

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1399 of 2015

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Avinash Kumar Verma @ Avinash Verma Son of Late Medani Prasad
Resident of Village- Jinedpur, Post Office- Rajaura, Police Station-
Muffasil, District- Begusarai. Ex- Assistant Account Officer, State Food
Corporation, Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Food and Civil Supplies Department, Bihar,
Patna.
3. The Managing Director, Bihar State Food and Civil Supplies Corporation
Limited, Patna.
4. The Director, Vigilance Investigation Bureau Bihar, Patna.
5. The Superintendent of Police Vigilance Investigation Bureau Bihar,
Patna.
6. The Deputy Chief Vigilance, Head quarter, Patna.
7. Sri Jafar Alam, Audit Officer, State Food Corporation, Samastipur.
8. Deputy Chief Claim, State Food Corporation Samastipur.
9. The District Manager, State Food Corporation Samastipur.
10. The District Supply Officer, Samastipur.
11. Sri Suresh Kumar Yadav Public Distribution System Dealer, Panchayat-
Haripur, P.O- Haripur, P.S- Rosara District- Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Braj Bhushan Mishra, Advocate.

For the Respondent/s : Mr. Sheo Shankar Prasad, SC-10.

For the Vigilance : Mr. Ramakant Sharma, Sr. Advocate.

For the BSFC : Mr. Shailendra Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 10-04-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application

reads as follows:

"1. That this is an application for issuance of an appropriate writ, order of direction for quashing the order dated 17.10.2014/21.10.2014 passed by the respondent no. 3 who has been pleased to terminate the service of the petitioner ignoring the rules of law and the

principle of natural justice and it is further prayed that the Hon'ble High Court may direct the respondent no. 3 to reinstate the petitioner in service with all monetary benefits along with arrears of pay with interest since the date of termination i.e. 17.10.2014/21.10.2014.."

3. Learned counsel for the petitioner has submitted that the impugned order is bad on several grounds but the one which will go to root of the matter is that such impugned order was passed without giving any show cause notice and/or opportunity of hearing to the petitioner.

4. Let it be noted that when a similar submission was made on the earlier occasion on 23.02.2015, this Court had passed an order, relevant portion whereof reads as follows

" Having regard to the fact that the petitioner was supposedly given a tenure for two years after his retirement, this Court would like to know from the Respondents as to whether the impugned order has been passed after giving him show cause notice and/or affording opportunity of hearing or he has been straightway removed from service even without following the principles of natural justice."

5. Today, Mr. Shailendra Kumar Singh, learned counsel appearing on behalf of the Bihar State Food and Civil Supplies Corporation Limited (hereinafter referred to as 'the Corporation') having produced the copy of the enquiry report, as referred to in the impugned order, had also tried to justify the

order of termination of service of the petitioner on two grounds. Firstly, that he was only continuing on contract basis after his retirement from the service of the Corporation and secondly, that in course of enquiry he was also given an opportunity to explain himself.

6. The answer to the first submission must be one and same in law inasmuch as though a contractual employee cannot be entitled for promotion under Article 311(2) of the Constitution of India and/or a regular departmental proceeding, but then if during the subsistence of the contract period his services has to be terminated on account of allegations and/or by putting stigma on him, the principle of natural justice will have to be necessarily followed. The petitioner was to continue on the contractual basis for the period of two years from 01.02.2014 up to 31.01.2016 and if his service were sought to be terminated on 21.10.2014, the respondents were required to at least give a notice to the petitioner.

7. As a matter of fact, the report of the local authorities on the complaint of Suresh Kumar Yadav, as contained in the letter of the District Magistrate dated 5.06.2014 and 08.08.2014, was in favour of the petitioner. Thereafter a fact finding enquiry was conducted by the Deputy Chief (Claims) and Audit Officer



and the enquiry report was submitted on 26.09.2014 and thus at this the petitioner ought to have been at least given a show cause notice enclosing a copy of the enquiry report for eliciting his response to the findings arrived against him and asking him to explain as to why his services should not be terminated. That having been not done, there would be no difficulty for this Court in holding that the impugned order is in violation of the principle of natural justice specially when it causes stigma to the petitioner, who was the employee of the Corporation and had been found at least good enough as on 1.2.2014 to be given extension service by way of contractual appointment for a period of two years i.e. till 31.01.2016.

8. The fact that the petitioner was not given such an opportunity, even in the fact finding enquiry conducted by the Deputy Chief (Claims) and Audit Officer, becomes apparent from the reading of his enquiry report itself, a copy whereof has been produced before this Court for perusal by the learned counsel for the Corporation.

9. Thus, when this Court has been now made aware of the fact that the impugned order dated 21.10.2014, terminating the contractual appointment of the petitioner and that too on certain allegation, was passed even without issuance of a show cause

notice, there would be no difficulty in holding that the impugned order cannot be sustained and it is, accordingly, quashed.

10. Having quashed such impugned order only on the ground of violation of principles of natural justice, this Court deems it expedient in the ends of justice to direct that the competent authority of the Corporation to issue a fresh show cause notice to the petitioner enclosing the copy of the enquiry report whereafter the petitioner will be entitled to file his show cause reply and any decision with regard to either his continuance or terminating the contractual employment of the petitioner, shall abide by the final order to be passed by the competent authority.

11. It is however made clear that the competent authority shall be under obligation to apply his mind to the defence of the petitioner in his show cause reply and pass a reasoned order while accepting or rejecting such plea(s) raised by the petitioner.

12. As with regard to issue of payment of salary while this Court would direct the respondents to pay such salary to the petitioner for the period 21.10.2014 to today (10.04.2015), within a period of 15 days from the date of receipt of a copy of this order, as this Court has found the termination order of the Director to be bad the petitioner's further payment of salary for the period

11.04.2015 onwards and his continuance on the contractual appointment for the period till 31.01.2016 or any further extended period of service beyond 31.01.2016, shall abide by the result of the final order to be passed by the Managing Director of the Corporation in the light of the aforesaid directions of this Court.

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

(Mihir Kumar Jha, J)

Sujit/-

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