
(2013) 10 PAT CK 0063

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16773 of 2012

Jay Prakash

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Citation : (2013) 4 BBCJ 475

Hon'ble Judges : Rakesh Kumar, J.

Bench : Single Bench

Advocate : Mr. Vipin Kumar, Advocate, for the Petitioner; Mr. Shyam Kishor Sharma, GA3, for the Respondent

Final Decision : Disposed Off

Judgement

Rakesh Kumar, J.— Heard Sri Vipin Kumar, learned counsel for the petitioner and Sri Himanshu Kumar, learned A.C. to Govt. Advocate no.3, who appears on behalf of all the Respondents.

2. The present writ petition has been filed with a prayer to quash an order, contained in Memo No.147 dated 04.06.2010 passed by Respondent no.3 i.e. Joint Director, Agriculture, Patna Division, Patna, whereby the petitioner was dismissed from service due to unauthorized absence. For unauthorized absence, proper departmental proceeding was initiated and despite service of notice affected through substituted service, the petitioner did not choose to participate in the departmental proceeding and finally the impugned order of dismissal was passed. The petitioner has further prayed for quashing of order, contained in letter no.941 dated 04.06.2012 passed by the Respondent no.2/Director, Agriculture, Bihar, Patna, whereby the appeal preferred by the petitioner against the order of dismissal was rejected on the ground of limitation itself.

3. In the present case, no counter affidavit has been filed and for the first time the writ petition has been taken up. Keeping in view the fact that the order of the appellate authority assigns no reason, even for dismissal of appeal on the ground

of delay, the Court is of the opinion that the writ petition can be disposed of at this stage itself. The appeal preferred by the petitioner against the order of dismissal from his service has been rejected in view of provision, contained in Rule 25 of the Bihar Government Servant (Classification, Control and Appeal) Rules 2005.

4. Learned counsel for the petitioner submits that in Memo of appeal itself, the petitioner had given adequate explanation for delay in filing the appeal. He submits that once a specific plea was taken showing reasonable cause for delay in filing the appeal, the appellate authority even in case of dismissal of the appeal on the ground of limitation was required to assign some reason regarding his non-satisfaction on delayed appeal.

5. In view of facts and circumstances, without making any comment or giving observation on merit of the case, the writ petition stands disposed of by way of setting aside the order dated 04.06.2012 passed by Respondent no.2 and remitting back the matter to the same authority i.e. the appellate authority to re-examine the same and pass appropriate order in accordance with law. Even if the appellate authority is not satisfied with the reason for filing the appeal at belated stage, the appellate authority is required to indicate some reason. Accordingly, the matter is remitted back to the appellate authority with above observation and direction. The Court expects that the learned Appellate Authority may decide the issue in accordance with law preferably within a period of four months from the date of receipt/production of a copy of this order.

6. With above observation and direction, the writ petition stands disposed of.