

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16699 of 2008

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1. Alok Kumar Singh Son of late Mohan Singh
2. Most. Manti Devi Wife of late Mohan Singh
3. Rajeev Kumar Singh Son of late Mohan Singh, All are resident of Village-Saidpur, P.S.- Mofassil Ara, District- Bhojpur.

.... Petitioners

Versus

1. The State of Bihar .
2. The Registrar(Administration) High Court of Judicature of Patna.
3. The District and Session Judge, Civil Court, Buxar.
4. The Judge, Incharge Nazarat, Civil Court Buxar.

.... Respondents

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Appearance :

For the Petitioners	: Mr. Amarendra Kumar, Advocate.
For the State	: Mr. Alok Kumar Rahi, AC to GP-21.
For the Respondents	: Mr. Piyush Lall, Patna High Court.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 21-02-2017

Heard learned counsel for the petitioners and learned
counsel for the State.

2. The petitioner seeks quashing of the order dated
29.05.2003 Annexure-10 to the supplementary counter affidavit
filed on behalf of respondent no. 3 issued by the District Judge,
Buxar by which the petitioner was dismissed from his service and
further seeks quashing of the order as contained in Memo No. 1040
dated 12.08.2008 (Annexure-8) issued under the signature of the
Registrar (Admn.) High Court of Judicature at Patna by which the
appeal against the order of his termination has been dismissed. The



petitioner states that the order of termination was never served or communicated to the petitioner. During the pendency of this writ petition, the petitioner died and his widow and sons were substituted vide order dated 19.01.2017.

3. The facts which are relevant for disposal of this writ petition are that the petitioner was appointed on the post of Peon of 29.07.1977 in the Civil Court, Arah. In the year 1979, itself, the petitioner was transferred to Civil Court, Buxar, but the petitioner absented himself on account of his mental illness since 03.05.1996. The petitioner was under the treatment of Dr. U.N. Choudhary till 10.10.2007. The petitioner joined on 11.10.2007, but his joining was not accepted. On 22.11.2007 the petition of the petitioner for accepting his joining was rejected as disclosed by the Judge-in-charge, Civil Court, Buxar that he was terminated from the service vide order dated 29.05.2003 and the same was communicated to the petitioner vide Letter No. 338 dated 3rd June, 2003. The petitioner on such communication filed appeal before the Registrar General, Patna High Court. The High Court have been pleased to dismiss the appeal and the same was communicated to the petitioner vide Memo No. 1040 dated 12.08.2008 as contained in Annexure-8.

4. Respondent No. 3 filed the counter affidavit and



stated that the petitioner was temporarily appointed on the post of Peon on 29.07.1977 vide order dated 93/77. The petitioner was habitual absconder from duty without any leave for which he was warned to be careful under order dated 08.12.1993 for his absence for many days. The petitioner remained absent from his duty from 03.03.1996 till the order of dismissal and he was again warned but he did not take care. The petitioner did not file petition on 02.05.1996 about his absence and treatment. A notice was sent through special messenger vide Letter No. 63 dated 29.06.1996 to the petitioner but the petitioner was not found present and the notice was hanged at the door. Again vide Letter No. 64 dated 10.07.1996 he was asked to explain but no reply was given. A notice was also sent on 01.10.2002 to show cause about his absence from 03.03.1996 but no information was sent and no show cause was filed by the petitioner. A notice was issued in the newspaper on 25.02.2003, but the petitioner did not join his service and consequently vide Order No. 10/2003 dated 29.05.2003 the District and Sessions Judge, Buxar dismissed the petitioner from service. It is stated that since the petitioner was temporarily appointed on the post of Peon, therefore, he cannot claim the violation of principle of natural justice, but the answering respondents has also admitted that no specific reply is given in any paragraph of the writ petition as no



departmental proceeding was initiated against the petitioner for his long absence.

