

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7507 of 2015

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Manoj Kumar, Son of Bharat Prasad Yadav resident of Flat No. 202, Prem
Kunj Apartment, Mazar Gali, Shekhpura, Patna - 14

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Road Construction
Department, Vishveshwariya Bhawan, Bihar, Patna
2. Principal Secretary, Planning and Development Department,
Vishveshwariya Bhawan, Bihar, Patna
3. The Managing Director, Bihar State Building Construction Corporation
Limited, Hospital Road, Shastrinagar, Patna
4. The Chief Engineer, Planning and Development Department,
Vishveshwariya Bhawan, Bihar, Patna
5. Joint Director, Planning and Development Department,
Vishveshwariya Bhawan, Bihar, Patna
6. Superintending Engineer, Munger Division, Munger
7. Executive Engineer, Planning and Development Department, Khagaria
Division, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli, Advocate.
Mr. Sanjay Kumar, Advocate.
For the State : Mr. Rajesh Singh, GP 16
For the Corporation : Mr. Aditya Prakash Sahay, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

5 22-05-2015 Heard learned counsel for the parties as with regard to
the following relief prayed in this writ application:-

"(i) For issuance of writ in the nature of Certiorari
quashing the Memo No. 1219 dated 17.04.2015 issued
by the Managing Director, Bihar State Building
Construction Corporation Ltd., communicated to the
petitioner through e-mail whereby the request of the

petitioner for grant of extension of time for joining has been declined and the candidature of the petitioner has been cancelled for the post of Deputy General Manager (Technical) on Deputation for reason being that the petitioner has failed to produce the relieving order from his parent department i.e. Road Construction Department.

(ii) For issuance of writ in the nature of Mandamus directing the Respondent no. 3 to recall its order contained in Memo No. 1219 dated 17.04.2015 whereby the candidature of the petitioner has been cancelled and further directing the Respondent no. 1 to relieve the petitioner from the present department. "

2. This case on being filed on 12.05.2015, was heard earlier on 13.5.2015, 18.5.2015 and 20.05.2015 and when no justifiable reasons were given to this court as to why the petitioner an Assistant Engineer in Road Construction Department was not relieved for joining post of Deputy General Manager in Bihar State Construction Corporation this Court directed for personal appearance of the Principal Secretary of the Road Construction Department to explain the whole episode.

3. At long last wisdom however seems to have dawned on the authorities of the State of Bihar and the Principal Secretary of the Road Construction Department (hereinafter referred to as 'the Department') in particular who being personally present in

Court, has submitted that the Government now has got no problem in relieving the petitioner for joining Bihar State Building Construction Corporation Limited (hereinafter referred to as 'the Corporation') upon his appointment by way of deputation on the post of Deputy General Manager.

4. Learned counsel for the Corporation, however, wants time to find out as to whether the petitioner can be accommodated after his offer of appointment on deputation has already been cancelled on account of the fact that he could not produce the order of relieving from the State Government despite three extension orders given to him.

5. This Court would not go to make any premature observation at this stage, but then this much has to be clarified that in the official domain and the red tapism that is prevailing in the offices of the State Government it is the poor petitioner who has become its victim. The application for appointment in Corporation was to be submitted by the petitioner and other candidates till 22nd January 2015. The walk in interview already was fixed as per the advertisement itself on 24th January 2015. The petitioner had filed his application to the Corporation on 20th January 2015 and had also immediately intimated his immediate controlling authority by submitting an application on 21.01.2015. Taking this as a

substantial balance, the Corporation had taken interview of the petitioner and had selected him for the post of Deputy General Manager. Thereafter, he was given an offer of appointment by way of deputation and the issue of relieving cropped up.

6. It is a matter of record that the petitioner was given three extensions by the Corporation to obtain the relieving orders from the State Government but when he could not produce such order, his offer of appointment was cancelled by the Corporation by the impugned order dated 17.4.2015. In fact, the petitioner had moved this Court on 12.05.2015 only on account of such arbitrary action on the part of the State Government in neither relieving him nor at least conveying him that the Government was not prepared to relieve him by way of his prayer to quash the order of the Corporation dated 17.4.2015 and consequently also direct the State Government to relieve the petitioner for his joining on the post of Deputy General Manager in Corporation.

7. Today, whatever has been stated by the departmental Secretary in this Court in defence of such an inaction on the part of the officials of his department would make no sense that the petitioner infact should not have been interviewed by the Corporation in absence of his application being not forwarded through proper channel.

8. The petitioner was interviewed is a fact and if, therefore, the Government had any problem in relieving him, may be on account of there being shortage of employee or any other valid and justified reason, that should have been atleast communicated to the petitioner instead of keeping his application for relieving pending for months together. The petitioner definitely has sustained a heavy loss in the matter of advancement in his career.

9. Time has come for the public servants to account for such negligence and/or malafide acts in the discharge of their function as was also held by the Apex Court in the case of **Common Cause, A Registered Society Vs. Union of India**, reported in (1996) 6 SCC 530 wherein it has been held as follows:-

"..... It is high time that the public servants should be held personally responsible for their mala fide acts in the discharge of their functions as public servants. This Court in Lucknow Development Authority v. M.K. Gupta reported in (1994) 1 SCC 243 approved "Misfeasance in public offices" as a part of the Law of Tort. Public servants may be liable in damages for malicious, deliberate or injurious wrongdoing. According to Wade:

"There is, thus, a tort which has been called misfeasance in public office and which

includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury."

With the change in socio-economic outlook, the public servants are being entrusted with more and more discretionary powers even in the field of distribution of government wealth in various forms. We make it to be perfectly clear, that if a public servant abuses his office either by an act of omission or commission, and the consequence of that is injury to an individual or loss of public property, an action may be maintained against such public servant. No public servant can say "you may set aside an order on the ground of mala fide but you cannot hold me personally liable." No public servant can arrogate to himself the power to act in a manner which is arbitrary."

10. This Court, however, for the present will not go to enlarge the scope of this writ application to that extent in view of the changed attitude of the Secretary to the department who by producing his letter addressed to the Managing Director of the Corporation dated 21.5.2014 has sought to assure this court that if the Corporation wants to utilise the service of the petitioner, he can be relieved forthwith for joining the services of Corporation on deputation. This Court, therefore, would direct the Managing Director of the Corporation to take a fresh decision as to whether

the services of the petitioner can be taken on deputation in view of his earlier selection, if the Government relieves the petitioner within seven days from such a decision taken by the Corporation.

11. As this Court is being closed today for the annual summer vacation it is made clear that if the Corporation finds that there is no impediment in accepting the services of the petitioner by recalling earlier order of cancellation of appointment of the petitioner and a communication to this effect is made by the Managing Director of the Corporation to the government in response to the letter of the Secretary to the Department dated 21.05.2015, which has been produced today in the file by the departmental Secretary before this Court, it will be the duty of the departmental Secretary to relieve the petitioner forthwith to enable him to join the post of the Deputy General Manager in the Corporation.

12. If, however, there is any such administrative problem on account of which the petitioner's services cannot be availed in Corporation after cancellation of the offer of his appointment on the post of Deputy General Manager, the petitioner may take remedy by filing a civil suit for claiming damages against the official of the State Government for the loss sustained by him.

13. With the aforementioned observations and directions, this writ application is disposed of.

14. The personal appearance of Mr. Arun Kumar Singh, Departmental Secretary is hereby dispensed with.

(Mihir Kumar Jha, J)

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