

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2253 of 2024

Prof. Sheikh Mujtaba Hussain Son of Late Sheikh Basharat Ali Resident of
Shaheen Lodge, Opposite Khuda Bakhsh Library, Ashok Rajpath P.S.
Pirbahore, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, Department of Higher Education, Government of Bihar, Patna.
3. Patna University through its Registrar, Patna.
4. Vice-Chancellor, Patna University, Patna.
5. Registrar, Patna University, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate Mrs. Anju Kumari @ Anju Narain, Advocate
For the State	:	Mr. Addl. Advocate General 5
For the Patna University	:	Mr. Manish Dhari Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 13-01-2026

Heard Mr. Rajendra Narain, learned Senior
Advocate for the petitioner and the State as well as Mr. Manish
Dhari Singh, learned Advocate for the Patna University.

2. The petitioner is aggrieved with the order dated
11.04.2019 passed by the Vice-chancellor, Patna University
communicated under the signature of Registrar of the University
vide Letter No. G/7600 dated 20.04.2019 by which the
respondent University communicated that since the earlier
decision dated 12.09.2007, terminating the services of the
petitioner with retrospective effect from 03.07.2002 has been



held to be bad in law by the Court in C.W.J.C. No. 5638 of 2017, therefore under the impugned order dated 11.04.2019 / 20.04.2019, the respondent University has decided to forfeit the past service of the petitioner alleging misconduct. The petitioner also sought quashing of the order contained in Letter No. G/7788 dated 25.05.2019 issued under the signature of Registrar, Patna University informing the petitioner that his past service is forfeited due to misconduct.

3. Briefly stated, the petitioner was initially appointed as a lecturer in the Department of Sociology, B.N. College, Patna University on 28.03.1973. The services of the petitioner was duly confirmed and later on being found eligible was promoted to the post of Reader with effect from 01.02.1985 vide notification no. G/668 dated 21.09.2000. The petitioner was also promoted as University Professor with effect from 29.05.1989 under the University Notification No. G/352 dated 10.01.1991. While performing the duties of the University Professor, the petitioner applied for Study leave from 01.04.2002 with an ambition and desire to write books. The petitioner was asked and assured by the concerned authorities that the formalities of grant of leave applied for would be completed and so the petitioner was asked to make/proceed with



preparation for his book writing work. The petitioner proceeded on Study leave from 03.07.2002.

4. The petitioner's books were published from time to time by different book publishers, however, on completion of the Study leave under the duly approved Statute for the University, which may extend up to five years in appropriate cases, especially in terms with Clause 6 (g) and Article 25 of the said Statutes, when the petitioner returned to join back his service and post in the University, he was informed that the University had already terminated him, but no such letter of termination was ever served on him. The petitioner, on enquiry, came to know that a letter from the Patna University under Memo No. G/2058 dated 12.09.2007 issued under the signature of Registrar, Patna University stating therein that the petitioner's service had been terminated with effect from 03.07.2002. The afore noted order since passed without assigning any reason or any ground nor referring to the provision of law, apart from being cryptic, totally illegal and arbitrary was brought to the knowledge of all the authorities concerned, but all these failed from getting any response and in the meanwhile the petitioner also attained the age of superannuation on 31.12.2010. He finally approached this Court in C.W.J.C. No. 5149 of 2015 and



the same was admitted on 07.07.2015.

5. Learned Senior Advocate while assailing the impugned order has submitted that the past service of the petitioner was forfeited alleging misconduct, but surprisingly without issuance of any show-cause notice or charge memo and without holding any departmental enquiry. Besides the fact that the decision to forfeit the past service has been taken after decade of the superannuation of the petitioner.

6. Referring to the averments made in the writ petition, especially para-15, Mr. Narain, learned Senior Advocate, contended that the University has filed its response in the aforesaid case and categorically admitted the position that the petitioner had applied for extra ordinary leave from 06.07.2001 to 31.03.2002 and further from 03.07.2002 to 31.03.2004, but his application was not accepted by the University at that time and his matter was placed in the meeting of Syndicate where it was resolved that the petitioner should be requested to join the services and accordingly letter no. G/1371 dated 09.09.2004 was issued, but the same could not be delivered due to wrong address. The matter was again placed in the meeting of Syndicate on 20.08.2007 and it was resolved that the services of the petitioner should be terminated with effect



from 03.07.2002. The University specifically contended that under Clause 12(1) of the Statutes, past services of the petitioner's has been forfeited, though the aforesaid clause was not applicable, as there was neither any misconduct nor any legal finding was there in a duly constituted departmental committee. In the meanwhile, the petitioner filed another writ petition, bearing C.W.J.C. No. 5638 of 2017 challenging the said order of termination dated 12.09.2007 holding it illegal and unsustainable, since no order of termination could be made with retrospective effect. However, the learned Court gave liberty to the respondents to take appropriate action in accordance with law after hearing the petitioner and keeping the Rules of service jurisprudence in view.

7. Thereafter, the earlier writ petition, bearing C.W.J.C. No. 5149 of 2015 was also taken by the Court, which was disposed of in terms of the order of the Court dated 29.03.2018 in C.W.J.C. No. 5638 of 2017.

