

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12757 of 2014

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Kapleshwar Mishra son of Late Brij Narain Mishra, resident of Naroch Bihari, P.S.- Jaley, District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Vishwashwaraiya Bhawan, Patna.
2. The Chief Engineer (Mechanical), Public Health Engineering Department, Government of Bihar, Vishwashwaraiya Bhawan, Patna.
3. The Superintending Engineer, Public Health Circle, Darbhanga.
4. The Executive Engineer, Public Health Division, Darbhanga.
5. The Sub- Divisional Officer, Public Health Sub- Division, Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gajendra Kumar Jha, Advocate
Mr. Sushil Kumar Jha, Advocate,
Mr. Bam Bahadur Jha, Advocate
Mr. Surya Kant Mishra, Advocate

For the Respondent/s : Mr. Rajesh Ranjan, AC to SC 31

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

2 08-01-2015

Heard the parties.

The petitioner is aggrieved by office order dated 21.05.2014 (Annexure-1) issued by the respondent Executive Engineer, Public Health Division, Darbhanga, whereby the petitioner has been reverted as daily wage/muster roll employee from regular establishment working on the post of Cleaner, a class IV post.

Learned counsel, while assailing the validity and correctness of the impugned order, has submitted that earlier by order dated 01.12.2006 (Annexure-4) service of the petitioner was absorbed and was adjusted as a class IV employee in the regular establishment and he was drawing the benefits of that post. It is contended that before passing the impugned order dated 21.05.2014, neither an opportunity of hearing was given to the petitioner nor any show cause notice was issued to him. Therefore,

according to him, on the ground of infraction of rules of natural justice itself, the impugned order is liable to be set aside by this Court.

Learned AC to SC 31, appearing on behalf of the respondents, has opposed the prayer by referring to the averments made in the counter affidavit filed on behalf of the respondent nos. 1 to 5. However, despite repeated query, he has not been able to show any document that before passing the impugned order as contained in Annexure-1 any show cause notice was ever issued to the petitioner or alternatively he was given an opportunity of hearing though it is contended by learned State counsel that the petitioner was not taken in regular establishment as per the government policy decision.

After having heard the parties and taking into consideration the undisputed fact that the impugned order dated 21.05.2014 (Annexure-1) has been passed by the respondent Executive Engineer in complete violation of the principles of natural justice reverting the petitioner from a class IV post in regular establishment to a daily rated employee cannot be sustained and on that ground alone the impugned office order dated 21.05.2014 is hereby set aside and quashed. The petitioner shall be reinstated on his previous post with all consequential benefits. However, this order shall not preclude the respondent authorities from passing a fresh order strictly in accordance with law after following the rule of natural justice.

In the result, the writ petition stands allowed to the extent indicated above, but there shall be no order as to costs.

(Birendra Prasad Verma, J)

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