

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12009 of 1998

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Dilip Mallick, son of late Bindeshwar Mallick, resident of Mohalla-Choklokman, Ward No.3, Gudri Dom Toli, P.S. Dalsingsarai, Distt. Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
 2. Secretary, Urban Development Department, Bihar, Patna
 3. District Magistrate, Samastipur
 4. S.D.O.-Cum-Chairman, Notified Area Committee, Dalsingsarai, Samastipur
 5. Vice Chairman, Notified Area Committee, Dalsingsarai, Samastipur
 6. B. D.O. Dalsingsarai, Samastipur
 7. Notified Area Committee, Dalsingsarai, Samastipur
- Respondent/s

with

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Civil Writ Jurisdiction Case No. 6407 of 1999

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Smt.Sita Devi No.1, wife of Shri Shankar Ram, resident of Bhagwanpur Chok-sekhu, Ward No.2 P.S. Dalsingsarai, District Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
2. Secretary, Urban Development Department, Bihar, Patna
3. District Magistrate, Samastipur
4. S.D.O.-Cum-Chairman, Notified Area Committee, Dalsingsarai, Samastipur
5. Vice Chairman, Notified Area Committee, Dalsingsarai, Samastipur
6. B. D.O. Dalsingsarai, Samastipur
7. Notified Area Committee, Dalsingsarai, Samastipur Ors

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 246 of 1999

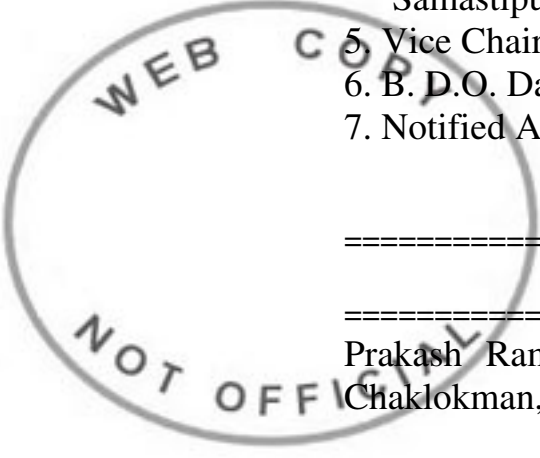
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Prem Lal Ram, son of Late Mauzi Ram, resident of Mohalla-Sardarganj, Nawadah, P.S. Dalsingsarai, District Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
2. Secretary, Urban Development Department, Bihar, Patna

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3. District Magistrate, Samastipur
 5. S.D.O.-Cum-Chairman, Notified Area Committee, Dalsingsarai, Samastipur
 5. Vice Chairman, Notified Area Committee, Dalsingsarai, Samastipur
 6. B. D.O. Dalsingsarai, Samastipur
 7. Notified Area Committee, Dalsingsarai, Samastipur. Respondent/s with

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Civil Writ Jurisdiction Case No. 247 of 1999

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Prakash Ram, Son of Late Motilal Ram, resident of Village – Chaklokman, Ward No.3, P. S. Dalsidsngsarai, District- Samastipur
 Petitioner/s

Versus

1. The State of Bihar
2. Secretary, Urban Development Department, Bihar, Patna
3. District Magistrate, Samastipur
6. S.D.O.-Cum-Chairman, Notified Area Committee, Dalsingsarai, Samastipur
5. Vice Chairman, Notified Area Committee, Dalsingsarai, Samastipur
6. B. D.O. Dalsingsarai, Samastipur
7. Notified Area Committee, Dalsingsarai, Samastipur.... Respondent/s with

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Civil Writ Jurisdiction Case No. 248 of 1999

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Dev Narain Ram, Son of Bhagwan Ram, resident of Rain Basera, Old Sub-Division, P.S. Dalsingsarai, District-Samastipur
 Petitioner/s

Versus

1. The State of Bihar
 2. Secretary, Urban Development Department, Bihar, Patna
 3. District Magistrate, Samastipur
 7. S.D.O.-Cum-Chairman, Notified Area Committee, Dalsingsarai, Samastipur
 5. Vice Chairman, Notified Area Committee, Dalsingsarai, Samastipur
 6. B. D.O. Dalsingsarai, Samastipur
 7. Notified Area Committee, Dalsingsarai, Samastipur.... Respondent/s
- =====

Appearance:

(In all writ petitions)

For the Petitioner/s : Mr. Dharmesh Kumar,
 With Amrendra Nath Biswas

For the Respondent/s : Mr. Dhruv Narayan, Sr. Advocate
With Mr. O.P. Agarwal, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
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ORAL JUDGMENT
Date: 15-04-2015

1. I. A. No. 2621 of 2015 has been filed in CWJC No. 12009 of 1998 for substituting the name of son of petitioner, Bindeshwar Mallick, who is said to have died on 15.08.2004, during the pendency of this writ application. It has been stated in the application that the petitioner, proposed to be substituted in place of the original petitioner, Bindeshwar Mallick, is working as manual labourer and he was not aware of the present case which caused delay in filing the substitution application. Mr. Dhruv Kumar, learned counsel appearing on behalf of respondent- Notified Area Committee (now Nagar Parishad) has no objection to such substitution. I. A. No. 2621 of 2015 is allowed. Let the name of original petitioner, Bindeshwar Mallick, be expunged from the cause title of CWJC No. 12009 of 1998 and in his place name of his son, as described in paragraph 1 of the interlocutory application, be substituted. A duly executed vakalatnama by the substituted petitioner has already been filed, and has been duly represented by his counsel.

