

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5035 of 2016

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Dr. Aakanksha D/o Rama Shankar Roy Resident of 302, Mahalaxmi Apartment ,
Suresh Nagar, Thanthipur Gwalior (M.P) At Present resident of House NO. D3/259
Near Bazir Building (North of Sanjay Talkies) Brahmpura PS Brahmpura, Distt
Muzaffapur.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, of Art Culture and Youth
Department Govt. of Bihar, Patna.
2. The Chairman, Governing Body Bihar Museum Society Patna.
3. The Director, Museum, Bihar
4. The Addl. Director, (Administration) Bihar Museum Society Bihar Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar Singh No.1, Adv.
Mr. Sunil Kumar Karn, Adv.
For Respondent No.1 : Mr. Pratik Sinha, AC to GA-5
For respondents no.3 & 4: Mr. Ajay Kumar Thakur, Adv.
Mr. Alok Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

CAV JUDGMENT

Date: 18-03-2017

The petitioner prays for issuance of a writ in the nature of
certiorari for quashing the office order bearing Memo No. 98/Patna
dated 17.2.2016 issued under the signature of the Director, Bihar
Museum, Patna, whereby and whereunder the services of the
petitioner from the post of Librarian has been terminated with
immediate effect. A copy of the order of termination is enclosed at
Annexure 12 to the writ petition.

With the consent of the parties the writ petition has been
heard with a view to final disposal at the stage of admission itself.

The facts of the case briefly stated is that following an



advertisement, a copy of which is annexed at Annexure 1 to the writ petition, the petitioner applied against the post of Librarian and was selected for such appointment. Vide order bearing Memo No. 226 dated 5.5.2015 enclosed at Annexure 2 the petitioner gave her joining on 8.5.2015 and which was accepted vide Annexure 3. Vide office order dated 13.8.2015 the Bihar Museum team was assigned duties and in so far as the petitioner is concerned, her name appears at Serial No.5 of the order and she alongwith Aparna Sinha were directed to manage the visitors of Children Gallery and Discovery Room without any shifts. The minutes of the Co-ordination Committee Meeting under which such assignment was made forms part of Annexure 4. By a subsequent office order dated 17.10.2015 the petitioner alongwith her colleague Aparna Sinha were assigned duties at the ticketing counter alongwith some others. A copy of such order is present at Annexure 6.

Perhaps some complaint was received against the petitioner and which led to issuance of a show cause notice on 20.10.2015 vide Annexure 7 by the Addl. Director (Administration), seeking an explanation as to the complaints against the petitioner of disobedience of office orders and dereliction of duty and why her services be not terminated for the same. The petitioner filed her reply vide Annexure 8 on 25.10.2015 and whereafter nothing was heard in the matter. On



20.1.2016 the petitioner prayed for child care leave as her daughter, a student of Class VII in a school at Gwalior, had to appear in her Annual Examination beginning 12.2.2016 upto 28.2.2016. Again nothing was heard rather the impugned order of termination followed, issued under the signature of the Director, Bihar Museum dated 17.2.2016, impugned at Annexure 12, and feeling aggrieved the petitioner is before this Court.

Mr. Abhay Kumar Singh, learned counsel has appeared for the petitioner alongwith the Advocate on record Mr. Sunil Kumar Karn while the respondent State is represented by the State Counsel and respondents no. 2 to 4 are represented by Mr. Ajay Kumar Thakur, who appears alongwith Mr. Alok Sinha, Advocate on record.

