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**(2010) 07 PAT CK 0186**

**Patna High Court**

**Case No:** C.W.J.C. No. 3852 of 2004

Kameshwar Jha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision:** July 19, 2010

**Citation:** (2011) 128 FLR 362

**Hon'ble Judges:** A.K. Tripathi, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

A.K. Tripathi, J.

Heard learned Counsel for the Petitioner and learned Counsel for the State.

Petitioner wants quashing of the order dated 27.3.2002 which has been passed by the Collector, Samastipur by virtue of which the period from 1st September, 92 till the date of passing the impugned order was treated against the Petitioner to be unauthorized leave. The disciplinary authority passed a direction that he shall not be entitled for payment for those periods treating to be breakage of service.

2. Submission of learned Senior Counsel is that the order per se is arbitrary and illegal since the period the Petitioner was supposed to be on unauthorized leave till passing of the order by the disciplinary authority has no co-relation whatever. It is not the case of the Respondents that the Petitioner never surfaced and did not participate in the enquiry. If the Petitioner was put under suspension for the period of his unauthorized leave and the departmental proceeding was initiated, conducted and report given then that period cannot be treated as unauthorized absence as the disciplinary authority was exercising control over him during the course of departmental enquiry. Obviously the disciplinary authority has got carried away while awarding the punishment in question.

3. The stand of the State in the counter affidavit is that the Petitioner was missing. He had to be put under suspension and as he was not performed (sic-- performing ?)

his official duty therefore, there was no question of treating him to be in service.

4. An employee cannot be expected to perform responsibility while under suspension. The suspension was part and parcel of the exercise of holding a departmental proceeding. Just because the departmental proceeding has dragged on for many years then the period when the Petitioner went on unauthorized leave till the period the punishment order came to be passed cannot be declared to be period of unauthorized leave. No rule has been produced on behalf of the Respondents to justify taking such a view in this regard.

5. The order being not supported by any rule or regulation per se requires re-consideration. The order dated 27.3.2002 contained in Annexure-1 is quashed.

6. This writ application is allowed with a direction upon the District Magistrate, Samastipur to pass a fresh order on the question of punishment.