2. The facts and the issues involve in present batch of writ applications under Article 226 of the Constitution of India are

almost identical and therefore, with the consent of the parties have been heard together and are being disposed of by present common judgment, with the consent of the parties.

3. The petitioners in the present batch of writ applications were appointed as Safai Karmcharies in the erstwhile Notified Area Committee (now Nagar Panchayat), Dalsingsarai. They have challenged the orders dated 03.07.1998 passed by the Chairman-cum-Sub Divisional Officer, erstwhile Notified Area Committee, Dalsingsarai, whereby, they have been dismissed from service on the basis of confession of their guilt of misconduct. The orders dated 03.07.1998 have been passed separately in case of all these petitioners on the same date and on identical grounds.

4. This is to be noted that CWJC No. 12009 of 1998 was earlier heard by this Court on 27.11.1999. Despite valid service of notice upon the respondents, since there was no representation on their behalf, this Court by an order dated 27.11.1999 had disposed of the said writ application in following terms:-

“27.11.1999. Heard counsel for the petitioner. No one appears on behalf of the respondents 4,5 and 6 despite valid service of notice.

The Safai Karmcharies of the Notified Area Committee, Dalsingsarai, Samastipur struck work and sat on Dharna demanding payment of their monthly salaries which were not paid to them for the past 28 months. The petitioner was one of the Safai Karmcharies striking work and sitting on Dharna. For taking the agitational course to press their demand for payment of their monthly salary the



striking workers including the petitioner were put under suspension by office order dated 31.3.1997. The suspension order was followed by the issuance of charge sheets, running into several pages, to each of the concerned workmen. In response to the charge sheet each of the concerned workmen apparently filed petitions in which their guilts were admitted and a prayer was made to forgive them for the misconduct and to make payment of their arrears of salary. In reply to the prayer for forgiveness each of the workmen, including the petitioner received order of dismissal, dated 3.7.1999.

I am wholly dissatisfied with the manner in which the entire episode is being presented to have developed and I am not convinced that the admission of guilt was genuine, voluntary and at arms length. It appears more likely to me that the workmen were induced to submit the admission of guilt on the promise or understanding that their admitting the guilt they will be forgive and would be taken back in service. But once they made their admission in black and white and, thus, cut their hands off, the retribution came by throwing them out of service. Lurking behind the veil of appearance I find victimization and unfair labour practice and I am also unable to overlook the fact that the workers were sitting on Dharna for payment of their monthly salary which was not paid to them for the past 28 months.

Having regard to the aforesaid facts and circumstances, I am constrained to intervene in this matter and I accordingly set aside the order of dismissal, dated 4.7.1998 passed against the petitioner. The petitioner will be, therefore, deemed to be in service and entitled to his back wages etc.

I further direct the District Magistrate, Samastipur to have the entire matter reviewed and re-examined. In case on the basis of the preliminary enquiry the District Magistrate has reasons to believe that the petitioner was guilty of any misconduct, he will give appropriate directions for initiating disciplinary proceeding against him which would proceed and conclude in accordance with law. While taking a decision on this question, the District Magistrate shall bear in mind that the petitioner and the other workers were not paid their monthly salary for the past 28 months and this was the main factor which had led to the strike and their sitting on

Dharna. In order to facilitate an early disposal of the case, the petitioner is directed to appear before the District Magistrate, Samastipur with a copy of this order by December 20, 1999. It is expected that the Collector will pass appropriate orders in this matter within two months from the date of appearance of the petitioner. In case no order is passed within that time the matter will stand closed and no further proceeding will be taken against the petitioner.

The petitioner will be entitled to his salary and allowances till date and his future salary will abide by the orders passed by the District Magistrate, Samastipur.

This writ petition is disposed of with the aforesaid observations and directions.

Sd/-
(Aftab Alam)”

5. Other writ applications, for one reason or the other had remained pending and were subsequently admitted for final hearing. In the meanwhile, the erstwhile Notified Area Committee preferred an appeal under the Letters Patent of this Court vide LPA No. 794 of 2000 (Yugal Kishore Choudhary, Vice Chairman, Notified Area Committee, Dalsingsarai, Samastipur Vs. State of Bihar & ors) against the order of this Court dated 27.11.1999 passed in CWJC No. 12009 of 1998, the entire text of which has been quoted hereinabove. The only point which erstwhile Notified Area Committee took before the Division Bench of this Court in LPA No. 794 of 2000 that because of the fault on the part of the office of the learned counsel representing the Notified Area Committee, there was no representation on behalf of the Notified Area Committee before

learned Single Judge when CWJC No. 12009 of 1998 was taken up and disposed of. The Division Bench, accepting the plea as taken on behalf of the respondent Notified Area Committee passed the following order on 4.1.2001:-

“4.1.2001. Heard the learned counsel for the parties on the point of limitation.