It is the argument of Mr. Abhay Kumar Singh, learned counsel appearing for the petitioner, that the petitioner was appointed to discharge the work of a Librarian and there is no complaint as to her functioning as a Librarian. He submits that although the notice at Annexure 7 does charge the petitioner of disobedience, dereliction of duty and showing lack of interest in her work but the petitioner explained the situation vide her reply at Annexure 8 and whereafter the matter was not acted upon because nothing was heard thereafter. He submits that simply because the petitioner prayed for child care leave since her daughter was to face her Annual Examination that in a



most arbitrary manner the order of termination has been passed. Learned counsel has referred to the judgment of the Supreme Court reported in (2010)15 SCC 305 (**State of U.P. v. Ram Vinod Sinha**) to submit that since the order of termination is punitive in nature, the petitioner was entitled to a regular proceeding and that her termination could not take place simply on the basis of show cause notice. Learned counsel has next referred to a judgment of the Supreme Court reported in 2016(1) PLJR (SC) 135 (**Ratnesh Kumar Choudhary v. IGIMS, Patna**) on the same proposition that an order of stigmatic termination should be proceeded by a regular enquiry.

The arguments of Mr. Singh has been contested by Mr. Thakur on ground of maintainability of the writ petition as well as on ground of availability of alternative remedy. According to Mr. Thakur, the Bihar Museum is not a State within the meaning of Article 12 of the Constitution of India as there is no control of the State over the affairs of the Museum, which is a society registered under the Societies Registration Act, 1860. Learned counsel has referred to the Special Bench judgment of this Court in support of his submission since reported in 2014(1) PLJR 695 (**Organizer, Dehri C.D. and C.M. Union Limited v. State of Bihar & ors.**) and with reference to the conclusion drawn by the Bench at paragraph 47 he submits that none of the requisites as described therein exists in the



present case. Learned counsel on the issue of alternative remedy has submitted that the Museum is an industry and thus, the dispute so raised qualifies as an industrial dispute to be adjudicated in the Forum so available to the petitioner under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). He submits that the issue whether or not the termination is supported by sound reasons can well be tested by the petitioner before the Forum so constituted under 'the Act' and even if the order impugned in the writ petition does not refer to the materials in detail, the respondents would not be precluded to lead evidence in support of their opinion before the Tribunal.

Responding to the issue that no formal proceeding was held by the respondents before the order of termination was passed, Mr. Thakur has submitted that since the petitioner was a temporary employee, there was no requirement of holding a formal proceeding. It is submitted that since the petitioner herself has admitted in her explanation present at Annexure 8 that she did not discharge the obligation cast upon her, there was no requirement for a formal enquiry. It is the contention of the learned counsel for the respondents that since the petitioner was found to be inefficient and disobedient in discharging the work allotted to her, the Executive Committee decided to do away with her services and which was duly ratified by



the Governing Body as manifest from the proceeding present at Annexure 'E' to the supplementary counter affidavit.

The argument of Mr. Thakur was supplemented by Mr. Sinha, the Advocate on record, appearing for the Museum, and in reference to the judgment relied upon by the respondents in their counter affidavit, it was argued that the proper Forum for the petitioner was by raising a dispute under the provisions of 'the Act' and by getting the order tested before the Tribunal. He has referred to the judgment of the Supreme Court since reported in 2000 LIC 3304 (**APMC v. Ashok Harikuni**), (1996)2 SCC 293 (**Chief Conservator of Forest v. Jagannath Maruti Kondhare**), to submit that the petitioner was appointed as a Librarian and thus, the work discharged by her did not qualify as a sovereign function for bypassing the remedy available to her under 'the Act'.

In reply to the objections raised, Mr. Abhay Kumar Singh, learned counsel for the petitioner, has relied upon the following judgments of the Supreme Court to submit that there is no such bar in maintaining a writ petition even in such matters:

- (i) AIR 2015 SC 3194 (**Board of Control, Cricket in India v. Cricket Association of Bihar & ors.**) and
- (ii) AIR 2016 SC 73 (**Dr. Janet Jeyapaul v. SRM University & ors.**)



I have heard learned counsel for the parties and have perused the records.

