

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.578 of 2023

In
Civil Writ Jurisdiction Case No.14090 of 2018

=====

Deepak Dwivedi Son of Dr. H.M. Dubey, Resident of 47B/5, Ganesh Nagar, mauryabad, Allahabad, Uttar Pradesh, presently residing at Shiv Nagar, Road No. 1, P.S. Ram Krishna Nagar, District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Additional Secretary to the Govt. of Bihar, General Administration Department, Bihar, Patna.
3. The Under Secretary to the Government of Bihar, Minority Welfare Department, Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr.Prashant Sinha, Adv. Mr. Pandit Jee Pandey, Adv.
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG-3

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 04-03-2025

1. Heard the learned counsel for the parties.
2. The appellant was terminated from service on account of his prolonged absence on account of illness which remained unexplained during the period of probation.
3. His challenge to the order of termination failed before the learned Single Judge, on the ground that the appellant had never been confirmed in service and therefore there



was no requirement before terminating his services to put him to the rigors of domestic proceedings, rejected the writ petition.

4. It further appears from the records that immediately after the appointment of the appellant as an Assistant on 21.02.2014, he was posted in the office of the Resident Commissioner, Bihar Bhavan on 03.04.2014. However, when he was transferred to the Minority Welfare Department of the Govt. of Bihar on 10.10.2014, he proceeded on leave on the ground of illness and remained on continued leave for a long time. The plea of the appellant was rejected and he was given 15 days time to resume his duties, failing which, disciplinary action would be taken for terminating his services.

5. That also could not fetch the appellant to his place of work.

6. He later joined the services on 02.09.2015 along with a certificate of fitness from Allahabad. Since it was election time and there was requirement of man-power, therefore, the General Administration Department, Govt.



of Bihar, accepted his joining. The appellant, thereafter, again went on casual leave, never to return.

7. In the meantime, two years passed by but because of the absence of the appellant, there was no confirmation and, therefore, he remained under probation.

8. It is essential to be noticed in this judgment that the appellant was asked to appear before a Medical Board for confirmation of his medical unfitness to join his duties and to test whether he had been malingering for all this while, but he refused to appear before the Medical Board for reasons inexplicable to the Department.

9. Considering all these aspects of the matter, his services were terminated.

10. The contention raised here in this appeal is that the appellant had crossed the period of probation and therefore without subjecting him to departmental proceeding, his services could not have been terminated.

11. The argument urged on behalf of the appellant is only being noted to be rejected.

12. The Bihar Secretariat Services Act, 2007 would be



applicable to the case of the appellant. Section 10 of the Act of 2007 provides that every person directly recruited to the grade of Assistant shall initially be appointed on probation. The period of probation shall be of two years from the date of appointment. The period of probation may, if the appointing authority deems fit, be extended but the total period of extension of probation shall not in any case exceed three years. In case of service being unsatisfactory in the extended period also, the service of the person may be terminated.

13. Perforce, Section 10 has to be read with Section 12 which provides for the manner in which an employee is confirmed in service.

14. A person appointed on probation after satisfactory completion of probation period as well as on completion of required training and on passing of required departmental examination and passing the test for competency in typing on typewriter or computer, shall be confirmed by the appointing authority.

15. The appellant never joined his duty and, therefore, he



was never confirmed as he never passed the required examination nor did he appear for any competency test for typing on a typewriter or computer. Thus it would be presumed that his period of probation continued and during the period of probation, his services being found to be absolutely unsatisfactory, he was terminated from service.

16. We have no option but to approve the judgment of the learned Single Judge in repelling the contentions raised on behalf of the appellant.

17. The appeal is dismissed.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.03.2025
Transmission Date	N/A

