

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.10 of 2008

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RAMA SHANKAR SINGH, S/O LATE BHUNESHWAR SINGH, R/O
VILL-LAHTIAN, P.S.-AGIAON BAZAR, DISTT-BHOJPUR
AT PRESENT RESIDING AT MOHALLA-SARISTABAD KACHI
TALAB, HOUSE OF ARUN KUMAR SINGH, DURGA MANDIR
RAJPUTANA, P.O.-G.P.O., PATNA, DISTT-PATNA.

... .. Petitioner-Appellant/s

Versus

1. THE STATE OF BIHAR THROUGH THE SECRETARY, WELFARE
DEPARTMENT, GOVT. OF BIHAR, PATNA.
2. THE ADMINISTRATOR, BIHAR STATE SOCIAL WELFARE
ADVISORY BOARD OLD SECRETARIAT, PATNA.
3. THE SECRETARY, BIHAR STATE SOCIAL WELFARE
ADVISORY BOARD OLD SECRETARIAT, PATNA.

Respondents.

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Appearance :

For the Appellant/s : Mr. Surendra Kr.Singh, Advocate
Mr. Avinash Shekhar, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-09-2017

This is an appeal filed by the appellant under Clause 10 of the Letters Patent calling in question tenability of the order passed by the respondents whereby Annexure-9 dated 08.08.2003 was passed terminating the service of the petitioner retrospectively with effect from 16.02.1990.

The facts, in brief, go to show that petitioner was appointed as a personal staff with the Chairman/Vice-Chairman of the Bihar Rajya Samaj Kalyan Salahakar Board (hereinafter referred to as



‘the Board’). The appointment was co-terminus with the tenure of the Vice Chairman and after the tenure of the Vice-Chairman came to an end on 16.02.1990, the petitioner continued to work up to the year 2003 when on 08.08.2003 it was found that the petitioner’s appointment was as a personal staff of the Vice-Chairman which was co-terminus with the appointment and posting of the Vice-Chairman in the Board and after the term of the Vice-Chairman came to an end, petitioner’s services should have been terminated. This having not been done, on 08.08.2003, his services were terminated retrospectively with effect from 16.02.1990.

Petitioner challenged the aforesaid and the learned Writ Court found that the petitioner did not have any right. His right was only to work with the Vice-Chairman so long as the Vice-Chairman appointment continued and once his tenure had come to an end, the petitioner has no right vested or otherwise to continue in service and, therefore, holding so, the petition was dismissed.

Challenging the same, the appeal was filed and from the record we find that after considering various aspects of the matter by a detailed order passed on 08.01.2008 and thereafter on 17.10.2011, the order passed by the Writ Court was stayed and the petitioner was directed to be reinstated in service.



Having considered the submissions made by learned counsel for the parties at length, we find that the petitioner's appointment was on a specific condition which was as a personal staff to the Vice-Chairman and the appointment was made co-terminus with the posting of the Vice-Chairman in the Board in question. Once the tenure of the Vice-Chairman came to an end on 16.02.1990, the petitioner's services would automatically come to an end and, therefore, the learned Writ Court in holding so has not committed any error. However, for reasons which are not attributable to the petitioner, nothing was done, the matter was kept pending and the petitioner continued to work up to 08.08.2003 and if on 08.08.2003, illegality in continuing the petitioner after 16.02.1990 was detected, the services could be terminated prospectively from 08.08.2003 and could not be retrospectively with effect from 16.02.1990. That being so, we only hold that the order passed, Annexure-9, dated 08.08.2003 retrospectively terminating the services of the petitioner with effect from 16.02.1990 is unsustainable, the order could only be given prospective effect from the date of issuance of the order dated 08.08.2003. To that effect, the order passed on 04.10.2007 passed by the learned Single Judge in CWJC No.396 of 2004 warrants modification and we further direct that in case the petitioner had discharged his



duties from 16.02.1990 till the order, Annexure-9, was passed on 08.08.2003, all dues and salary should be paid to him within a period of two months from the date of receipt of a copy of this order.

Apart from the aforesaid, we see no reason to make any indulgence into the matter. However, by the interim order dated 08.01.2008, the petitioner is still continuing in service, the respondents will be free to proceed in the matter in accordance with law.

With the aforesaid, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
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