

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1764 of 2010

IN

Civil Writ Jurisdiction Case No 8723 of 1997

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1. Balbir Singh S/O Ram Charittar Singh R/O Vill.- Panhas, P.S.- Begusarai, Distt.- Begusarai
 2. Arbind Kumar Singh S/O Ram Narain Singh R/O Vill.- Panhas, P.S.- Begusarai, Distt.- Begusarai
 3. Surendra Kumar S/O Late Harakh Mahto R/O Vill.- Rachiahi, P.S.- Begusarai, Distt.- Begusarai
 4. Sanjit Kumar S/O Ram Naresh Rai R/O Vill. Rajanea, P.S.- Begusarai, Distt.- Begusarai
 5. Ram Prakash Paswan S/O Bishnudeo Paswan R/O Vill.- Arwa, P.S.- Bachhwara, Distt.- Begusarai
 6. Manoj Kumar S/O Bhikhari Sah R/O Vill.- Rajendra Nagar Gachhi, Tolam P.S. Begusarai, Distt.- Begusarai
 7. Rina Kumari W/O Anil Kumar Gautam R/O Vill.- Nand Kotai, P.S.- Nawkothe, Distt.- Begusarai
 8. Prem Shankar Singh S/O Bindeshwari Singh R/O Vill.- Parora, P.S.- Sahebpur, Kamal, Distt.- Begusarai

.... Appellant/s

Versus

1. The State Of Bihar
2. The Commissioner-Cum-Secretary Health Department, Govt. Of Bihar, Patna
3. The Director, Deshi Chikitsa, Health Department, Govt. Of Bihar, Patna
4. The District Magistrate, Begusarai
5. The Principal, Govt. Ayurvedic College, Begusarai

.... Respondent/s

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For the Appellant/s : M/s Rajeev Kr Singh & Rishi Raj, Advs

For the S t a t e : Mr Mayank Rukhaiyar, AC to GA 1

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

&

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 27-04-2016

The present intra-Court appeal is directed against part
of the judgment and order dated 22.07.2010 passed in *CWJC No*

8723 of 1997 (Balbir Singh & Others –Versus- The State of Bihar & Others) by which the learned Single Judge of this Court has dismissed the writ petition of the writ petitioners-appellants in so far as continuance in service is concerned while directing that for the period they had worked, payments have to be made in accordance with the directions issued in the order. It is the first part of the order that the writ petitioners are aggrieved and hence, this appeal.

2 The writ petitioners-appellants were employee in Government Ayurvedic College at Begusarai. At different times, the writ petitioners-appellants, alleged that they were engaged on daily wages against sanctioned vacant posts after complying with roster requirements. Having worked for some time on daily wages, they were regularized and then absorbed in the service of the College. At this time, it appears that the Collector of Begusarai received certain complaints and he instituted an enquiry and upon his directions, payment of salary and other remunerations to the writ petitioners-appellants were stopped. It is, at that stage, that the writ petition was filed and during pendency of the writ petition, their services were terminated by the orders of the Director, Indigenous Medicine, Government of Bihar, Patna by Memo No 55 dated 22.01.1998 which was then challenged by way of an amendment petition which petition was allowed. The learned Single Judge held that as the appointment

was illegal, there was no necessity of holding enquiry in the matter. Writ petitioners-appellants had challenged the very authority of the Collector to get the matter enquired into but in view of the opinion of the learned Single Judge the appointment, being illegal, those arguments could not be looked into.

3 We have heard the learned counsel for the parties and we are unable to subscribe the view taken by the learned Single Judge.

4 Whether an appointment is illegal, irregular or not in accordance with law is itself a question of fact and has to be determined pursuant to a proper enquiry conducted by a person authorized to do so. Merely because Collector is the Collector of the district, his jurisdiction does not extend to Government Ayurvedic Colleges which are under the control of the Director of Indigenous Medicine. A power correctly exercised by an unlawful authority is no exercise of power. It is now well settled that a right judgment by a wrong forum is not a judgment. Similar principle applies here. The Collector could not have usurped the jurisdiction which is vested in another authority. We may, on the issue of enquiry in case of illegal or irregular appointments, cite a decision. The Apex Court, in the case of *Basudeo Tiwary –Versus- Sido Kanhu University & Others* since reported in (1998) 8 *Supreme Court Cases* 194, was confronted

with the same very issue arising out of Section 35 of the Bihar Universities Act. Their Lordships, in no uncertain terms, said that no order, prejudicial to a person, can be passed without proper hearing. It is a question of fact whether the appointment was illegal or irregular and a person has a right to show otherwise. He can do so only in a proceeding constituted for this purpose and their Lordships have held thus in paragraphs-8, 9, 10 and 13:

