

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3703 of 2015

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Chandravanshi Ram Son of Shri Rajendra Ram, Resident of village-
Samahuta, P.S.- Pippa, P.S.- Karahgar, District- Rohtas

.... Petitioner/s

Versus

1. The Bihar Police Building Construction Corporation, Kautilya Nagar, Patna, through its Secretary
2. The Secretary, Bihar Police Building Construction Corporation, Kautilya Nagar, Patna
3. The Executive Engineer, Bihar Police Building Construction Corporation, Magadh Division Camp, Dehri-on-sone

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Brisketu Sharan Pandey, Adv

For the Respondent/s : Mr. Prasoon Sinha GA-2

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL ORDER

3 13-04-2015 Heard learned counsel for the parties.

The prayer of the petitioner in this writ
application reads as follows:-

“For quashing the order dated 03.09.2014 bearing memo no. 3922 issued under the signature of respondent no. 2 whereby and whereunder the services of the petitioner as Junior Engineer has been terminated owing to misconduct that he has extended his leave beyond the leave granted by the respondents.

Further the respondents be directed to consider the candidature of petitioner for discharging of his duty as he was doing prior to the order of the impugned order.

Further the order dated 03.09.2014 be held to be bad in law as the same has been passed without giving a show cause to the petitioner and without considering the fact the petitioner offered his joining which was accepted and subsequently owing to his arrest he could not discharge his

duties.

For directing the respondents to pay the salary of the petitioner from 03.09.2014 until the disposal of the present writ application as the respondents are restraining the petitioner to discharge of his duties and ultimately have terminated his services by the impugned order.”

Learned counsel for the petitioner in support of the aforementioned prayer has basically concentrated on the aspect that the impugned order terminating the services of the petitioner with immediate effect is bad on two counts:-

(i) Firstly, because the petitioner's tenure of contract was still to continue till 31.10.2014 but then he was unceremoniously removed even without completion of his tenure.

(ii) Secondly because such order of termination was passed not only in violation of the principles of natural justice i.e. without giving any show cause notice and/or opportunity of hearing but also by declaring the services of the petitioner in the Bihar Police Building Construction Corporation (hereinafter referred to as the Corporation) to be unsatisfactory.



According to learned counsel for the petitioner, such stigma given to the petitioner and that too without following the principles of natural justice cannot be countenanced in law and therefore, this Court should quash not only the impugned order contained in Anneuxre-1 but also issue direction for reinstatement of the petitioner in service and direct the authorities to consider the show cause reply filed by the petitioner in response to the letter dated 14.03.2015 as contained in Annexure-H to the counter affidavit.

Learned counsel for the Corporation on the other hand having filed his counter affidavit has submitted that not only the petitioner was working on contract but in fact was never entitled for such leave alike the regular employees and in fact the moment he had gone without leave being sanctioned by the competent authority, he cannot be heard to say that his contract did not come to an end on account of his own conduct. He has also explained that the petitioner was taken into custody in



connection with a serious offence relating to murder and yet the petitioner had suppressed this information by not informing anyone in the Corporation. Learned counsel for the Corporation, therefore has justified the impugned order both on account of the terms and conditions of the contract as also conduct of the petitioner.

In the considered opinion of this Court, whatever could have been the conduct of the petitioner, he could not have been removed from service if there was any allegation pending against him. Here, in this case there were two allegations against the petitioner as per the report of the Executive Engineer. Firstly, that he had proceeded on long leave for a period of more than one month without its being sanctioned by the competent authority i.e., the Executive Engineer and secondly, the petitioner was found to have involved himself in a criminal case for which he was taken into custody. Thus if such report of the Executive Engineer, was received in the headquarter and the same was to be acted upon for



terminating his service on aforesaid allegations the petitioner was at least entitled for a show cause notice giving an opportunity to explain his conduct.

The impugned order could have been passed after considering such show cause reply of the petitioner or even in absence thereof, if the petitioner could not have chosen to file his reply. That however having been admittedly not done as is apparent from the reading of the impugned order as well as counter affidavit, this Court will have no option but to hold the stigmatic order of termination of the petitioner as contained in Annexure-1 to this writ application, is bad only on account of violation of principles of natural justice. If such order of termination is allowed to remain on record the petitioner will never get any employment despite his being ultimately acquitted of his charge in criminal case.

In that view of the matter, the order of termination of the petitioner as contained in Annexure-1, is hereby quashed. As a result of the quashing of the impugned



order, the petitioner need not be reinstated in service of the Corporation because his last term of 11 months of contractual appointment had already come to an end on 31.10.2014. In fact the order which was produced by the petitioner being of earlier date could have taken him to date of 11.02.2015, but then the subsequent order dated 04.06.2014 had also given him contractual period of service up to 31.10.2014. Admittedly, on 31.10.2014, the petitioner was in jail and could get bail only sometime in the month of January-2015 as is also being claimed by the learned counsel for the petitioner. Therefore, there would be no question of reinstatement of the petitioner back in service. The petitioner was not a regular employee of the Corporation and in fact was not entitled for one month medical leave as per the terms and conditions of the contract of his service.

In that view of the matter when, such medical leave was also neither admissible nor sanctioned to the petitioner as per the report of the Executive Engineer

dated 05.08.2014, and this Court will have no difficulty in holding that the reinstatement of the petitioner in Corporation will not be possible even as per the terms and conditions of the contract of service of the petitioner with the Corporation.

It is a different thing that the petitioner has been subsequently during the pendency of this writ application asked to explain his conduct for the purpose of his being taken back in service of the Corporation vide letter dated 14.03.2015. This Court however will not like to make any observation in this regard but if the petitioner files his reply to the aforesaid notice dated 14.3.2015, the same should be considered strictly in accordance with law as per the terms and conditions of the contract.

With the aforementioned observation this application is disposed of.

(Mihir Kumar Jha, J)

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