

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11791 of 2017

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1. Nawnit Kumar Singh Son of Late Brij Nath Prasad Singh, G.D.S. M.D., Kashma B.O. In A/C with Rafiganj S.O. under the Superintendent of Post Offices, Aurangabad(Bihar).
 2. Naresh Singh Son of late Suryadev Singh G.D.S. M.D./M.C. Malhara B.O. in A/C with Deo S.O under the Superintendent of Post Offices, Aurangabad (Bihar).
 3. Udyanand Yadav Son of Sri Mahavir Prasad Yadav G.D.S. M.D/M.C., Jaipur B.O. in A/C With S.S. College Under the Superintendent of Post Offices, Aurangabad (Bihar).
 4. Birendra Kumar Yadav Son of late Mohan Yadav G.D.S. M.D./M.C., Dugul B.O. in A/C with Rafiganj S.O. Under the superintendent of Post Offices, Aurangabad (Bihar).
 5. Jitendra Kumar Singh Son of Sri Dhaneshwar Singh G.D.S. M.C., Gordiha B.O in A/C with Refiganj S.O. under the Superintendent of Post Offices, Aurangabad (Bihar).

.... Petitioners

Versus

1. The Union of India through the Director General of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Bihar Circle, Patna.
3. The Director Postal Service (HQ), Office of the Chief Post Master General, Bihar Circle, Patna.
4. The Superintendent of Post Offices, Aurangabad (Bihar).
5. The Sub Divisional Inspector (East), Sub Division, Aurangabad (Bihar).

..... Respondents 1st Set.

6. Binit Kumar Son of Sri Suresh Chandra Singh G.D.S. M.D., Ram Bilash Nagar, B.O. in A/C with S.S. College the Superintendent of Post Offices, Aurangabad (Bihar).
7. Nand Kumar Raut Son of late Sarvajeet Ram G.D.S. M.D./M.C., Resiap B.O. in A/C with S.S. College S.O. Under the superintendent of Post offices, Aurangabad (Bihar).

..... Proforma Respondents – Respondents IInd Set.

.... Respondents

With

Civil Writ Jurisdiction Case No. 12591 of 2017

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1. Binit Kumar S/o Sri Suresh Chandra Singh GDSMC, Ram Bilash Nagar, SO, in A/c with S.S. College, Aurangabad under Superintendent of Post Offices, Aurangabad, Bihar.
 2. Nand Kumar Raut, S/o late Sarvjeet Ram, GDSMD/ MC, Risiap BO in A/c with S.S. College SO Under Superintendent of Post offices, Aurangabad, Bihar.

.... Petitioners

Versus

1. The Union of India through the D.G. of Posts, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Director of Postal Services (HQ), O/o the Chief Postmaster General, Bihar, Circle, Patna.



4. The Superintendent of Post Offices, Aurangabad.
5. The Sub- Divisional Inspector (East) Sub Division, Aurangabad..... Respondents
6. Nawnit Kumar Singh S/o late Brij Nath Prasad Singh GDSMD Kashma BO in A/c with Rafiganj SO under the superintendent of Post Offices, Aurangabad, Bihar.
7. Naresh Singh S/o late Suryadev Singh GDSMD/MC, Mahara BO in A/c with Deo SO under the Superintendent of Post Offices, Aurangabad, Bihar.
8. Udayanand Yadav S/o late Shri Mahabir Prasad yadav GDSMC/MC, Jaipur BO in A/c with S.S. College SO Under the Superintendent of Post Offices, Aurangabad, Bihar.
9. Birendra Kumar Yadav S/o late Mohan Yadv GDMSC/MC, Dugul BO in A/c with Rafiganj SO under the Superintendent of Post offices, Aurangabad, Bihar.
10. Jitendra Kumar Singh S/o Shri Dhaneshwar Singh GDSMC Gordiha BO in A/c with Rafiganj SO under the Superintendent of Post Offices, Aurangabad, Bihar.

..... Proforma Respondents.

.... Respondents

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Appearance:

(In CWJC No.11791 of 2017)

For the Petitioner/s : Mr. M.P. Dixit, Mr. S.K. Dixit,
Mr. Sanjay Kumar Chaubey,
Mr. Shailendra Kumar and
Mr. Sunil Kumar, Advocates.
For the Respondent/s : Mr. S.D Sanjay, Addl. Solicitor General &
Mr. S.D. Verma, Advocate.

