

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14720 of 2015

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Satyendra Kumar Sinha, Son of Late Bishwa Nath Prasad, Resident of
Gopalbad, Police Station- Sarmera, District- Nalanda.

.... Petitioner/s

Versus

1. Bihar State Building Construction Corporation Ltd. Patna.
2. The Managing Director, Bihar State Building Construction Corporation Ltd. Patna.
3. The Chairman, Bihar State Building Construction Corporation Ltd. Patna.
4. The General Manager, Administration, Bihar State Building Construction Corporation Ltd.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Adv, Mr. Uday Chand Prasad, Adv & Mr. Manoj Kumar, Adv

For the Respondent/s : Mr. Tej Bahadur Singh, Sr. Adv & Mr. Brajesh Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 16-10-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application is to quash the order of termination of service of the petitioner.

3. Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioner submits that not only the termination order is a cryptic order and does not deal with the defence taken by the petitioner in his show cause reply but then otherwise the said order seems to be wholly arbitrary because of the extreme punishment of

termination of service being inflicted for misconduct of the petitioner not being available on the mobile for reporting on duty.

4. Mr. Tej Bahadur Singh, learned senior counsel for the respondent-Corporation having filed the counter affidavit has sought to explain that the idea of the petitioner being available on mobile, was only to ensure, the efficiency in working but then the conduct on the part of the petitioner as noticed by the authorities of the Corporation was that he was not diligent and careful in discharge of his duty. Mr. Singh, also explains that the petitioner even on earlier occasion was found wanting in performance of his duty and therefore, keeping in view that the appointment of the petitioner was contractual in nature, his services have been terminated as per the terms and conditions of appointment.

5. Mr. Giri, in reply submits that the previous conduct of the petitioner was neither made subject matter of show cause notice nor the petitioner can be at least



punished on that ground in view of the limited and confined allegation in the show cause notice. He in fact has also submitted that the removal of the petitioner is by way of stigma as such his removal cannot be said to be a termination simplicitor by invoking the terms of contractual employment.

6. In the considered opinion of this Court, the moment the termination was/is based on allegation made against the petitioner, the same has to meet the requirement of natural justice which does not mean only issuance of a show cause notice but also consideration of the show cause reply filed by the person concerned. Here, in the present case, the petitioner was subjected to a show cause notice and he had filed his reply but its consideration is not at all reflected in the impugned order. The only bald reason given in the impugned order therefore of the petitioner's explanation being not satisfactory, could not have led to termination of the services of the petitioner. It is this aspect of the matter



which will make the impugned order bad as was held even in the case of *Siemens Engineer & Manufacturing Co. of India Ltd. Versus Union of India and Anr.* reported in *AIR 1976 SC 1785*, *S.N. Mukherjee Vs. Union of India* reported in *1990 SC 1984*, as also in the case of *Oryx Fisheries Private Limited vs Union of India & Ors* reported in *2010 (3) SCC 427*.

7. In that view of the matter, this Court will have no difficulty in quashing the impugned order as contained in Annexure-12, only on the ground of violation of principles of natural justice. The petitioner in view of this order shall therefore be entitled for being taken back in service.

8. Since, the impugned order has been set aside by this Court on the ground of violation of principles of natural justice, it would also give liberty to the respondent-Corporation to pass a fresh order on the show cause reply already filed by the petitioner and take a decision strictly in accordance with law. The payment of

salary for the interregnum period shall also abide by the decision to be taken on the show cause reply already filed by the petitioner.

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

(Mihir Kumar Jha, J)

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