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**(2013) 12 JH CK 0041**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (S) No. 60 of 2013**

Dr. Shashi Bhushan Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 02-12-2013

**Acts Referred:**

**Citation :** (2013) 12 JH CK 0041

**Hon'ble Judges :** S. Chandrashekhar, J

**Bench :** Single Bench

**Advocate :** R.S.P. Sinha and Rakesh Kumar Sinha, for the Appellant; Prabhat Singh, J.C. to A.A.G., for the Respondent

**Final Decision :** Dismissed

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## Judgement

S. Chandrashekhar, J.—Challenging order dated 28.09.2012 the petitioner has approached this Court. Heard the learned counsel appearing for the parties and perused the documents on record.

2. The brief facts of the case as disclosed in the writ petition are that, the petitioner was posted at M.G.M. Medical College and Hospital at Jamshedpur. He proceeded on leave for five days on 13.11.1998. He reported for duty on 14.11.2003 however, he was not permitted to join and therefore, he gave his joining in the headquarters however, when he tried to perform his duty he was not allowed to join there. On 08.07.2006, a departmental proceeding was initiated against the petitioner by issuing a charge-memo. An enquiry was conducted into the matter in which the petitioner participated. A second show-cause notice was issued to the petitioner and thereafter, penalty order dated 28.09.2012 has been passed terminating the service of the petitioner with effect from 13.11.1998.

3. A counter affidavit has been, filed stating as under,

10. That it is further submitted that the joining of the petitioner was not allowed by the principle of MGM Medical College and Hospital, Jamshedpur. That

thereafter he gave his joining application in the office of Principal Secretary, health Department, Govt. of Jharkhand on 14.11.2003.

11. That the aforesaid request of joining of the Petitioner was turned down. That in the year 2003 a Departmental proceeding was initiated against the Petitioner i.e. vide resolution as contained in memo No. 197(2) dated 08.07.06. Petitioner was asked to submit his explanation to the charge, which was accordingly submitted by the petitioner along with supporting documents before conducting officer. It has been alleged by the Petitioner that the conducting officer set tight over the matter but surprisingly Petitioner in the month of February, 2007 received a letter as contained in memo No. 35(2) dated 12.02.07 issued by Special Secretary, Dept. of Health, Govt. of Jharkhand whereby and whereunder the Petitioner was held guilty since the charges were found to be true and proved. Accordingly the second show cause notice was issued to the Petitioner along with a copy of the enquiry report. Petitioner was once again given opportunity to put his defence if any.

18. That from the fact stated in the present writ petition itself it would be evident that the Petitioner was allowed leave for 5 days only [i.e. 13.11.1998 to 17.11.1998] and after expiry of his leave he remained unauthorizedly, absent, from his duty. According to the Petitioner himself he gave his joining on 14.11.2003, thus he remained absent for more than 5 years. Thus Rule 76 of the Service Code is applicable in the case of the Petitioner. As per the requirement of Rule 76(b) of the Service code, a departmental proceeding was initiated against the Petitioner and was conducted in accordance with law. Petitioner participated in the said departmental proceeding. There has been no violation of principal of natural justice. Petitioner himself did not produce his defense witness. Enquiry report was concluded and the charges were found to be true and proved by the conducting officer. Second show cause notice was given to the Petitioner along with a copy of the enquiry report. Petitioner was again given opportunity to produce his defense, if any. Accordingly thereafter giving all opportunity to the Petitioner he was removed from service after following the prescribed procedure in accordance with law. The consequence of a proceeding under Rule 76(b) of the Service Code is removal from service, thus the contention of the Petitioner that the punishment imposed to him is not at all proportionate to the charges leveled against him is irrelevant and misconceived and fit to be rejected.

4. Heard the learned counsel appearing for the parties and perused the documents on record.

5. Mr. R.S.P. Sinha, the learned Senior Counsel appearing for the petitioner has submitted that, though the petitioner proceeded on leave on 13.11.1998, he reported for duty on 14.11.2003 and therefore, admittedly the absence from duty was less than five years and therefore, the impugned order could not have been passed under Rule 76(B) of the Jharkhand Service Code as it would not be applicable in this case. He has further submitted that, though the petitioner gave

his joining on 14.11.2003, he was not permitted to join and the statement made by the petitioner has not been controverted by the respondents in the counter-affidavit filed in the present proceeding.

6. As against the above, the learned counsel appearing for the respondents reiterated the stand taken in the counter-affidavit and submitted that, the petitioner remained absent from duty unauthorisedly. A departmental proceeding was initiated against the petitioner in which he participated and full opportunities was granted to the petitioner. On conclusion of the enquiry, the disciplinary authority passed the order of penalty which is just and fair.

7. On a perusal of the documents on record, I find that though a statement has been made by the petitioner that he gave his joining on 14.11.2003 and he was not permitted to join his post, no material has been brought on record to indicate that after 14.11.2003, the petitioner was paid any salary. To a query to the learned Senior counsel appearing for the petitioner, whether the petitioner has been paid any salary during this period, the learned counsel has conceded that the petitioner was not paid salary during this period. The learned Senior counsel appearing for the petitioner has further submitted that, during the period of absence, no departmental proceeding was initiated against the petitioner and suddenly, on 08.07.2006 a charge-memo was served upon the petitioner and an enquiry was initiated against the petitioner which is not justified. I find that the petitioner proceeded on leave on 13.11.1998 and he did not report for duty. Though the petitioner has taken a plea that he remained absent from duty due to illness of his father and his own illness and he sent intimation to the department through registered post. I find that the application seeking extension of leave was not accepted by the department and the leave granted to the petitioner has not been extended by the respondent authority. The impugned order dated 28.09.2012 would disclose that the said order has been passed with the prior approval of the Jharkhand Public Service Commission, the departmental Minister as well as the Hon"ble Chief Minister of the State. The petitioner has admitted that he remained absent after 13.11.1998 and he allegedly tried to give his joining on 14.11.2003 however, he did not approach the Court for redressal of his grievance and therefore, the stand taken by the petitioner cannot be accepted. In view of the aforesaid, I find no merit in the writ petition and accordingly, it is dismissed.