(In CWJC No.12591 of 2017)

For the Petitioner/s : Mr. Hemant Kumar Karan, Advocate.
For the Respondent/s : Mr. S.D. Sanjay, Addl. Solicitor General &
Dr. Punam Kumari Singh, CGC.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 06-10-2017

Heard learned counsel for the petitioners and learned
Additional Solicitor General with learned Assistant Counsel for the
Union of India.

2. Since both these Writ Applications arise out of a
common order dated 21st July, 2017 passed in O.A. No. 847 of 2013



and the issues involved are identical in respect of all the writ petitioners, as prayed for by the learned counsel for the parties, these two Writ Applications have been heard together and are being disposed off by this common judgment.

3. Seven applicants joined together in O.A. No. 847 of 2013 raising their grievances against the impugned order dated 16.12.2013 (Annexure A/1 series to the O.A.) by which their services have been ordered to be terminated; they also prayed for quashing of the letter dated 18.12.2013 (Annexure A/2 series), wrongly typed as 19.12.2013 in the prayer portion of the O.A. and in the impugned order, by which the Superintendent of Post Offices, East Division, Aurangabad (Respondent no. 3) called upon the District Employment Officer, Aurangabad inviting fresh sponsoring for engagement as Gramin Dak Sevak-Sah-Mail Carrier (in short, hereinafter referred to as 'GDSMC').

4. According to the applicants, they were engaged in different Branch Offices under Aurangabad Postal Division on the vacant posts of GDSMC. Their engagement was done by virtue of the notification calling upon the District Employment Officer, Aurangabad for sponsoring names of suitable candidates for those posts. It is their case that after receipt of their names from the Employment Exchange, the respondents issued separate call letters for



screening and paper verification, only thereafter all the applicants – petitioners were issued appointment letters. The applicants, who are petitioners in CWJC No. 11791/2017, joined on 19.06.2013, 09.04.2013, 02.05.2013, 02.05.2013 and 03.05.2013 respectively whereas the applicants – petitioners in CWJC No. 12591/2017 submitted their joining on 09.04.2013 and 02.05.2013 respectively. They were served with the show cause notice dated 23.11.2013 calling upon them to submit their reply within 15 days against the proposed termination of their engagement. All the applicants submitted their reply and took a plea that their appointment has been done fairly under Rule 21 of the Department of Posts, Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011 (hereinafter referred to as ‘the Rules 2011’). The show cause notice, which has been enclosed as Annexure A/4 series, in respect of all the applicants is on similar lines. For a ready reference, the contents of one of the show cause notices are noted hereunder:-

**“DEPARTMENT OF POSTS, INDIA
Office of the Inspector Posts East Sub Dn. Aurangabad 824 101**

Memo No: A-1/Kasma BO/Rafiganj SO/2012-13 Dated at Aurangabad the 23.11.2013

Whereas Sri Nawnit Kumar Singh S/o late Baijnath Prasad Singh Vill Karsara Post Karsara Via- Jakhim Distt Aurangabad (Bihar has been engagement as GDSMD Kasma BO in a/c with Rafiganj S.O. under Aurangabad Division by the then SDI(P) East Sub Dn Aurangabad vide memo of even no. A-1/GDSEDDA/Kasma BO/Rafiganj SO/2012-13 dated 02.05.2013

Whereas on receipt of various complaints regarding engagement a careful examination and enquiry of the engagement



process was made and the undersigned has come to the conclusion that Sri Sri Nawnit Kumar Singh is not engagement to the post GDSMD as per departmental rules / instruction and accordingly proposes to cancel his engagement made on the post.

Now, therefore, Sri Nawnit Kumar Singh is hereby given an opportunity of making representation which he may wish to make against the action proposed will be considered by the undersigned. Such a representation, if any should be made in writing and submitted so as to reach the undersigned within 15 days from the date of receipt of this memo.

The receipt of this memo should be acknowledged.

Inspector Posts
East Sub Dn. Aurangabad.”

5. The grievance of all the applicants is that they have been later on terminated vide order dated 16.12.2013 without assigning any reason and at the same time the District Employment Officer has been called upon for sponsoring names of suitable candidates. The applicants assailed their termination submitting that though the nomenclature of the notice speaks of a notice issued under Rule 8 of Rules, 2011 but the fact remains that the termination order mentions Rule 6(a) and 6(b) of the P&T EDAS (Conduct and Service) Rules, 1964 which is not in force. The present Rules 2011 came into force with effect from 18.04.2011 on amending the existing Rules of 2001. The submission of the learned counsel for the applicants was that in spirit it is a notice under Rule 4(3)(c) of the Rules 2011.

