

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A No. 142 of 2025

1. The State of Jharkhand through its Secretary, Department of Human Resource Development Department, Govt. of Jharkhand, Dist.-Ranchi, PO+PS+Dist.-Ranchi
 2. The Director, Primary Education, Human Resource Development Department, Govt. of Jharkhand, Dist.-Ranchi, PO+PS+Dist.-Ranchi
 3. The Deputy Commissioner, Palamu, Dist.-Palamu, PO+PS+Dist-Palamu
 4. The Regional Deputy Director of Education, Palamu, Dist.-Palamu
 5. The District Superintendent of Education, Palamu, PO+PS+Dist-Palamu
- **Appellant(s)**

Versus

Nandu Ram, son of Late Birju Ram, resident of PO Tolra, PS Rehla Block, District-Palamu, Jharkhand

... .. **Respondent(s)**

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Appellant(s) : Mr. Ashwini Bhushan, AC to Sr. SC-II
For the Respondent(s) : Mr. Prem Pujari Roy, Advocate

JUDGMENT

CAV on 30/03/2026

Pronounced on 09/04/2026

Per Deepak Roshan, J.

1. This intra Court appeal is directed against the order dated 16.04.2024 passed by the learned Single Judge in W.P.(S) No. 6782 of 2016; whereby the learned writ Court has quashed the order of punishment and further directed the respondents in writ application to reconsider the case of the writ petitioner for inflicting punishment other than dismissal/removal/compulsory retirement.

2. Briefly stated, the respondent-writ petitioner (in short, writ petitioner) was appointed on the post of Assistant Teacher vide letter dated

31.12.1999. After serving for more than three years, he has fallen ill. Thereafter, he proceeded on leave for his proper check up and upon investigation, the Doctor had informed him that he was suffering from acute depression and accordingly he was advised to take proper treatment.

Upon such advice of the Doctor, the writ petitioner sent an application for extension of leave through registered post to the District Superintendent of Education as well as to the Principal, Government Middle School, Birshrampur, Palamau where he was posted at that time.

The fact further reveals that after a gap of almost seven years when the writ petitioner was declared medically fit, he approached the school on 19.01.2012 to rejoin his services; however, the same was refused by the Principal of the School. Thereafter, the writ petitioner represented several authorities but he could not succeed and being aggrieved by the inaction of the State authorities, he was forced to file a writ application being *W.P.(S) No. 4225 of 2014* primarily praying for a direction upon the respondent-authorities to accept his joining; however, during pendency of the aforesaid writ application, his claim for rejoining was rejected by the authorities vide order dated 14.09.2014 and by way of interlocutory application the writ petitioner had also assailed the said order.

This Court after hearing the parties quashed and set aside the order of dismissal dated 14.09.2014. However, a liberty was given to the respondents in writ application to proceed against the writ petitioner in terms of Rule 74(b) of the Jharkhand Service Code. Pursuant to the said

order passed by this Court in earlier round of litigation, a disciplinary proceeding was initiated against the writ petitioner by framing charge dated 10.05.2018 which contained three charges.

During enquiry proceeding, the writ petitioner duly participated and finally the enquiry officer submitted its report to the disciplinary authority holding that two out of three charges were not proved. However, the charge regarding absenteeism was proved. Thereafter, the disciplinary authority after considering the enquiry report and after getting reply to the second show-cause notice, had again passed the order of dismissal with effect from 14.09.2004 vide order dated 27.10.2018. This order was challenged by the petitioner in the instant case by way of filing *W.P.(S) No. 6782 of 2016*.

3. It transpires from record that pursuant to the order passed by the writ Court in earlier round of litigation; though a regular proceeding was initiated but the writ petitioner was not held guilty for the charge nos. (i) and (ii). Further, for charge no. (iii) it was the opinion of the enquiry officer that it requires consideration in view of sympathetic situation.

4. Learned writ Court has given a categorical finding that the writ petitioner was able to satisfy the Court that the absenteeism was due to compelling circumstances. Learned Single Judge has also referred the judgment passed in the case of “*M. V. Bijlani v. Union of India & Ors.*”¹ wherein the Hon’ble Apex Court has held that though the jurisdiction of

¹ (2006) 5 SCC 88

the Court in judicial review is limited; however, the disciplinary proceedings being *quasi-criminal* in nature, there should be some evidence to prove the charge and after giving all these findings quashed the order of punishment dated 27.10.2018 and further directed the appellants herein to reconsider the case of the writ petitioner for inflicting punishment other than dismissal, removal, compulsory retirement. In other words, the learned writ Court on the question of quantum of punishment has remitted the case to the disciplinary authority in view of the fact that the absenteeism was due to compelling circumstances and it was not a willful absenteeism.