5. Learned counsel for the petitioner submits that that the petitioner was appointed on 29.07.1977. The petitioner was appointed temporarily on the post of Peon in a pay scale and the petitioner continued in his service, but he was terminated without initiating a departmental proceeding. Learned counsel for the petitioner placed his reliance on a judgment reported in ***AIR 1964 SCC 600 (Moti Ram Deka vs. General Manager, N.E.F.)*** Learned counsel for the petitioner further submits that even in the counter affidavit the answering respondents has not stated that any departmental proceeding was initiated. Of course, the notice was published in paper publication, but the petitioner was mentally ill and in such circumstances, it is held in a judgment of this Court reported in *PLJR 1991 (1) 229* that even the paper publication is not a valid notice. The petitioner preferred appeal in the High Court stating that no departmental proceeding was initiated in absence of the petitioner and the petitioner has been summarily dismissed from service, but the appeal of the petitioner was also dismissed without assigning any reason. The order is in violation of principle of natural justice. It is stated that the appellate authority also dismissed the appeal without considering the grounds of the delinquent in



memo of appeal.

6. Learned counsel for the petitioner placed his reliance on paragraphs 46 and 47 the Judgment of the Supreme Court reported in **2010(9) SCC at page 496 (Kranti Associates Pvt. Ltd. and Anr vs. Masood Ahmed Khan and Ors)**. Paragraphs 46 and 47 of the judgement are as follows:-

“Para 46 – The position in the United States has been indicated by this Court in the case of **S.N. Mukherjee vs Union of India AIR 1990 SC 1984**. This Court held that in the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as “the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review”. In **S.N. Mukherjee** this Court relied on the decisions of the US Court in **Securities and Exchange Commission v. Chenery Corpn. And Dunlop v. Bachowski** in support of its opinion discussed above.

Para 47 :- Summarizing the above discussion, this courts hold:

(a.) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b.) A quasi-judicial authority must record reasons in support of its conclusions.

(c.) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d.) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e.) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f.) Reasons have virtually become as indispensable a component of a decision- making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g.) Reasons facilitate the process of judicial review by superior Courts.

(h.) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually



the life blood of judicial decision- making justifying the principle that reason is the soul of justice.

(i.) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j.) Insistence on reason is a requirement for both judicial accountability and transparency.

(k.) If a Judge or a quasi-judicial authority is not candid enough about his/her decision- making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l.) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision- making process.

(m.) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision- making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.

(n.) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision- making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o.) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

7. On the other hand Mr. Piyush Lal, learned counsel appearing on behalf of the High Court has submitted that from perusal of the appointment letter of the petitioner as annexed in the supplementary counter affidavit, it would appear that the petitioner was appointed temporarily and there is no requirement for issuance



of notice to terminate the service of a temporary employee. The temporary employee has got no right to hold the post. In case of his dismissal from the service, there is no question of violation of principle of natural justice. Learned counsel has placed his reliance on the judgments reported in *(1991) 1 SCC 691 State of Uttar Pradesh vs. Kaushal Kishore Shukla*) and *(1995) 1 SCC page 638 (Madhya Pradesh Hast Shilpa Vikas Nigam Ltd. vs. Devendra Kumar Jain & Ors)*.

8. The learned counsel further submitted that the appellate authority is not obliged to give reasons, if the order of termination is in confirmation with the order of the disciplinary authority and in support of this contention placed his reliance on the judgments reported in *AIR 1990 (SC) page 1984 (S. N. Mukherjee vs. Union of India)* and on the judgment reported in *(1994) Suppl. SCC (2) 468(State Bank of India vs. S. S. Koshal)*.

9. On the basis of submissions of the respondents, it is evident that the thrust of the arguments is that the petitioner was appointed temporarily and he was not a permanent employee of the Civil Court, Buxar. The first and foremost question which arises as to whether the petitioner, who was appointed temporarily as Peon in Civil Court, Ara remained temporary employee even after 19 years of service and his termination from service without holding



any departmental enquiry is legal?