6. It was also one of the submissions of the learned counsel for the applicants that the impugned notice dated 16.12.2013 was issued under Rule 6 of the Rules of 1964 which was non-existent,



therefore, on this ground also the termination order is liable to be set aside.

7. It appears that the respondents filed a Written Statement in opposition to the O.A. in which the reasons for termination are clearly stated. According to the respondents, one T. Ram (since deceased) the then SDI (P) East Sub Dn., Aurangabad, being the Appointing Authority for the posts of GDSMD/MC, made engagement on these posts but thereafter a series of complaints regarding irregular engagements made by him were being received in the Office of the Superintendent of Post Offices, Aurangabad by different persons / public representatives. In this situation, the engagement files were reviewed by the Divisional Office and during review of the files, the authorities found that it was not clear as to what were the sources of receipt of applications and how many applications were received for different posts in which 10 senior most in marks were sorted out by the Appointing Authority. It was noticed that every engagement files contained 10 applications only. In each file, Xerox copy of the registered cover being no. FF 409525240 was kept as if all the applications were received from the Employment Exchange only and not directly. No list of candidates being sent by the Employment Exchange was available in the file. No verification report of mark sheet of the candidates selected was available in the



engagement file. In these circumstances, show cause notice was issued to the Appointing Authority also but as he died on 25.10.2013, the incumbent in SDI (P) was asked to explain the above irregularities with the office record, who reported that no register for receipt of applications for engagement of GDS and no records of verification report of mark sheet are available in the office. In these circumstances, the SDI (P) East Sub Division, Aurangabad was ordered to terminate the engagements, observing due formalities. The respondents issued termination order accordingly.

Order of CAT, Patna Bench

8. The Tribunal considered the submissions on behalf of the applicants, considered the relevant rules, particularly Rule 4(3) and Rule 8 of the Rules 2011, and finally came to a conclusion that the termination of the applicants was under Rule 8 of the Rules 2011 which was evident from the contents of the order of termination. The Tribunal was also of the view that for termination of engagement of the applicants, who had not completed three years from the date of their respective engagement, no show cause was required in terms of Rule 8(2). The Tribunal has also come to a conclusion that putting a wrong provision does not take away the jurisdiction of the authority because it is well settled that once it is found that the power exists, the exercise of power under a wrong provision will not render the order



illegal or invalid. Several judicial pronouncements of the Hon'ble Supreme Court have been referred and relied upon by the learned Tribunal to bring home its conclusion on the arguments raised on behalf of the applicants. The Tribunal came to a conclusion that the termination of the applicants by the Appointing Authority was in terms of Rule 8 of the Rules 2011 and the impugned notice / order of termination was neither intended nor a notice issued under Rule 4 of the Rules 2011. There was no reason in the impugned order and, hence, the Tribunal dismissed the O.A.

Submissions of the Writ Petitioners

9. The O.A. applicants, who are writ petitioners before us, have once again drawn our attention towards Rule 4 and Rule 8 of the Rules 2011. It is reiterated that when the order of termination has been passed admittedly on the direction of the superior authority, the provisions as contained in Rule 4(3) would be the only applicable provision whereunder the superior authority would have exercised its jurisdiction after giving an opportunity to the applicants of being heard. It is their common submission that the termination of their engagement by the Appointing Authority taking recourse to the proviso to Rule 8(2) of the Rules 2011 to makes it a case of termination simplicitor without considering the show cause of the applicants is not just and proper and hence the Tribunal has



committed error in not accepting the case of the applicants.

Submission of the Respondents

10. On the other hand, learned Additional Solicitor General for the Union of India submits that the Tribunal has rightly come to a conclusion that the termination of the engagement of the applicants is in terms of the proviso to Rule 8(2) of the Rules 2011 and the same being a termination simplicitor without there being any finding of misconduct against the applicants, no interference is required and the Tribunal has rightly rejected the applications.

11. The learned Senior Counsel for the respondents would submit that the Rules 2011 came into force upon supersession of the existing Department of Posts, Gramin Dak Sevak (Conduct & Employment) Rules, 2001. In the superseding Rules 2011, the word 'Employment/Appointment' wherever appeared in the Rules 2001 has been replaced with the word 'Engagement'. According to him, the engagement letters issued to the GDS MD/MC clearly states that their engagement is in the nature of a contract, liable to be terminated by SDI (P) by notifying an order in writing and that his conduct and services was also to be governed by the Rules 2011 as amended from time to time. He has drawn our attention towards the order of engagement, which is available on the record as Annexure 3 series to the O.A.