5. Being aggrieved by the order passed by the learned writ Court the State is in appeal.

6. Ld. Counsel for the appellants submits that from bare perusal of the enquiry report it appears that the charges against the writ petitioner have been duly proved and there is no procedural irregularity and the Ld. writ Court has failed to appreciate that the writ petitioner was unauthorizedly absent for seven years continuously and under Rule 76 of Service Code, this was the only punishment; as such, the order passed by the Ld. Single Judge for reconsidering the matter on the question of quantum of punishment is without any basis.

7. After going through the entire record, it appears that an interlocutory application being I.A No.13211 of 2025 has also been filed for condoning the delay of 194 days in filing the appeal. But this Court has

decided to proceed this case on merit.

8. Having heard learned counsel for the appellants and after going through the documents annexed with the memo of appeal it appears that earlier the writ petitioner filed a writ application being W.P.(S) No. 4225 of 2014 wherein the only prayer of the writ petitioner was for a direction upon the respondents to allow him to join his service. The said writ application was partly allowed in favour of the writ petitioner and the impugned order dated 14.09.2014 was quashed. For brevity, relevant portion of the order passed in W.P.(S) No. 4225 of 2014 is extracted hereinbelow:

“As per Rule 76(b) of the Bihar Service Code, a Government servant can be removed from service, if he remain absent unauthorisedly for more than five years after following the procedure laid down in the Civil Services (Classification, Control and Appeal) Rules, 1930 and Bihar and Orissa Subordinate Services Discipline and Appeal Rules, 1935. Admittedly, in the instant case, as per the aforesaid rule no departmental proceeding initiated against the petitioner nor the petitioner was given any opportunity of hearing.

Under the said circumstances, I find that the impugned order dated 14.08.2014 cannot be sustained being violative of principles of natural justice.

Accordingly, I quash the impugned order dated 14.08.2014 and direct the respondent no.5 to initiate a proceeding against the petitioner as per Rule 76(b) of Bihar Service Code and after giving full opportunity of hearing to the petitioner, the respondent no.5 shall pass fresh order in accordance with law.

With the aforesaid observation and direction, this writ application stands allowed.”

9. Pursuant thereto; a regular departmental proceeding was initiated in which the enquiry officer has categorically held that charge nos. (i) and (ii) are not proved and regarding charge no. (iii) the enquiry officer opined that it requires consideration in view of the admitted position that the writ petitioner was suffering from mental illness.

10. The learned writ Court has given a specific finding that though the appellants herein were directed to initiate a regular proceeding under Rule 76 of the Jharkhand Service Code but since the enquiry officer has exonerated the writ petitioner from first two charges and also for the charge no.(iii) he has given a finding that it requires consideration; then certainly the order of punishment is not commensurate with the charges. The learned writ Court has also relied upon the judgment passed in the case of “*Krushnakant B. Parmar v. Union of India & Anr.*”² wherein the Hon’ble Apex Court has held that if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful.

11. After going through the entire record, it does not transpire that the appellants herein have been able to demonstrate that the absence was willful. As a matter of fact, when the writ petitioner went on leave for the first time and was treated by the Doctor; the doctor opined for a better treatment since the writ petitioner was suffering from acute depression, and therefore, the writ petitioner also sent a letter to the appellants herein for extension of leave but the treatment continued for seven long years and finally after receipt of fitness certificate; the writ petitioner wanted to join the duty.

Thus, by any stretch of imagination, it cannot be said that the absenteeism was willful. Furthermore, neither before the writ Court; nor before us, Ld. Counsel for the appellants could demonstrate that the

² (2012) 3 SCC 178

absenteeism was willful and it was not due to compelling circumstances.

12. Having regard to the aforesaid discussion and the factual background, we are of the considered opinion that the learned writ Court has rightly quashed the order impugned treating it to be unduly harsh and directed the appellants herein to reconsider the case of the writ petitioner by inflicting any lessor punishment other than dismissal, removal and compulsory retirement. As such we are not inclined to interfere with the order passed by the learned writ Court.

13. This appeal has also been filed with a delay of 194 days and no satisfactory explanation has been given by the appellants.

14. Accordingly, the instant appeal is dismissed, both on merit as well as on limitation.

15. Pending I.A. for stay of the proceeding, is accordingly dismissed. However, there shall be no order to cost.

(M.S. Sonak, C.J.)

(Deepak Roshan, J.)