10. Bihar Civil Court Rules, 1998 deals with the mode of appointment of class-III and class-IV posts in the Civil Courts of State of Bihar. Rule 5 of the Civil Court Rules prescribes the mode of recruitment of class-IV employees which reads as follows:-

*5. Mode of recruitment of Class IV employees.-
(1) The District Judge shall notify the vacancies of Class IV employees in the local Employment Exchange and shall notify the same also in the General Notice Boards of the District Headquarters as also Sub-divisional Headquarters, if any.
(2) Such vacancies shall also be advertised in two daily newspapers having wide circulation in the concerned district, one of which must be in Hindi.*

11. Rule 13 of Bihar Civil Court Rules deals with the period of probation of employees appointed in Civil Courts of Bihar which reads thus:-:

*13. Probation.-(1) All persons appointed to any category shall from the date on which he joins duty shall be on probation for the period as follows:-
(i) If recruited directly for a total period of two years duty within a continuous period of three years.
(ii) If appointed from other service for a total period of one year on duty within a continuous period of two years.
Provided that the period of probation shall be deemed to have been extended unless his services are expressly confirmed:
Provided further that the decision regarding the said confirmation shall ordinarily be taken within a period of three years from the date of his initial joining of the post.
(2) The services of candidates may be terminated on the expiry of such period or even during the pendency of probation period without assigning any reason, if in the opinion of the District Judge his performance is not satisfactory.*



12. The facts which are admitted that petitioner was appointed on a class-IV post in accordance with rules on 29.07.1977 by the District Judge, Ara. He was transferred from Civil Court Ara to Civil Court Buxar and he remained there till 1996. The respondents have not brought on record any paper to show that the petitioner did not complete his probation successfully. Rule 13 of the Bihar Civil Court Rules, 1998, as quoted above, clearly provides that the District Judge shall take decision about confirmation of an employee within 2/3 years of his appointment. The proviso of aforesaid Rules, of course, provides that the period of probation shall be deemed to have been extended unless his services are expressly confirmed but admittedly the proviso says clearly that decision regarding such confirmation shall ordinarily be taken within a period of three years from the date of his initial appointment to the post but if no such express order is given the employee cannot be deemed to be temporary even after 19 years of service.

13. In view of the aforesaid provisions and, particularly, in absence of any such order extending the period of probation of the petitioner till indefinite period, the petitioner shall be deemed to have been confirmed after serving successfully during the probation



period, i.e. three years and the petitioner shall be treated, for all practical purposes, to be a confirmed employee and, therefore, his service cannot be terminated without following the procedure of termination in accordance with law.

14. It has also been pointed out that earlier Bihar Civil Services (Classification, Control and Appeal) Rules, 1930 or now Bihar Civil Services (Classification, Control and Appeal) Rules, 2005 is applicable to the staff of Civil Courts which provides for detailed departmental enquiry in order to punish the delinquent. Rule 17 of the Bihar Civil Services (Classification, Control and Appeal) Rules prescribes the detailed procedure for holding departmental proceeding. Sub Rule 11 of Rule 17 provides that in absence of delinquent the enquiry officer shall ask the presenting officer to prove the articles of charges made against the delinquent but in the present case simply a notice was published in daily newspaper directing the petitioner to join his duty but no departmental proceeding was initiated and the service of the petitioner was terminated without following any procedure of law prescribed under the Rules.

15 I find that the judgements on which Mr. Lall, the learned counsel for the respondents, placed reliance are not helpful to the case of respondents on the simple ground that petitioner



cannot be treated as temporary employee even after putting in successfully and satisfactorily 19 years of service although the Rules prescribes the period of probation only for three years. Therefore, I find that that the order of termination is palpably illegal and should not be allowed to stand.

16. So far as second ground taken by the learned counsel for the respondents that the appellate authority is not bound to give reasons if the finding of the disciplinary authority is confirmed by the appellate authority, I do not find this submission to be acceptable in view of the law laid down by the Supreme Court in the case of *Kranti Associates Pvt. Ltd. (supra)*. By now it has been settled that even the appellate authority has to give reasons after considering the grounds of the appellant, while dismissing the appeal, but if reason is not assigned it shall be deemed that the grounds taken by the appellant has not at all been considered and that amounts to violation of principle of natural justice.

17. In the result, the writ petition is allowed. The order dated 29.05.2003 (Annexure 10) and order as contained in Memo No. 1040 dated 12.08.2008 (Annexure-8) are set aside.

18. Since the original petitioner Mohan Singh has already died, the petitioners, who are the legal heirs, are entitled to get the retiral benefits. The District Judge, Buxar is directed to take



actions in accordance with law.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.03.2017
Transmission Date	