CONSIDERATION

12. We have considered the rival submissions at the bar and perused the materials available on the record. Before we record our final opinion in this matter it would be just and proper to quote the relevant Rule 4 and Rule 8 of the Rules 2011 as under:

“4. Recruiting Authority

(1) The Recruiting Authority in respect of each category of Sevak shall be as shown in the Schedule annexed to these rules.

(2) If any doubt arises as to who is the appropriate Authority in any case, the matter shall be referred to the Government, whose decision thereon shall be final.

(3) Notwithstanding anything contained in these rules, any authority superior to the Recruiting Authority as shown in the Schedule, may, at any time, either on its own motion or otherwise call for the records relating to the engagement of Gramin Dak Sevaks made by the Recruiting Authority, and if such Recruiting Authority appears-

(a) to have exercised a jurisdiction not vested in it by any law or rules time being in force; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, such superior authority may, after giving an opportunity of being heard, make such order as it thinks fit.”

“8. Termination of Engagement

(1) The engagement of a Sevak who has not already rendered more than three years’ continuous service from the date of his engagement shall be liable to be terminated at any time by a notice in writing given either by the Sevak to the Recruiting Authority or by the Recruiting Authority to the Sevak;

(2) The period of such notice shall be one month:

Provided that the service of any such Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim a sum equivalent to



the amount of Basic Time Related Continuity Allowance *plus* Dearness Allowance as admissible for the period of the notice at the same rates at which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice fails short of one month.

Note.- Where the intended effect of such termination has to be immediate, it should be mentioned that one month's Time Related Continuity Allowance *plus* Dearness Allowance as admissible is being remitted to the Sevak in lieu of notice of one month through money order."

13. A perusal of the order of engagement of these applicants read with the scheme of the Rules 2011 leave no doubt in our mind that the applicants' status is not more than that of a contractual worker. As submitted by the learned Senior Counsel, the Rules 2011 has superseded the earlier existing Rules 2001 and in course of revision / supersession the word 'Employment' has been removed and the word 'Engagement' has been brought into existence, therefore, the applicants cannot claim their continuance on the post if the respondents have taken recourse to the provisions contained in the order of engagement read with the proviso to Rule 8(2). The only submission which has been agitated on behalf of the petitioners is that in the present case admittedly the order of termination has been issued on the direction of the superior authority, therefore, the order should have been passed only by the superior authority after giving an



opportunity of hearing to the petitioners. We are unable to agree with the submission made on behalf of the petitioners. The orders of termination of the petitioners are in the nature of termination simplicitor. There is no stigma attached to the applicants which will be apparent from the contents of the orders of termination which we quote hereunder:-

“Office of the Inspector of Post Offices, East Sub Division, A.bad

Memo No: A-1/Malhana BO/Deo SO/2012-13 dated at Agb the 16.12.2013

In pursuance of the Proviso to Rule 6(b) and Note below Rule-6(b) of P&T EDAS (Conduct and Service) Rule, 1964, I B.K. Pathak, Inspector of Post Offices, East Sub Division, Aurangabad here terminate forthwith the services of Sri Naresh Singh GDS MD/MC Malhana B.O. in a/c with Deo S.O. under Aurangabad H.Q. and direct that he shall be entitle to a sum equivalent to amount of his TRCA plus Dearness Allowance for the period of the notice at the same rate at which he was drawing immediately before the Termination of his service or as the case may be, for the period by which notice fails short of one month.

Notice has been issued in the interest of Administration and also for want of any documentary in respect of Conduct & Engagement to those engaged persons.

The Due Amount of same TRCA plus DA is remitted in lieu of notice of one month. This action has been done as per S. Posts, Aurangabad Letter No. East / employment / SDI (E)/2013 Aurangabad dated 20.11.2013.

Sd/-

(B.K. Pathak)

Inspector, Post Offices,
East Sub Division, Abad

Copy forwarded for information & Necessary action to:-

- (i) The Supdt. of Post Offices, Aurangabad Dn., Abad - with reference to his Letter No. East/employment/SDI East/2013 dated at Agb the 20.11.2013.
- (ii) The Postmaster, Aurangabad H.Q. – He will act as per Memo issued immediately.
- (iii) Office copy.”

14. The Written Statement filed on behalf of the



respondents has narrated in detail the reasons which we term here 'motive' behind issuing such order of termination by the appointing authority at the instance of the superior authority. There were several complaints from different corners and ordinarily on the complaints filed several irregularities were noticed. The relevant records were not maintained and there were serious doubts over the manner in which the engagements were done by the then Superintendent of Post Offices, who was the Appointing Authority. In these circumstances, without casting any aspersion on the petitioners and without recording any finding of misconduct against them, after the show cause notices were issued to the applicants and when they submitted their reply, it was thought just and proper to take recourse to the proviso to Rule 8(2) of the Rules 2011 and, accordingly, termination orders were issued by the Appointing Authority.

