

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4776 of 2015

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Dina Nath Datta Son of Late Sheo Bachan Ram resident of Mohalla-
Ratanpura, New Bank Colony, Bhagwan Bazar, P.s- Chapra, District-
Saran.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Bihar, Patna.
3. The Principal Secretary, Panchayati Raj Department , Bihar Patna.
4. The Director, Panchayati Raj Department, Bihar, Patna.
5. The District Magistrate, Saran at Chapra.
6. The Zila Parishad , Saran at Chapra through its chairman.
7. The Chairman, Zila Parishad, Saran at Chapra.
8. The Deputy Development Commissioner -cum-Chief Executive Officer,
Zila Parishad, Saran at chapra.
9. Ram Pravesh Singh Son of not Known Executive Engineer, District
Urban Development Authority, Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Adv
For the Respondent/s : Mr. AAG8- Gautam Bose

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 24-04-2015 Heard learned counsel for the parties as with

regard to the following relief prayed in this writ

application:-

"(i) For quashing of the order contained in
memo no. 970 dated 10.03.2015 (Annexure-20)
of District Magistrate, Saran, Chapra whereby
and whereunder respondent no. 9, Ram Pravesh
Singh, the Executive Engineer, District Urban
Development Authority, Saran has been
deputed to work as district engineer in

respondent Zila Parishad.

(ii) For quashing of the order contained in memo no. 931 dated 02.02.2015 (Annexure-17) of the Deputy Development Officer, Zila Parishad, Saran, whereby and whereunder, the petitioner has been restrained to work as District Engineer of the said Zila Parishad referring the letter no. 2385 dated 19.06.2000 (Annexure-4) of the Panchayati Raj Department.

(iii) For issuance of direction commanding the respondent to promote the petitioner as District Engineer, which promotion has been kept pending for more than 15 years."

2. When this writ application was heard earlier on 31.03.2015, an interim order was passed directing the Respondent to file their counter affidavit.

3. Thereafter the case was heard again on 3.4.2015 and on that this Court again had passed another interim order, relevant portion whereof reads as follows:-

"2. Mr. Y.V.Giri, learned senior counsel appearing on behalf of the petitioner, having



placed reliance on Section 62, 69, 87 and 88(C) of Bihar Panchayat Raj Act (hereinafter referred to as the Act) has submitted that under the provisions of the aforesaid Act, the District Magistrate does not get any authority or jurisdiction to depute some one even by way of temporary measure on the post of District Engineer in Zila Parishad, Saran.

3. This court having noticed similar submission on earlier occasion had passed an interim order on 31.03.2013, which reads as follows:-

"Having regard to the nature of impugned order dated 10.03.2015 as contained in Annexure-20, passed by the District Magistrate, Saran under the guise of so called control over the Zila Parishad and in fact also by issuing the same under his pen and signature from the office of the Zila Parishad, this Court would direct him to file his show cause reply as also appear in person before this Court on Friday i.e., 03.04.2015 at 10:30 am to enable him to explain in person as to under what circumstances as also under which provision of law such an order could be passed by him.

This Court would also direct learned



counsel for the State to ensure that respondent no. 9, the Executive Engineer, the creation of District Magistrate, Saran for coming into picture in Zila Parishad by displacing the petitioner is informed by the District Magistrate, Saran for his appearance either personally or through a counsel and for this purpose let an additional copy of writ petition be handed over to the learned counsel for the State by the learned counsel for the petitioner in course of the day.

Pending final disposal of this writ application though this Court for the time being is not inclined to stay the operation of impugned order as it may tend to disturb the functioning of the Zila Parishad at this crucial time in the end of March on the eve of closure of financial year, but it is made clear that any action taken by respondent no. 9, shall remain subject to final result of this writ application.

Put up this case on **Friday i.e., 03.04.2015** under the same heading at the top of the list when the District Magistrate, Saran must remain personally present before this Court."

4. Pursuant to the aforesaid earlier order of this Court dated 31.03.2015, not only a counter affidavit has been filed on behalf of the

respondent nos. 5 and 8 but Mr. Deepak Anand, the District Magistrate, Saran is also personally present in the Court.

5. Mr. Gautam Bose, learned AAG 8, in defence of the impugned order passed by the District Magistrate, Saran, having made his submission and failed to satisfy this court has prayed for further three weeks time to file a supplementary counter affidavit in order to enable to the District Magistrate to give his further explanation and to bring on record any provision of law and/or government decision under which the District Magistrate, Saran could have deputed the respondent no. 9, an Executive Engineer of the State Government in capacity of District Engineer in Saran Zila Parishad.

6. The respondent no. 9 has also filed his Vakalatnama and he too wants time to file counter affidavit.

7. Having regard to the provisions of law, this Court prima face finds force in the submission of Mr. Giri. This Court in fact had earlier refrained from passing any interim order on 31.03.2015 only for allowing the District Magistrate, Saran and respondent no. 9 to explain as to how the impugned order could be



justified by them, either on fact or in law. Till date, neither in the counter affidavit nor in the submission under the any provisions of law has been pointed out by them which can even remotely justify the exercise of power by the District Magistrate while passing the impugned order.

8. In that view of the matter, while allowing the prayer of the respondent District Magistrate and the respondent no. 9 for adjourning this case for a period of three weeks, this Court now must stay the operation of the impugned order passed by the District Magistrate, Saran dated 10th March 2015, as contained in Annexure-20, till further orders of this Court.

9. Let it be however made clear that District Magistrate, Saran apart from filing his supplementary affidavit will also be under obligation to also file a show cause reply that if ultimately it is held by this Court that the order passed by him was wholly without jurisdiction and having no sanction of law, why should he not be subjected to a disciplinary proceeding for passing the impugned order and creating a chaotic situation in the independent functioning

of Saran Zila Parishad."

4. Mr. Gautam Bose, learned AAG-8 having filed the show cause on behalf of District Magistrate, Saran has explained in presence of Sri Deepak Ananda the District Magistrate, Saran that there was an error committed by the District Magistrate, Saran in passing the impugned order on account of some misreading of the provision of law.

5. This Court will also have no difficulty in recording an ancilliary submission of learned AAG-8 that whereas the District Magistrate has no power and role in making appointment/arrangement of the post of District Engineer in Zila Parishad and even the State Government also has only a limited role defined under the statute in taking a decision for filling of the post of District Engineer.

6. In view of the aforesaid subsequent development learned counsel for the petitioner has sought the permission to withdraw this application.



7. Learned counsel for the petitioner however submits that since there was also a prayer in this writ application for considering the case of the petitioner on the post of District Engineer, liberty should be given to the petitioner to approach the competent authority for consideration of his case.

8. This Court having regard to the fact that the District Magistrate, Saran now has recalled his order, would accord leave to the petitioner to withdraw this application with a hope and belief that in future no such occasion will be given by Mr. Deepak Ananda the District Magistrate, Saran of creating similar situation.

9. As noted above, when the learned counsel for the petitioner has sought permission to withdraw this application only by becoming fully satisfied on account of withdrawal of the impugned order, this court would not like to make any observation in respect of such ancillary submission inasmuch as the case of the promotion of the petitioner has to be considered by the

competent authority in accordance with law.

10. That being so, this application is permitted to be withdrawn with the aforementioned liberty.

11. The personal appearance of Mr. Deepak Ananda, the District Magistrate, is hereby dispensed with.

(Mihir Kumar Jha, J)

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