamrup, Metro, Assam

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Kumar Pandey, Advocate
For the Respondent/s : Mr. Additional Solicitor General

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 29-04-2024

Though, the learned Advocate for the respondents is present in Court, he is not in a position to address the Court. On the other hand, he has prayed for one week's time.

2. This Court is not inclined to grant any adjournment in the instant writ petition and this Court proceeds to dispose of the instant writ petition on the basis of submission made by the learned Advocate for the petitioner.

3. Under such circumstances, it is made clear that the learned Advocate for the respondents shall not raise any appearance fees from the Union of India and if such appearance or hearing fees is



charged, the authority shall not make payment from the public exchequer.

4. The petitioner, by way of this writ petition, has prayed for following reliefs:-

“(1) For issuance of an appropriate Writ/Writs, Order/Orders, direction/ directions, for quashing the order dated-13-03- 2023 passed by Dy. Inspector General, SHQ, SSB Gorakhpur vide letter No.EB-260/E.1/1(3)/CC/PF/G.Mallick/22Bn/SHQ/SSB/GKP/2022 /1042-46, by which the appeal dated-10-04-2023 of the petitioner filed against the order dated-08-11-2012 passed by the Commandant, 22nd BN SSB, Sonpur, Assam vide letter no. CRC/ 22nd Bn/PF/CT-SWP/GM/10/9227-38 by which the petitioner has been removed/terminated from the service from the post of Constable (Sweeper), has been rejected.

(ii) For direction to the respondent to re-instate the petitioner in service with all consequences benefits and back wages.

(iii) For any other direction, which your Lordships may deem fit and proper in the facts and circumstances of the case for the end of justice.”

5. Indisputably, the petitioner was working as an Sweeper at Shashtra Seema Bal (SSB, in short). He was appointed to the said post by an order dated 19th June 1993 and he duly joined the Service. It is the case of the petitioner that he was granted Earned Leave for 45 days with effect from 16th November 2011 to 01st January 2012, therefore, on 11.01.2012, the petitioner made an application to the Commandant, 22th Battalion, SSB on 11th June



2012, requesting for extension of Earned Leave by 15 days. The said prayer was not granted by the Commandant, 22th Battalion, SSB. On the contrary, on 08th November 2012, he was terminated from Service on the ground that he was unauthorizedly absent with effect from 01st January 2012 to 06th November 2012 for 310 days.

6. It is contended on behalf of the petitioner that the petitioner prayed for extension of Earned Leave by 15 days due to illness of her mother. Subsequently, her mother died and he was suffering from mental disorder. In support of his contention, he submitted a medical certificate-cum- prescription issued by Dr. Ashok Kumar Prasad, a neuro psychiatrist on 15th January 2012.

7. The neuro psychiatrist found the petitioner dull, anxious, no interest to perform any work, no interest in respect of his surroundings, excessive thinking, tension and irritation, disturbed sleep, loss of appetite, weakness, wants to be alone, excessive fear, feels being chased by others, hearing others voice when he is alone, suspects others talking about him, always feels sad, unworthiness, weeping tendency, talking irrelevant, lack of concentration, etc. He was under medication. Subsequently, on 16th march 2012, he was advised some medication. The Medical Officer reported that though, he improved satisfactorily, but he was having no interest to work, does not like to talk with others, wants



to be alone, feels being chased by others, hearing the voice of others when he is alone, etc. thus, he was suffering from psychiatric depression. After getting the order of termination, he obtained medical certificate from his doctor to the effect that the petitioner was under treatment from 15th January 2012 to 24th November 2012. However, he was terminated from Service with effect from 8th November 2012.

8. He preferred an appeal against the order of termination and the said appeal was dismissed on 13th March 2023.

9. I have already recorded that the petitioner used to work as Sweeper in SSB. He was absent from his job unauthorizedly for about 310 days. He did not make any communication during his unauthorized absence, only after receiving the termination order, he filed a medical certificate that he was under medical treatment from 15th June 2012 to 24th November 2012. The appellate authority did not consider such medical certificate as a ground for his unauthorized leave.

10. The SSB is an uniformed Service who is interested to protect the international borders of this country. In such uniform Service, if an employee remains absent unauthorizedly, his Service is liable to be terminated. Accordingly, the superior authority of the petitioner terminated his service.



11. As noted above, I do not find any illegality or violation of any fundamental or legal right in the order of termination dated 08th November 2012, and the impugned order passed by the appellate authority on 13th March 2023. Therefore, the instant writ petition is, accordingly, dismissed.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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