

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13745 of 2023

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Shyam Kishore Prasad S/o Sone Lal Sah, Resident of Ward no. 2, Amgatta Road, Dumra, P.S. Dumra, District - Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, Sitamarhi.
4. The A.D.M. Sitamarhi.
5. The Deputy Collector (Establishment), Sitamarhi.
6. The Block Development Officer, Choraut, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shailendra Kumar Singh
		Mr. Karu Kumar
For the Respondent/s	:	Ms. Babita Kumari

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CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL
ORAL JUDGMENT

Date : 17-06-2025

Heard learned counsel for the petitioner and learned
counsel for the respondents-State.

2. This petition has been preferred by the petitioner being aggrieved with the order dated 06.06.2020, Annexure-7, whereby and whereunder the break in service of the petitioner for the period from 13.02.2020 to 13.03.2020 (total 30 days) was ordered to be recorded in the Service Book of the petitioner and also challenged the order dated 18.07.2023/21.01.2023, Annexure-8, whereby and whereunder the order of the District Magistrate appertaining to break in service of the petitioner to



be recorded in the Service Book was upheld.

3. The facts, in brief, is that on the basis of the order dated 22.01.2020 issued by the respondent no. 3, Annexure-1, the petitioner joined his services on 25.01.2020 on deputation in the office of Choraut Block, District-Sitamarhi. Since the petitioner was suffering from Hypertension and diabetics and was taken medicine in consultation with the doctor, he made an application for grant of Casual Leave from 13.02.2020 to 15.02.2020 on the medical ground for needful medical treatment vide Annexure-2. The petitioner was having severe back pain and uncontrolled diabetics and hypertension, as advised by the doctor, he again made an application for grant of earned leave for the period of one month vide Annexure-3 dated 17.02.2020. Both the applications submitted by the petitioner were neither rejected nor any decision was taken by the concerned respondent, in stead of that, the District Magistrate vide Memo No. 160 dated 06.03.2020 constituted a Medical Board under the chairmanship of A.D.M., Sitamarhi for enquiry of health issue of the petitioner and the petitioner was directed to be present before the Medical Board and accordingly, the petitioner appeared before the Medical Board and the Board medically examined the petitioner and submitted its report dated



14.03.2020, Annexure-5, whereunder the medical board found the diabetics and hypertension of the petitioner on the higher side and also found lower back pain and the petitioner was advised for taking care to regulate blood sugar and blood pressure. Subsequently, vide impugned order dated 06.06.2020, Annexure-7, the District Magistrate, Sitamarhi passed the order of break in service of 30 days, as mentioned hereinabove, which has also been affirmed by the appellate authority vide impugned order Annexure-8 dated 18.07.2023/21.07.2023 and hence, this petition preferred by the petitioner.

4. Learned counsel for the petitioner would submit that without deciding both the leave applications submitted by the petitioner, the impugned order of break in service has been passed by the District Magistrate, Sitamarhi. Before passing of the said order, no any show cause notice was served to the petitioner, therefore, there is clear cut violation of principle of natural justice in this case. He further submits that on its report dated 14.03.2020, Annexure-5, it is clearly mentioned that blood sugar of the petitioner was found in higher side and it was also found that petitioner is also suffering from backache and the Medical Board also advised some medicines even after the District Magistrate while passing the impugned order,



Anneuxre-7, wrongly arrived at the conclusion that blood pressure and blood sugar of the petitioner is normal. Thus, on this ground the impugned order, Annexure-7 as well as the order passed by the appellate authority, Annexurre-8 are liable to be set aside.

5. Learned counsel appearing for the respondents-State opposes the argument raised by the counsel for the petitioner and submits that since the petitioner willfully absent from his duty for 30 days, the District Magistrate, Sitamarhi has rightly passed the order break in service.

6. Heard learned counsel appearing for the parties and perused the records annexed with the petition.

7. Undisputedly, the petitioner has applied for casual leave for 30 days and subsequently, earned leave of 30 days, which has been fairly admitted by the learned counsel for the respondents-State that till today both the leave applications have not been decided by the concerned authority, meaning thereby, till today both the leave applications, as submitted by the petitioner, is pending.

8. Perusal of the report, which is submitted by the Medical Board, Annexure-5, further shows that it was found by the Medical Board that petitioner is suffering from blood sugar



and at the time of medical examination, his blood sugar was found 220 milligram. The Medical Board also opined that the petitioner is also suffering from backache and some medicines were also advised to the petitioner. Surprisingly, the District Magistrate, Sitamarhi in his order dated 06.06.2020 (Annexure-7) has wrongly arrived at the conclusion that the Medical Board has found blood sugar of the petitioner is normal, therefore, the impugned order, Annexure-7, passed by the District Magistrate is contrary to the report of the Medical Board.

9. It has been admitted by the counsel for the respondents-State that before passing of the impugned order Annexure-7, no show cause notice has been given to the petitioner and the District Magistrate has passed the order on the basis of report of Medical Board. Since no opportunity of hearing has also been provided to the petitioner before passing of the impugned order, on this ground also, the impugned order is liable to be set aside.

10. Resultantly, on the grounds, as discussed above, both the orders Annexure nos.7 and 8 are liable to be set aside.

11. Accordingly, both the orders dated 06.06.2020 (Annexure-7) and 18.07.2023/21.07.2023 (Annexure-8) are, hereby, set aside.



12. The respondents-State are directed to consider and decide the pending application of leave of the petitioner in accordance with the relevant rules and law probably within four weeks from the date of receipt/production of a copy of this order.

13. However, petitioner is at liberty to approach this Court again if the occasion will arise later on.

(Arvind Singh Chandel , J)

shailendra/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	19.06.2025
Transmission Date	NA

