

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4966 of 2015

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Manoj Kumar Sharma S/o Lt. Bhagwat Prasad Sharma, R/o Road No. 3,
Magistrate Colony, P.S. - Rajiv Nagar, Town & District- Patna.

.... Petitioner/s

Versus

1. The Bihar Urban Infrastructure Development Corporation Ltd., 303, Maurya Tower, Buddha Marg, Patna, through its Managing Director.
2. The Chairman, Bihar Urban Infrastructure Development Corporation Ltd. Patna-cum- The Development Commissioner, Govt. of Bihar, Patna.
3. The Managing Director, Bihar Urban Infrastructure Development Corporation Ltd., 303, Maurya Tower, Buddha Marg, Patna.
4. The G.M. (Administration), Bihar Urban Infrastructure Development Corporation Ltd., 303, Maurya Tower, Buddha Marg, Patna,.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Purushottam Kumar Jha, Advocate.

For the Respondent/s : Mr. Lalit Kishore, P.A.A.G.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 04-05-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in the writ application

reads as follows:

"1.(i) Issuance of an order direction or a writ in the nature of Certiorari, quashing the Office Order No. 67 dated 19.07.2014 issued by the respondent no. 3, as contained in Memo No. 2230 dated 19.07.2014 (Ann-3) whereby and whereunder, on the basis of the alleged charge of "अमर्यादित आचरण व भ्रष्टाचार" so received by the respondent no. 3, against the petitioner, the respondent no. 3 has terminated the Services of the petitioner as Deputy Project Director of the Bihar Urban Infrastructure Development Corporation Ltd., Patna, that too, in complete disregard to the principle of natural justice, since, before the issuance of the said order of termination dated 19.07.2014, even a formal show cause notice was not issued to the petitioner, what to talk of initiating and holding a regular Departmental proceeding.

AND CONSEQUENT UPON THE QUASHING OF THE OFFICE ORDER NO. 67 DATED 19.07.2014 (Annexure-3).

(ii) This Hon'ble Court may further be pleased to issue a writ in the nature of Mandamus commanding the Respondents concerned to reinstate the writ petitioner in the services of Respondent Corporation, that too, on the post of Deputy Project Director, with all its consequential benefits."

3. Mr. Purushottam Kumar Jha, learned counsel for the petitioner, in support of the aforementioned prayer, has straightway taken this Court to the aspect of violation of principle of natural justice and in this regard, he has invited attention towards para-6 of the writ application which reads as follows:

"6. That it is stated and asserted here that vide Office Order No. 67 dated 19.07.2014, the Respondent No. 3 issued an order whereby and whereunder on the basis of the alleged charge of ""अमर्यादित आचरण व भ्रष्टाचार", so received by the Respondent no. 3, against the petitioner, the Respondent No. 3 has terminated the Services of the petitioner as Deputy Corporation Ltd., Patna, that too, in complete disregard to the principle of natural justice, since, before the issuance of the said order of termination dated 19.07.2014, even a formal show cause notice was not issued to the petitioner, question of initiating and holding a regular departmental proceeding hardly arises.

4. In this case, a counter affidavit has been filed wherein the aforementioned specific averments made with regard to violation of principle of natural justice has not been denied. Mr. Lalit Kishore, learned PAAG appearing on behalf of the Bihar Urban Infrastructure Development Corporation Ltd. (hereinafter referred to as 'the Corporation') has submitted that the petitioner has a very limited right inasmuch as his appointment was made on 02.09.2013 for a period of one year only and such contractual appointment of the petitioner was itself came to an end on 01.09.2014 and, therefore, when writ application has been filed on 31.03.2015, no direction can be given to reinstate the petitioner in service even if this Court may quash the impugned order allegedly

being in teeth of violation of principle of natural justice.

5. Mr. Jha, in reply, has submitted that had the impugned order dated 19.07.2014 been not passed, the petitioner, alike others, could have got extension for a period of three years. According to him, it is the stigma given in the impugned order which has been made as with regard to the petitioner to not earn his extension.

6. Mr. Lalit Kishore, however, has immediately sought to clarify that the grant of extension of service was not automatic and, in fact, was not only need based, but also on evaluation of the satisfactory services of the petitioner or any other contractual employee.

7. In the considered opinion of this Court, the writ application has been filed after expiry of a period of one year of the contractual appointment. The petitioner had a valid contract only till 01.09.2014. This writ application was filed on 31.03.2015 and, therefore, this Court cannot give lease of life to the period of one year of tenure which was given to the petitioner in his order of appointment dated 18.08.2013 which came into force on the date of joining of the petitioner dated 02.09.2013. Such period of deputation of service was valid only up to 01.09.2014. Had the petitioner assailed the order of his termination passed on



19.07.2014, this Court could probably thought of the issue of grant of further extension or consequential relief upon quashing of the order of termination but for the present, the delay can not be condoned in favour of the petitioner. Only explanation given by the petitioner that he had filed an appeal does not also impress this Court inasmuch as there is no provision of appeal for a person appointed on fixed tenure. If the petitioner, therefore, chose to await of the result of the appeal, he alone has to face the consequence.

8. Reverting back to the issue that the impugned order does carrying stigma, there could be no difficulty in holding that such order even today will stand in the case of the petitioner either in getting employment in the Corporation or any other services. Such stigma to the petitioner having been caused in the order of termination even without issuance of show cause notice cannot be sustained and the same has to be essentially quashed only on the ground of violation of principle of natural justice.

9. The impugned order dated 19.07.2014 is, accordingly, quashed. As a result of quashing of the impugned order, the petitioner shall be entitled for payment of salary for the remaining period of 01.09.2013 and this amount must be paid to the petitioner within a period of three months from the date of

receipt of this order.

10. As this Court has found that the petitioner was bound by a inter parte agreement, as contained in Annexure-2, relevant portion whereof reads as follows:

"4. First Party's contract shall commence from 02.09.2013 & the Contract will be valid for One (1) year only. In case of Separation during this period; the same would be possible by serving notice of 1 month or pro-rated pay in lieu of notice period by either side subject to other terms and conditions detailed in the BUIDCo's mandate/Service Regulation-2010."

To be noted that this appointment is for the specific period mentioned and that no right is vested in for regularization of services in BUIDCo at any point of time. However, if considered necessary, extension of the contractual term would be considered purely on the basis of organizational requirements and performance at the appropriate time and on mutual consent."

this Court would not like to make any further comment on this aspect as to whether the petitioner could be retained in service of the Corporation had the impugned order been not passed.

11. This Court would however record that the impugned order was in violation of the principle of natural justice and has set aside the same. Therefore, it will be for the parties to act strictly in terms of the agreement.

12. Since, Mr. Jha, learned counsel for the petitioner, accepts that if this order had not been there, he could have earned extension for a period of three years and that the petitioner had also filed his so called appeal against the order of termination dated 19.07.2014, this Court would only direct the respondents to

give a fresh show cause notice to the petitioner before passing any adverse order with regard to the petitioner, being not allowed to be given benefit of continuation in service. In other words, if the petitioner files his show cause reply with the allegation made against him of "अमर्यादित आचरण व भ्रष्टाचार" as made in the impugned order of punishment was contrary to the materials on record and could not be sustained, the authorities will give due consideration in the case of the petitioner, which has been given to others. But on the other hand, if it is found that there are materials for his being substantiated to such allegation, the Corporation may pass fresh order giving also a permanent stigma against the petitioner in future for earning employment not only in the Corporation but also any where else.

13. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

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