

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4479 of 2011

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Dinkar Prasad, s/o Sri Kishori Sah, resident of village Gorigama, P.S. Runisaidpur district Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Rural Development Department, Patna
2. Nagar Panchayat, Dumra through its Executive Officer, Town and District Sitamarhi
3. Executive officer, Nagar Panchayat, Dumra, district Sitamarhi
4. Board of Councillors of Nagar Panchayat Dumra through its Chairman Town and District Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yogendra Mishra

For the Respondent/s : Mr. Praful Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 08-03-2016

Heard Sri Yogendra Mishra, learned counsel who was assisted by Sri Uma Kant Tiwary, learned counsel for the petitioner , learned AC to GA No. 9 as well as Sri Praful Kumar Sinha, learned counsel who has appeared on behalf of the respondent no. 2 to 4/ Nagar Panchayat, Dumra.

The petitioner initially invoking writ jurisdiction of this court under Article 226 of the Constitution of India had made a prayer for directing the respondent no. 2 to 4 to make payment of his salary which was due since March 2010 which was stopped from the month of March 2010 with further direction to the respondents not to interfere with the services of the petitioner.

In this case for the first time on 9.3.2011 a bench of this



court directed for issuance of notice to the respondent no. 2 to 4 which was validly served which is evident from office note dated 17.5.2011. However surprisingly vide order dated 29.4.2011 the Executive Officer, Nagar Panchayat, Dumra i.e. the respondent no. – 3 vide Annexure - 8 to the interlocutory application cancelled the appointment of the petitioner on certain grounds oblivious of the fact that the writ petition claiming salary was pending before this court. Thereafter petitioner filed an interlocutory application vide I.A. No. 3766 of 2011 for allowing the petitioner to amend the relief in the writ petition and a prayer was made for quashing of Annexure – 8 i.e. order dated 29.4.2011. This court directed to treat the interlocutory application as part of the writ petition. However no specific counter affidavit to the interlocutory application was filed. In this case separate counter affidavits have been filed on behalf of the respondent no. 3 and 2 on 16th August 2011 and 11.11.2011 respectively. Earlier time was also granted to learned counsel for the respondent no. 2 and 3 to file appropriate response after the amendment petition was directed to be treated as part of the writ petition however thereafter no response was filed.

Short fact of the case is that the petitioner was initially appointed as 'Amin' by the respondent no. 2 and 3 vide order contained in letter no. 145 dated 8.12.2006 (Annexure - 3 to the writ



petition). The said appointment was made only for three months on consolidated emolument of RS. 2000/- per month. However after completion of work for which the petitioner was initially appointed for a fixed period, by order dated 2.2.2008 (Annexure - 4) the petitioner was discharged from service. Again in the year 2009 vide order dated 28.2.2009 the petitioner was engaged for eleven months on fixed emolument of 2000/-. While the petitioner was functioning in the Nagar Panchayat, Dumra the Board in its meeting dated 12.12.2009 considering other proposal took a decision to adjust the petitioner as Tax Daroga -cum -Tahsildar against the sanctioned and vacant post and thereafter appointment letter was issued vide letter no. 315 dated 29.12.2009 appointing the petitioner as Tax Daroga-cum -Tahsildar in the pay scale of Rs. 825-1200/- on permanent basis. Thereafter the petitioner started discharging his duty as Tax Daroga -cum- Tahsildar. However subsequently new Board was constituted and thereafter the petitioner was asked to draw only honorarium not salary. Petitioner thereafter filed representation before the Executive Officer vide Annexure - 7 to the writ petition. Since the request of the petitioner was not taken note of by the authority concerned the petitioner was constrained to approach this court by filing the present writ petition in which notices were issued as indicated above. It has already been indicated that after issuance of