Having regard to the facts stated in the limitation petition, the delay in filing the appeal is condoned.

This appeal is directed against the order dated 27.11.1999 passed in CWJC No. 12009 of 1998 by a learned Single Judge of this Court whereby he has set aside the order of dismissal passed by the authority and directed the District Magistrate to inquire into the matter and take appropriate action.

The only point that has been pressed on behalf of the learned counsel for the appellant that there was no appearance on behalf of the appellant who are respondents in the writ application due to fault of the office of the learned counsel. It appears that at the stage of admission, notice was issued to the appellant-respondents, (The Chairman of the Notified Area Committee and others) by order dated 5.7.1999. The notices were validly served. Thereafter when the case was taken up for admission, no body appeared on behalf of the appellant and other respondents and the learned Single Judge disposed of the writ application on the basis of the averments made in the writ application and the submissions made on behalf of the writ petitioners. It is stated in the memo of appeal that after service of notice, a vakalatnama was given by the appellant to Srid Ashok Kumar Choudhary, Advocate which was received by his Clerk, but the same could not be filed due to inadvertence. Thus, no body could appear on behalf of the appellant at the time of admission of the case. There was no laches on the part of the appellant. He has already executed the Vakalatnama and handed over the same to the Advocate's Clerk. The mistake was on behalf of the learned counsel for the appellant who did not appear at

the time of admission of the case. We are of the view that for such mistake, the appellant should not be allowed to suffer and on chance should be given to the appellant to present his version in the writ application.

Accordingly, the impugned order is set aside and the matter is remitted for disposal according to law. The appeal is allowed.

As it is an old case, the same should be placed before an appropriate bench in the 1st week of February, 2001.

Sd/-

(Nagendra Rai, J)

Sd/-

(S.K. Katriar, J)”

6. CWJC No. 12009 of 1998 was thereafter, placed for admission, in the light of the Division Bench order passed in LPA No. 794 of 2000. In view of a plea taken on behalf of the Notified Area Committee that matters involving similar issues in CWJC No. 6407, 245,247 and 248 all of the year 1999 had been admitted and were pending for final disposal, the said CWJC No. 12009 of 1998 was admitted by order dated 22.2.2001. By the said order dated 22.2.2001 CWJC No. 12009 of 1998 was directed to be heard along with CWJC No. 6407, 245,247 and 248 of the year 1999 and accordingly, these matters have been placed for final hearing together.

7. Today a counter affidavits have been filed by Executive Officer, Nagar Panchayat, Dalsingsarai (Successor of Notified Area Committee, Dalsingsarai). The only point which the



respondents have taken in the counter affidavits in opposition to the averments made in the writ applications that the petitioners had after service of charge-sheet submitted their show cause replies and they had fairly accepted almost all of the charges levelled against them. It has accordingly been stated in the counter affidavits that in view of the conduct of the petitioners, orders of dismissal from service were rightly passed against them.

8. I have heard learned counsel appearing on behalf of the petitioners and the learned counsel representing the respondent Nagar Panchayat, Dalsingsarai.

9. The stand taken in the counter affidavits by the respondents in all the cases are identical. In my opinion, the stand which they have taken in the counter affidavits is based on the documents which have been brought on record by way of annexures to the writ applications. They have merely supported their action of dismissing the petitioners from service on the basis of confession of their guilt with respect to the charge framed against them. The documents which form the basis of the counter affidavits filed in different cases were dealt with in the order of this Court dated 27.11.1999 elaborately where this Court was of the firm opinion that the workmen were induced to submit the admission of their guilt on the promise or understanding that on their admitting the guilt, they



would be for-given and taken back in service. I do not find any reason, nor any material had been produced before me on the basis of which I am required to take a view different from the one taken in the order dated 27.11.1999 passed by this Court in CWJC No. 12009 of 1998. The orders dated 03.07.1998 which are under challenge in the present batch of writ applications with respect to the individual petitioners which have been brought on record as annexures in their respective writ applications, dismissing the petitioners from service are set aside. I am of the opinion that the dismissal of the petitioners from service, in the manner in which it has been done, is highly arbitrary and abuse of executive power and deserves to be deprecated.

10. I am also of the view that the petitioners are entitled for the backwages also as they have been compelled to remain out of service despite the fact that they were willing to perform their duties. It is directed accordingly, that the respondents shall be required to pay the petitioners their backwages within a period of six months from the date of receipt/production of a copy of this order. It is observed that the disciplinary authority, however, will be free to proceed against the petitioners from the stage of framing of charge-sheet which was admittedly, served upon the petitioners, in accordance with law.

11. These applications are allowed with the observations

as aforesaid.

12. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

ArunKumar/-

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