A rather a peculiar situation has arisen in the present case. Whereas learned counsel for the respondent Society has argued on the maintainability of the writ petition itself, inter alia, on grounds that the activities of the Museum does not qualify it as a State within the meaning of Article 12 of the Constitution of India, but the argument so advanced is contrary to the stand taken by the Museum at paragraph 3(ii) of the counter affidavit, wherein the respondents do not proceed to question the maintainability of the writ petition on grounds that the respondent Museum is not a State or its instrumentality within the meaning of Article 12 of the Constitution of India rather have questioned the maintainability on the issue of alternative remedy available to the petitioner under the Industrial Disputes Act before the Industrial courts so available to her.

In my opinion the stand taken by the respondent Society in the counter affidavit in so far as the status of the respondent Society as a State or its instrumentality within the meaning of Article 12 of the Constitution of India is concerned, is rather fair. The argument of Mr. Thakur to deviate therefrom cannot be accepted either in view of the stand so taken in the counter affidavit or even on the principles so laid down in the judgment rendered on the issue. In fact the very judgment



relied upon by Mr. Thakur rendered in the case of **Organizer** (supra) is supportive of the opinion of this Court.

The resolution of the State Government in its Art, Culture and Youth Department, present at Annexure 'A' itself is sufficient to strike down the objections so raised by Mr. Thakur on the issue and to hold that the respondent Society is a State within the meaning of Article 12 of the Constitution of India since the very resolution accepts that the Society is under the control of the Art, Culture and Youth Department of the Govt. of Bihar. Paragraphs 3 and 4 of the resolution further qualify this position since the Governing Body and the Executive Committee so constituted consists of Senior Government officials with the Chief Minister and the Minister, Arts, Culture and Youth Department as its Chief Conservator and Conservator respectively. In my considered opinion there cannot be a better demonstration of pervasive control of the State Government in the affairs of the Museum and it is understandably in this view of the matter that the Society in its counter affidavit had clearly conceded on this issue at paragraph 3(ii) of the counter affidavit.

The next issue which comes for consideration is that even if the Society is amenable to the writ jurisdiction of this Court whether the matter requires to be considered on merits or requires to be disposed of with the liberty to the petitioner to exhaust the statutory



alternative remedy so available to the petitioner under the provisions of 'the Act' by raising an industrial dispute thereunder.

Before I would proceed to record my opinion on the issue, I would like to place certain relevant facts available on the records of the proceedings.

(i) The petitioner was appointed against the post of Librarian vide Annexure 2 dated 5.5.2015 and on which post she gave her joining on 8.5.2015 as confirmed from Annexure 3.

(ii) Vide office order dated 13.8.2015 the petitioner alongwith one other was directed to manage the visitors at the Children Gallery and Discovery Room with no shifts. There is nothing on record to show that the petitioner failed on this assignment.

(iii) Vide office order dated 17.10.2015 the petitioner was posted at the ticketing counter alongwith one other.

(iv) Within three days of this posting, the petitioner was issued a show cause notice dated 20.10.2015 against termination by the Addl. Director for showing disinterest in her work as well as for being irresponsible. There are no specific details for such accusation nor there is any complaint accompanying such show cause notice.

(v) Vide Annexure 8 the petitioner denied the accusation and explained the reasons why she was not present at the ticketing counter. She also explained that as per oral instructions of the team



leader Ms. Kavita she discharged the duties at the Gallery. The matter was not pursued thereafter.

(vi) After three months of this exercise that the petitioner applied for child care leave for being present during the Annual Examination of her daughter, a Class VII student at Gwalior and for which she filed an application to such effect on 20.1.2016. No order was passed on this.

(vii) Since the leave application was not rejected, the petitioner proceeded on leave and while she was on leave that she was served with the termination order dated 17.2.2016 impugned at Annexure 12. The termination order rests on the following charges:

(a) During the tenure of the petitioner as Librarian, Bihar Museum, Patna, her overall performance was not satisfactory and not upto mark.

(b) A midterm evaluation of her work and conduct and her performance report, marked her unsatisfactory and a non-performer.