8. Notwithstanding the aforesaid orders passed by this Court when no action was taken, the petitioner filed Contempt Petition, bearing M.J.C. No. 1993 of 2018. In the meanwhile, the Vice-chancellor of the University came out with the impugned order, duly communicated to the petitioner,



through letter no. G/7600 dated 20.04.2019, followed by another letter bearing no. G/7788 stating therein that since retrospective termination is not tenable, therefore, in terms of Rule 12(1) of the University Statutes, the past service of the petitioner stood forfeited due to misconduct by disrespecting the order of the University authority. The University further ordered that the payment of pension and gratuity of the petitioner would be ceased and he could only pray for the amount of GPF, Group Insurance and Leave Encashment.

9. Since the contempt application, bearing MJC No. 1993 of 2018 has finally been disposed off by the Court on 11.01.2024 giving liberty to the petitioner, he could take appropriate action for payment of pending dues, the petitioner challenged the impugned order by filing the present writ petition after disposal of the same.

10. Mr. Narain, learned Senior Advocate advertising to the aforesaid facts, has submitted that on being given liberty by this Court to pass a fresh order in accordance with law, the respondent University again committed further illegality by passing the impugned order referring to Rule 12(1) of the Statutes. Despite the respondents having admitted that any correspondence/communication with the petitioner could not be



made before passing the impugned order, the petitioner has neither been served with any show-cause notice nor any charge memo was issued nor any departmental proceeding had ever been held during his service period till 31.12.2010. For any disciplinary action under Rules 15 and 17 of the Statutes, reasonable opportunity of hearing after framing definite charge/charges with list of witnesses and evidence is *sine qua non*. The charged official must be given opportunity to file his statement of defence and denial of the same by the University. Even for holding and saying about any misconduct said to have been committed by the employee or teacher of the University, it has to adopt and follow the same procedure of holding a departmental enquiry before arriving any such decision. Since the conduct of the petitioner is termed to be misconduct causing stigma, the same cannot be passed without following the principle of natural justice.

11. On the other hand, Mr. Manish Dhari Singh, learned Advocate for the University while refuting the afore noted contention led by the learned Senior Advocate for the petitioner vehemently contended that proposal for sanction of his leave was placed before the Syndicate and after initial leave when the petitioner had applied for fresh extraordinary leave



from 03.07.2002 to 31.03.2004 he was asked to join his service in the University immediately otherwise his service would be terminated. The aforesaid information has also been given to the petitioner vide letter no.G/1371 dated 09.09.2004, but the petitioner did not join his duty, rather asked for extension of leave. The petitioner also submitted his resignation letter on 31.03.2006 on the grounds of indifferent health.

12. In the aforesaid premise, the Syndicate in its meeting decided that his service be terminated with effect from 03.07.2002. Since the order of termination was held to be bad in law on account of retrospective date, the same was again considered by the Vice-chancellor of the University and a fresh impugned order has been passed in terms with Rule 12(1) of the Statutes and his past service is forfeited on the ground of misconduct and non-compliance of the order of the respondent University and tendering the resignation instead of apologizing for his misconduct.

13. Referring to the impugned order as well as as earlier decision dated 12.09.2007, Mr. Manish Dhari Singh, learned Advocate for the University further contended that the reason for his termination i.e. absence without permission was not held to be invalid and the Court in the earlier round of



litigation had found that since the termination of the petitioner has been made retrospective and thus found unsustainable in law, hence fresh order has been passed accordingly by treating the date of termination to be with effect from the issuance of the notification and forfeiting his past service due to misconduct and disrespecting the order of the University, besides tendering the resignation instead of apologizing for his misconduct.

14. Heavy reliance has been placed on a decision rendered by this Court in the case of **Pooja Verma Vs. The Patna University, Patna and Ors.**, reported in **2025(1) PLJR 513** wherein the Court placing reliance upon the decision of the Apex Court in the case of **Vijay S. Sathaye Vs. Indian Airlines Limited & Ors.**, reported in **(2013) 10 SCC 253** has observed that when a government servant willfully absents himself/herself from duty for a long period without giving notice to the employer, he/she can not get the pay for period during which he/she remained absent and it may amount to voluntary abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.

15. Placing reliance upon the afore noted decision, learned Advocate for the University prays for dismissal of the



writ petition.

16. This Court has bestowed the anxious consideration to the submissions advanced by the learned Senior Advocate/Advocate for the respective parties and also perused the materials available on record.

17. In the earlier round of litigation, this Court, while adjudicating the validity of the order dated 12.09.2007, has been pleased to hold that termination order cannot operate from retrospective date and found it unsustainable and accordingly quashed the same. The liberty was made available to the respondents to take appropriate action following the rules contained in the service Statutes applicable to the teachers of the University. In pursuance of the order passed by this Court, as afore-noted, now the University has come out with a fresh order dated 11.04.2019 and rectified its mistake to the extent that the earlier order dated 12.09.2007 may be assumed from the date of its Notification and not w.e.f. 03.07.2002. However, while reviving the termination order, the University further held that the past services of the petitioner was also forfeited due to misconduct on account of disrespecting the order of the University authorities and tendering the resignation instead of apologizing under Rule 12(1) of the Patna University Statutes.



