

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10066 of 2014

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Samta Rani Shrivastav D/o Arun Kumar Shrivastav Resident of Mohalla -
Ranighat (Ranighat Lane), P.O. Mahendru, P.S. Sultanganj and District - Patna 06

.... Petitioner/s

Versus

1. The Chairman Managing Director Addl. Director General of Police Bihar Police Bhavan Nirman Nigam at B.M.P. 05, Campus, Raza Bazar, Patna - 14
2. The Secretary, Bihar Police Bhavan Nirman Nigam at B.M.P. 06, Campus, Raza Bazar, Patna - 14
3. The Administrative officer, Bihar Police Bhavan Nirman Nigam at B.M.P. 05, Campus, Raza Bazar, Patna - 14
4. The Superintending Engineer, Bihar Police Bhavan Nirman Nigam at B.M.P. 05, Campus, Raza Bazar, Patna - 14

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shiv Shankar Prasad Yadav

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 06-05-2015

Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads as follows:-

"1. That through the present writ application, the petitioner is seeking presently a stay of the office order dated 27.05.2014 bearing the Memo No. 2318 and finally the setting aside of the same whereby and where under the petitioner has been terminated from her post of computer operator without giving her any show-cause notice before her termination i.e. a case of the violation of the Article 311 of the Constitution of India as well as the violation of Article 14, 16 and 309 of the Constitution. Due to her illegal termination, the petitioner is aggrieved, so she has preferred the writ jurisdiction of Hon'ble Court for directing respondent to provide her with the status-quo, vide the office order dated 27.05.2014 bearing the Memo No. 2318 as the Annexure to the present

application."

Let it be noted that though the aforesaid prayer in the writ application was only to stay the operation of the impugned order dated 27.5.2014 without seeking its quashing, this Court, having regard to the fact that such writ application came to be filed on 20.6.2014 and the operation of the order was not stayed when the writ application was firstly heard on 30.6.2014, will have no difficulty in holding that the relief as sought by the petitioner was neither given nor can be given now. As a matter of fact, the petitioner also becomes disentitled for any relief against the respondent nos. 2 to 4 because the writ application has stood dismissed for non-compliance of the preemptory order dated 30.6.2014 and, therefore, this Court on 28.7.2014 had recorded that the writ application stood dismissed against the respondent nos. 2 to 4 on account of non-compliance of the order dated 30.6.2014.

In absence of the respondent nos. 2 to 4 against whom the writ application has been dismissed, the writ application becomes only incompetent and is fit to be dismissed on this ground.

Considering the aspect that the writ application now survives against the Corporation, namely, Bihar Police Building Construction Corporation (hereinafter to be referred to as 'the Corporation'), this Court would not find any error in the order passed by the competent authority dispensing with the daily wages appointment of the petitioner.



Let it be noted that the petitioner was engaged initially in the Corporation on daily wages on 26.8.2011 and was allowed to continue even beyond a period of three months by making periodical extension. The Corporation had sought to fill up those posts occupied by the petitioner by publishing an advertisement and making such appointment on contract basis. The petitioner did not file an application in response to the said advertisement. The Corporation, thereafter, having made such appointment on contractual basis in terms of the advertisement, had terminated the continuation of service of the petitioner on daily wage.

Learned counsel for the petitioner has sought to defend such action on the part of the petitioner of not filing an application in terms of the aforesaid advertisement on the ground that since the petitioner was already continuing on daily wages, it was not necessary to file an application for such post. The wisdom of the petitioner has to be appreciated because if she was continued on daily wages and the Corporation after following the mandate of Article 14 & 16 of the Constitution had advertised the post by filling it up by giving opportunity to one and all including those working on daily wages alike the petitioner who were initially taken in without any advertisement on daily wages, the petitioner's reluctance or deliberate avoidance to file application itself is brought to an end the right of the petitioner for being continuing in the service of the Corporation.

Be that as it may, law stands well settled that daily wagers have got no right to continue in service and in the event of termination, the only complaint that they can make is with regard to non-observance of the principle of “last come first go” as was held by the Apex Court in the case of ***The Branch Manager Government Branch Press Vs. D.B. Belliapa*** reported in 1979 SC 429. Here in the writ application, the petitioner has not even made any such case of any junior engaged on daily wages after her to have been retained on daily wages. As a matter of fact, if the averments of the learned counsel for the petitioner has to be believed and in fact that has to be believed in absence of any rejoinder filed by the petitioner, the petitioner’s daily wage appointment was sought to be replaced by making appointment on contract basis after issuance of advertisement and selection in which the petitioner herself did not choose to participate. That being so, this Court even on merit does not find any reason to grant any relief to the petitioner.

This writ application is, accordingly, dismissed.

Nothing said in this order, however, shall stand in the way of the petitioner in seeking her appointment as and when the Corporation will advertise the post.

(Mihir Kumar Jha, J)

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