(c) Vide letter dated 16.9.2015 the petitioner was warned and asked to improve performance or face termination.

(d) The observations in the performance report dated 15.9.2015 was never disputed or contested.

(e) The petitioner refused the assigned task and neglected responsibility.



(f) The show cause notice dated 20.10.2015 was issued and her reply was found unsatisfactory.

(g) The petitioner repeatedly left the office without notice for which the salary was deducted.

(h) The management finds the performance unsatisfactory with no scope of improvement and thus, has decided to terminate her unconfirmed service which has the approval of the Governing Body.

According to Mr. Thakur, learned counsel appearing for the respondent Society, in the nature of the allegations facing the petitioner, there was no requirement to hold a full-fledged enquiry since the petitioner was yet to be confirmed on her post. The other argument advanced is that there are materials to support the allegations and which would be led by the department if need would arise and in case the petitioner would raise a dispute under 'the Act'.

As I have observed the issue is whether the matter needs a relegation to the Forum constituted under 'the Act' or in view of the uncontested position reflecting from the records, the matter would require an indulgence in the present writ petition itself. The resolution placed at Annexure 'A' of the counter affidavit encloses the Rules and Regulations framed by the Society at running page-95 and reference is made to Rule 10(2)(ख) thereof which relates to the bye laws of the Society and which, inter alia, provides that until such time the Society



would prepare its own Rules, Regulations and Bye laws, the Financial Rules and the Service Rules governing the State Government Employees, would apply together with amendments introduced from time to time. In other words, the Society has inter alia adopted the Service Rules governing the State Government employees until framing of its own Service Rules. Undisputedly the State Government employees are governed by the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules') and while Rule 14 provides for penalties that can be imposed on any employee inclusive of minor and major penalties, the procedure for imposing a major penalty is provided under Rule 17 while those for imposing minor penalty is given under Rule 19 and in between Rule 18 provides for action to be taken on an enquiry report to be submitted in this regard by the Enquiry Officer. Now there is no dispute that no regular proceeding was held in the present case and the defence taken is that since the petitioner was yet on probation and a temporary employee yet to be confirmed, there is no requirement for holding any such full-fledged enquiry.

In my opinion the stand so taken is not correct because once the Society has adopted 'the Disciplinary Rules' governing the State Government then any action initiated which culminates in a major or minor penalty, can be undertaken only after following the procedure



prescribed under 'the Disciplinary Rules'. Admittedly this procedure has not been followed rather bypassed. An identical situation had arisen in the case of **Ratnesh Kumar Choudhary** (supra) and the Supreme Court even while examining the circumstances where a formal enquiry may not be required has concluded in favour of the aggrieved because even in the said case, the termination was stigmatic and on the basis of ex-parte enquiry held behind the back of the delinquent employee. In the present case the situation is preposterous because it is not the failure of the petitioner to discharge her obligation as a Librarian that has led to her termination rather it is for the alleged failure of the petitioner to discharge the duty other than that of a Librarian which has led to the impugned order. I am tempted to reproduce Paragraph 28 of the judgment passed by the Supreme Court in the case of **Ratnesh Kumar Choudhary** (supra) relied upon by the learned counsel for the petitioner and which would squarely apply to the case at hand:

"28. In the case at hand, it is clear as crystal that on the basis of a complaint made by a member of the Legislative Assembly, an enquiry was directed to be held. It has been innocuously stated that the complaint was relating to illegal selection on the ground that the appellant did not possess the requisite qualification and was appointed to the post of Chest Therapist. The report that was submitted by the Cabinet (Vigilance) Department eloquently states about the conduct and character of the appellant. The stand taken in the counter affidavit indicates about the behaviour of the appellant. It is also noticeable that the authorities after issuing the