Once the order of termination is consequent to misconduct, the same cannot be proved without any inquiry, is the rule, unless it provides otherwise.

18. Now coming to Rule 12(1) of the Patna University Statutes, it clearly reads that resignation from service, or dismissal or removal from it for misconduct, insolvency inefficiency not due to age or failure to pass a prescribed examination entails forfeiture of past service.

19. So far the resignation tendered by the petitioner is concerned, the same has never been acted upon and even before the order of termination having been passed on account of misconduct; hence plea of tendering the resignation instead of apologizing for his misconduct, is out and out a new ground which is not available to the University, while passing a fresh order in pursuance of the liberty extended by this Court.

20. Before proceeding further and adjudicating the validity of the impugned order, some facts are relevant for consideration, as noted in the impugned order itself. The petitioner, for the first time, applied for extraordinary leave for three months w.e.f. 06.07.2001 and later he applied for extension of his leave up to 31.03.2002. A proposal for sanction of his leave was placed before the Syndicate on 04.10.2002,



whereupon he was asked vide Letter No.G-298 dated 29.03.2003 to submit information regarding the nature of leave which he was availing and where he was at that point of time. The petitioner vide letter dated 31.03.2003 informed the University that he was on extraordinary leave for writing a book till 31.03.2002 and resumed his duty on 01.04.2002. The proposal of sanction of his extraordinary leave from 06.07.2001 to 31.03.2002 was placed again before the Syndicate on 22.05.2004 along with an application for fresh period of extraordinary leave from 03.07.2002 to 30.03.2004. However, it was decided by the Syndicate that the petitioner should immediately submit his joining otherwise his service would be terminated. Accordingly, Letter No.G-1371 dated 09.09.2004 was issued with a direction to join the University.

21. The afore-noted letter has never been served upon the petitioner, rather the concerned respondent himself admitted that the same could not be delivered due to the wrong address. There is no confrontation to the prescription of the Statutes, especially Rule 6(3) that leave cannot be claimed as a matter of right when exigencies of the university service so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it. However, once



the respondent University comes to the conclusion that the past service of the petitioner right from 1973 till 2002, is forfeited on account of misconduct, besides it led to termination of an employee, it will certainly attract the relevant prescriptions of the University Statutes, which deal with the general condition of service of employees of the Universities.

22. Rule 16 of the Statutes clearly mandates that no order of dismissal, removal or reduction shall be passed on a University servant unless he has been informed in writing of the ground on which it is proposed to take action, and has been afforded a reasonable opportunity of defending himself. The grounds on which, it is proposed to take action must be reduced in a definite charge or charges, which shall be communicated to the person charged together with the statement of the allegations and thus he shall be required to put in writing his statement of his defence, if the authority of the delinquent so directs or desires, an oral inquiry shall be held. The delinquent shall also be entitled to produce evidence or to cross-examine the witnesses. After completion of the proper inquiry, the authority competent shall pass appropriate order or impose penalty after serving a copy of the inquiry report followed by a second show-cause notice.



23. Any order of punishment based upon the charge of misconduct, is *per se* stigmatic in nature, besides causing civil consequences and irreparable loss. Hence the same cannot be effected without following the provisions as prescribed under the Statutes. Where Statutes provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner [**Taylor v. Taylor 1875 LR 1 CHD 426**].

24. So far as the legal position is concerned, it is well settled that an employee has a right to abandon the service any time voluntarily by submitting his resignation and alternatively not joining the duty and remaining absent for long. Absence from the duty in the beginning may be a misconduct, but when absence is for a long period, it may amount to voluntary abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer. For the said purpose, the learned Advocate for the University has rightly placed reliance upon a decision of this Court rendered in the case of **Vijay S. Sathaye** (supra) as also in the case of **Pooja Verma** (supra). However, it is needless to observe that to establish voluntary, long term absence from duty by an employee constitutes abandonment and no formal termination order is required.



Conversely, for the purposes of termination, there has to be positive action on the part of the employer, while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it.

25. In the case at hand, this is not a mere abandonment of service leading to forfeiture of past services, rather the petitioner has been subjected to termination on account of misconduct due to unauthorized absence and disrespecting the order of the authorities, in the opinion of this Court, such action could have been justified and get validated only if the prescriptions provided in the Statutes, especially Rule 16 thereof, are followed.

26. This Court, in the afore-noted facts, circumstances and the position obtaining in law, has no hesitation to set aside the impugned order dated 11.04.2019 passed by the Vice-chancellor, Patna University communicated under the signature of Registrar of the University vide Letter No.G/7600 dated 20.04.2019.

27. It is made clear that the petitioner shall not be entitled to any back wages/salary for the period he did not discharge his duty, however, on account of setting aside of the impugned order, he shall be entitled to get all the pensionary



benefits by treating him to be superannuated with effect from the date he attained his superannuation. The entire exercise must be completed, preferably within a period of twelve weeks.

28. The writ petition stands allowed.

29. There shall be no order as to cost(s).

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.01.2026
Transmission Date	