“8. Several contentions have been addressed by learned counsel on either side. However, for the purpose of disposal of this appeal, it is suffice to consider only one aspect of the matter and that is, whether the appellant had been given an opportunity of being heard before terminating his services and in the absence of the same, whether such termination is valid. The High Court took the view that the appointment of the appellant made by the Syndicate of the University by its resolution dated 24-1-1986 is illegal and on that basis took the view that the termination of the services was in order but did not examine the aspect with which we are concerned in the present case as to the non-observance of the rule of audi alteram partem.

9. The law is settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. It has come to be established, as a further corollary, that the audi alteram partem facet of natural justice is also a requirement of Article 14, for natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are the components of fair treatment. The conferment of absolute power to terminate the services of an employee is an

antithesis to fair, just and reasonable treatment. This aspect was exhaustively considered by a Constitution Bench of this Court in Delhi Transport Corpn v DTC Mazdoor Congress.

10. In order to impose procedural safeguards, this Court has read the requirement of natural justice in many situations when the statute is silent on this point. The approach of this Court in this regard is that omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing – it may be implied from the nature of the power – particularly when the right of a party is affected adversely. The justification for reading such a requirement is that the court merely supplies omission of the legislature (vide Mohinder Singh Gill v Chief Election Commr) and except in case of direct legislative negation or implied exclusion (vide S L Kapoor v Jagmohan).

13. Admittedly in this case, notice has not been given to the appellant before holding that his appointment is irregular or unauthorized and ordering termination of his service. Hence the impugned order terminating the services of the appellant cannot be sustained.”

5 But learned counsel for the State points out that the ultimate order of termination of service has been passed by the Director, Indigenous Medicine, which was impugned in the writ proceedings by way of amendment. A reference to the said order would show that he had conducted some enquiry. Some notices were issued to the writ petitioners-appellants. Some of them responded but the order of the Director is cryptic, non-speaking order. In one line, all it says is that the explanation is not satisfactory. Again, such

orders cannot be sustained. Passing of speaking order by a quasi judicial authority or authority deciding the rights and liabilities of a party, which had adverse civil consequences, apart from grant of reasonable opportunity of hearing, what is necessary is passing a speaking order which is an essential facet of principles of natural justice. Reasons have to be assigned as to why the contention raised by a party is not acceptable. Reasons are the link between facts found and the decision taken and it discloses the reasoning process because such orders are subject to judicial review. If no reasons are given, there cannot be an effective judicial review. In absence of reasons, being given, the order is a non-speaking order which cannot be sustained.

6 Thus, we have no option but to hold that the Collector acted wholly without jurisdiction in ordering enquiry or ordering stoppage of pay. Thereafter, an enquiry report was submitted and it is pursuant to that unauthorized enquiry report that some show cause was issued to the writ petitioners-appellants. They contended that the Principal of the College had requisite authority to make appointments and then to regularize them. They, clearly, had pleaded that there were sanctioned vacant posts. They had been paid for quite sometime which could not have been in absence of adequate budgetary provisions made by the Government. Then, to declare their

appointments illegal without reason, cannot be accepted.

7 We would, thus, set aside the order of termination as issued by the Director and allow the writ petition even to that extent but this would not entail that the writ petitioners-appellants would automatically come back in service. The Director would have to notice them again and decide the matter with seriousness as it has serious repercussions for the writ petitioners-appellants who have spent most time of their life working in the College. If it is found that there was an irregularity in procedure of appointment then, subject to sanctioned posts being available, they would be considered for regularization which would not be there in case their appointments are found to be illegal. This distinction between illegal and irregular appointment has to be kept in mind.

8 In view of the aforesaid, this appeal is allowed. The order of the learned Single Judge is set aside with the directions aforesaid.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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