15. We have taken notice of the contents of the termination orders here-in-above and safely come to a conclusion that the termination orders is in the nature of a termination simplicitor.

16. In the case of **Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others**, reported in (2015) 15 SCC 151, the Hon'ble Supreme Court has considered the distinction in a case where termination takes effect on the foundation of guilt and where the termination is based on a



complaint which may, at best, be a motive for such termination. Their Lordships, in Paragraph 21, quoted Paragraphs 28 & 29 from the judgment rendered in the case of **Chandra Prakash Shahi v. State of U.P.**, reported in (2000) 5 SCC 152, which read as under:-

“21. In **Chandra Prakash Shahi v. State of U.P. (2000) 5 SCC 152** after addressing the history pertaining to “motive” and “foundation” and referring to series of decisions, a two-Judge bench had held that: (SCC p. 167, paras 28-29)

“28. The important principles which are deducible on the concept of ‘motive’ and ‘foundation’, concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of ‘motive’.

29. ‘Motive’ is the moving power which impels action for a definite result, or to put it differently, ‘motive’ is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If,



however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry.”

17. Further, their Lordships, in Paragraph 22 of the judgment in **Ratnesh Kumar Choudhary** (Supra), took note of Paragraph 10 of the judgment rendered by a three-Judge Bench in **Union of India v. Mahaveer C. Singhvi, (2010) 8 SCC 220**, which reads as under:-

“22. A three-Judge Bench in **Union of India v. Mahaveer C. Singhvi (2010) 8 SCC 220** dwelled upon the issue whether the order of discharge of a probationer was simplicitor or punitive, referred to the authority in **Dipti Prakash Banerjee v. Satyendra Nath Bose national Centre for Basic Sciences, (1999) 3 SCC 60**, and came to hold thus: (Mahaveer C. Singhvi case, SCC p. 225, para10)

“10. It was held by this Court in **Dipti Prakash Banerjee case (1999) 3 SCC 60** that whether an order of termination of a probationer can be said to be punitive or not depends on whether the allegations which are the cause of the termination are the motive or foundation. It was observed that if findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, a simple order of termination is to be treated as founded on the allegations and would be bad, but if the enquiry was not held, and no findings were arrived at and the employer was not inclined to conduct an enquiry, but, at the same time, he did not want to continue the employee’s services, it would only be a case of motive and the order of termination of the employee would not be bad.”



18. In view of what has been held by the Hon'ble Supreme Court in the aforementioned cases, in the present case we find that the applications received from different sources were the motive behind taking the action for termination simplicitor. There was no finding against these petitioners, no stigma was attached to them and, for that reason, nothing wrong may be inferred from the orders of termination issued to the applicants – petitioners.

19. In a last attempt learned counsel for the petitioners raised an issue that the petitioners were holding a civil post and, therefore, they were entitled for protection under Article 311 of the Constitution of India. In the facts of the present case where we have noticed the status of the GDS MD/MC after the Rules 2011 came into force and further that their termination is a termination simplicitor, the submission of the learned counsel in the facts of the present case is totally irrelevant and need not be dwelt upon.

20. The learned Tribunal has gone into all aspects of the matter and has rightly come to the conclusion that only because a provision of the Rules is not quoted or is wrongly quoted in any notice or order of termination, the same would not render the notice or the termination invalid. In the present case also, no doubt notice of termination mentioned Rule 6(a) and Rule 6(b) of the Rules 1964 but thereafter a corrigendum was issued by the respondents that the Rule



6 in the termination order may be read as Rule 8. Rules 1964 was not in existence and if the provision of Rules 1964 was wrongly quoted, which was later on rectified by the respondents, the same would not be a ground to nullify the order of termination. The superior authority having reviewed the fact and noticed the irregularities ordered the Appointing Authority to take recourse to the provision of Rule 8 of the Rules 2011 and accordingly the Appointing Authority has issued the notice of termination simplicitor, it has caused no prejudice to the applicants – petitioners. The order of termination simplicitor has rightly been upheld by the learned Tribunal.

21. We find no merit in the Writ Applications and those are hereby dismissed. However, there will be no order as to costs.

(Rajeev Ranjan Prasad, J)

I agree.
Ajay Kumar Tripathi, J.-

(Ajay Kumar Tripathi, J)

Dilip, AR

AFR/NAFR	A F R
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