notice the respondents have come out with an order i.e. Annexure - 8 to the interlocutory application which is part of the writ petition whereby the petitioner was unanimously discharged from service. Petitioner has taken a specific stand that once the petitioner was regularized against sanctioned and vacant post of Tax Daroga- cum - Tahsildar in the pay scale as indicated above and started drawing salary, after constitution of new Board there was no occasion for the new Board to alter the decision of the earlier Board and take away the right of the petitioner that too without affording any opportunity to the petitioner. He submits that petitioner was entitled to get his salary from the month of March 2010 and as such the petitioner had filed the present writ petition. However the petitioner was not paid salary by the respondents and maliciously and arbitrarily after issuance of notice in the present writ petition and during the pendency of the writ petition the petitioner has been discharged from service vide Annexure - 8 to the interlocutory application. By way of referring to Annexure - 8 to the interlocutory application Sri Mishra , learned counsel for the petitioner submits that apparently it depicts that before passing of such order neither petitioner was asked to give any explanation nor any hearing was given to the petitioner and unilaterally decision was taken to discharge the petitioner from his services. It is palpably illegal, arbitrary and malafide and as such a

prayer has been made to quash the order contained in Annexure - 8 and direct the respondents to reinstate the petitioner with effect from the date of issuance of Annexure - 8 and direct for payment of salary which has been stopped from the month of March 2010 till date.

In this case two counter affidavits have been filed on behalf of the respondent no. 2 and 3 but no plausible explanation has been given regarding non payment of salary as well as the fact as to whether before issuance of Annexure - 8 the petitioner was given any notice or not.

Sri Praful Kumar Sinha, learned counsel for respondent/ Nagar Panchayat, Dumra has tried to persuade the court that since the petitioner was committing several irregularity and illegality the respondent no. 3 was constrained to pass order of cancellation of his appointment. He further submits that it is true that by earlier decision the Board of Nagar Panchayat had decided to appoint the petitioner but said decision was never approved in the subsequent meeting and as such in subsequent meeting which was held after reconstitution of the Board a decision was taken that petitioner may not be given salary but he can be given honorarium. However subsequently it was noticed that petitioner had committed several illegality and irregularity and as such vide Annexure - 8 to the interlocutory application the petitioner was discharged from service.



Besides hearing learned counsel for the parties I have also perused the material on record. It is unfortunate that once the petitioner has approached this court invoking its writ jurisdiction with a prayer to direct the respondents to pay salary which was stopped from the month of March 2010 the respondent no. 3 obviously in malicious and arbitrary manner the Respondent has come out with Annexure - 8 and discharged the petitioner from service. There is nothing on record to suggest that before issuance of Annexure - 8 any opportunity was given to the petitioner. It is settled that if any right has accrued in favour of a citizen such right may not be taken away unless opportunity of hearing is given. The principle of natural justice in the present case has been violated as well as the action of the respondent no. 3 in view of the fact that after issuance of notice in the present writ petition he has come out with Annexure - 8 cancelling the appointment of the petitioner, appears to be arbitrary and malicious. Once the services of the petitioner was regularized by a duly constituted Board vide Annexure - 6 to the writ petition there was no occasion for the newly constituted Board to alter the earlier decision of the Board without availability of any cogent reason. In any event the new Board was not at all authorized to pass an order discharging the petitioner from service without giving any opportunity of hearing to the petitioner. Accordingly the court is of

the opinion that the order contained in Annexure - 8 i.e. order dated 29.4.2011 passed by the Executive Officer, Nagar Panchayat, Dumra/ respondent no. 3 is irregular and illegal and as such same is hereby set aside with a direction to reinstate the petitioner from the date of order dated 29.4.2011 with all back wages. The respondents are further directed to calculate the salary of the petitioner which was stopped from the month of March 2010 till the order dated 29.4.2011 and pay the same to the petitioner within a period of eight weeks from the date of receipt / production of a copy of this order.

It is repeated that the petitioner is directed to be reinstated with effect from the date of issuance of the order i.e. Annexure - 8 with all consequential benefits.

The writ petition stands allowed.

(Rakesh Kumar, J)

Praful/-

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