notice to show cause and obtaining a reply from the delinquent employee did not supply the documents. Be that as it may, no regular enquiry was held and he was visited with the punishment of dismissal. It is well settled in law, if an ex parte enquiry is held behind the back of the delinquent employee and there are stigmatic remarks that would constitute foundation and not the motive. Therefore, when the enquiry commenced and thereafter without framing of charges or without holding an enquiry the delinquent employee was dismissed, definitely, there is clear violation of principles of natural justice. It cannot be equated with a situation of dropping of the disciplinary proceedings and passing an order of termination simpliciter. In that event it would have been motive and could not have traveled to the realm of the foundation. We may hasten to add that had the appellant would have been visited with minor punishment, the matter possibly would have been totally different. That is not the case. It is also not the case that he was terminated solely on the ground of earlier punishment. In fact, he continued in service thereafter. As the report would reflect that there are many an allegation subsequent to the imposition of punishment relating to his conduct, mis-behaviour and disobedience. The Vigilance Department, in fact, had conducted an enquiry behind the back of the appellant. The stigma has been cast in view of the report received by the Central Vigilance Commission which was ex parte and when that was put to the delinquent employee, holding of a regular enquiry was imperative. It was not an enquiry only to find out that he did not possess the requisite qualification. Had that been so, the matter would have been altogether different. The allegations in the report of the Vigilance Department pertain to his misbehaviour, conduct and his dealing with the officers and the same also gets accentuated by the stand taken in the counter affidavit. Thus, by no stretch of imagination it can be accepted that it is termination simpliciter. The Division Bench has expressed the view that no departmental enquiry was required to be held as it was only an enquiry to find



out the necessary qualification for the post of Chest Therapist. Had the factual score been so, the said analysis would have been treated as correct, but unfortunately the exposition of factual matrix is absolutely different. Under such circumstances, it is extremely difficult to concur with the view expressed by the Division Bench."

The case in hand reflects a rather sorry state of affairs. The petitioner having been appointed against the post of Librarian was initially directed to discharge the duty at the Gallery vide Annexure 4. There was no complaint received. Having successfully done the duty she was now posted at the ticketing counter and when a show cause was received which included complaints regarding her duty at the gallery and on reply by the petitioner on 25.10.2015, the matter did not proceed rather it is only when the petitioner proceeded on Child Care leave after filing her application in February, 2016 that the extreme action has been taken and as I have already indicated the order of termination rests on a number of charges and complaints which are not even included in the show cause. The respondents have tried to shy away from disclosing the materials supporting the charges by submitting that should the petitioner raise an industrial dispute they would lead the materials. In other words the petitioner stands terminated for her failure to discharge her duty properly, disobedience of the orders issued and recurrent absence but the materials to support are not communicated to her and it is only if the petitioner would raise



an industrial dispute then it shall be made known to her.

This is shockingly preposterous. The society having adopted 'the Disciplinary Rules' governing the State Government employees, they are bound by the procedure prescribed. In the circumstances discussed above where undisputably the respondents have failed on the mandatory procedure for imposing the extreme penalty of termination which is stigmatic in character, inasmuch as it comments on her service discharge, the termination neither can be held to be a termination simplicitor nor the respondents can be allowed to take refuge under the provisions of 'the Act' for obstructing the relief prayed herein. The allegations herein are not a motive assigned for termination rather the allegations are in the nature of misconduct and the moment an issue of misconduct would form the basis for punishment, it has to precede a formal departmental proceedings, which has not been done nor the petitioner has been confronted with the materials supporting the charge.

For the reasons so discussed, the order of termination bearing Memo No. 98/Patna dated 17.2.2016 is held punitive and since admittedly it does not precede a formal proceeding as envisaged under 'the Disciplinary Rules' so adopted by the Society, it cannot be upheld and is accordingly quashed and set aside. The writ petition is allowed.



The petitioner is reinstated on her post with all consequential benefits.

Let the records produced by Mr. Ajay Kumar Thakur, learned counsel for the Society, be returned to his custody.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	21.12.2016
Uploading Date	20.03.2017
Transmission Date	NA

