

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.476 of 2016

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Basant Priyaraj, son of Shri Dhanik Lal Mandal, resident of village- Sarhila, P.O.-
Boraj, P.S.- Hathauri, District- Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Bisheswaraiya Bhawan, Bihar, Patna.
2. Engineer in Chief -cum- Additional Commissioner -cum- Special Secretary, Road Construction Department, Bisheswaraiya Bhawan, Bihar, Patna.
3. Chief Engineer, South Bihar (Traffic) Wing, Road Construction Department, Bihar, Patna.
4. Deputy Secretary, Road Construction Department, Bisheswaraiya Bhawan, Bihar, Patna.
5. Executive Engineer, Road Construction Department, Road Division, Buxar.
6. Assistant Engineer, Road Sub-Division, Road Construction Department, Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Saha, Advocate

For the Respondent/s : Mr. Kumar Manish, SC-5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-05-2017

Leave is granted to Mr. Gautam Saha, learned counsel
for the petitioner to correct the status of respondent no.1 during
the course of the day.

Heard Mr. Gautam Saha, learned counsel appearing for
the petitioner and Mr. Kumar Manish, learned Standing Counsel
No.5 for the State.

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

The petitioner is aggrieved by the order bearing Memo
No.5882(S) dated 30.6.2015 of the Deputy Secretary, Road



Construction Department, Government of Bihar, Patna, whereby the petitioner has been held ineligible for re-employment as a Junior Engineer (Civil) on contract basis. A copy of the order is impugned at Annexure-1 to the writ petition. The petitioner while questioning the order, seeks appropriate direction to the authorities of the Road Construction Department to consider his case for re-employment albeit on contract basis.

The facts are not in dispute and it is following a decision of the State Government to appoint Junior Engineers on contract basis that the petitioner was appointed vide office order bearing Memo No.380(E) dated 17.2.2009, a copy of which is placed at Annexure-4 to the writ petition in which the name of the petitioner appears at serial no.141. The appointment of the petitioner was for a period of one year on a fixed salary of Rs.11,900/- subject to extension as stipulated in condition no.2 of the order bearing Memo No.380(E) dated 17.2.2009. The petitioner since after his initial employment on contract basis has continued to serve the department with his contract renewed each year until the issuance of the impugned order when the department decided not to renew the contract of the petitioner, inter alia, on grounds of his absence with effect from 25.1.2014 to 8.8.2014.

It is the argument of Mr. Gautam Saha, learned counsel



appearing for the petitioner while accepting the absence of the petitioner that the same was preceded by an application for leave contained in Annexure-15 and since the petitioner thereafter fell seriously ill suffering from jaundice that he could not join the duty for the period in question and gave his joining only after he was medically fit on 9.8.2014 vide Annexure-17. A certificate of the Doctor encloses the joining given by the petitioner and which has been accepted by the controlling authority i.e. the Executive Engineer, Road Construction Department, Road Division, Buxar. The petitioner has thereafter been allowed to complete the contract period ending in December 2014 but when his name was not recommended for re-employment that he gave his representations present at Annexures 20 and 21 and whereupon the Deputy Secretary, Road Construction Department, Bihar, Patna queried from the Executive Engineer, Road Construction Department, Road Division, Buxar vide his letter no.3014 dated 1.4.2015 to offer his comment on the application filed by the petitioner. A copy of the letter of the Deputy Secretary is placed at Annexure-22 and has been responded to by the Executive Engineer, Road Construction Department, Road Division, Buxar vide letter no.589 dated 20.4.2015. The Executive Engineer has informed the Deputy Secretary, Road Construction Department, Bihar, Patna that the petitioner was suffering from jaundice and



has submitted the medical certificate in support which was the reason for his absence from 25.1.2014 to 8.8.2014. The Executive Engineer has mentioned that the petitioner has discharged his duties for the contract period except the period in question. The Executive Engineer by the same letter has recommended the case of the petitioner for re-employment for the year 2015 but the recommendation has not found favour as by the impugned order dated 30.6.2015 (Annexure-1), the re-employment of the petitioner has been rejected on grounds of his unauthorized absence from 25.1.2014 to 8.8.2014.

Rather a short argument has been advanced by Mr. Saha, learned counsel appearing for the petitioner. He submits that the foundation on which the order has been passed is incorrect because the reasons assigned by the petitioner for his absence has been accepted by the controlling authority who has also accepted his joining vide Annexure-17 and allowed the petitioner to complete the contract period. He further submits that the Deputy Secretary, Road Construction Department, Bihar, Patna having initiated action on the application of the petitioner for re-employment for the period 2015 onwards vide Annexure-22, a favourable recommendation by the Executive Engineer vide Annexure-23 should have drawn in favour of the petitioner but was followed by the illegal order as contained in Annexure-1.



The argument of Mr. Saha has been contested by Mr. Kumar Manish, learned Standing Counsel no.5 mainly on grounds that the engagement being a contractual appointment, the petitioner had no enforceable right, even if he has civil law remedy. In support, learned counsel has referred to a Division Bench judgment of this Court reported in **2017(2) PLJR 160 (Banking Business Facilitators Association vs. Chairman, State Bank of India)** to submit that that the legal position in respect of contractual appointment stands settled by the judgment and thus the petitioner has no case for re-employment.

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

This Court in consideration of the contest had required the State Government to inform as to the number of vacancies yet available with the department and when the respondents through Mr. Kumar Manish, learned Standing Counsel No.5 has fairly informed by way of a supplementary counter affidavit that there are yet 521 posts of Junior Engineer vacant in the department. I must admit that the respondents have been quite fair in giving this information to this Court but it is yet to be seen whether any infirmity exists in the non-consideration of the case of the petitioner. There cannot be any contest that any dispute arising from a contract, has to be resolved before a court of competent



civil jurisdiction and a writ remedy is not available to such of the litigants. The issue is whether the contest at hand is at all a contractual dispute or it is a case of wrongful rejection of an entitlement.

As I have already indicated above, it is not in dispute that the petitioner was on leave from 25.1.2014 to 8.8.2014. It is also not in dispute that the petitioner has served the department since 2009 until December, 2014 without any complaint from the superiors. At least it does not reflect from the counter affidavit. The issue is whether the absence can be justified or would be a motive for rejection. Had it been a case of a termination of contract on account of absence of the petitioner for the period in question in exercise of powers so vested in the stipulations present in the resolution dated 18.7.2007, more particularly Clause 5 which does not allow extraordinary leave to the contract employees, the matter would have been different but in the present case the contract of the petitioner has not been cancelled for his absence rather the petitioner was allowed to join duty after his return from leave and he was also allowed to complete his contract period. In fact Annexure-23 to the writ petition which is a letter dated 20.4.2015 of the Executive Engineer, Road Construction Department, Road Division, Buxar responding to the query made by the Deputy Secretary, Road Construction



Department, Bihar, Patna in the matter of consideration of re-employment of the petitioner is conclusive on the issue that the explanation given by the petitioner for his absence was accepted by the department. In my opinion if the department has not chosen to cancel the contract of the petitioner for his absence and for the alleged violation of Clause 5 of the resolution dated 18.7.2007 rather has permitted him to join duties and also to complete his contract followed by the letter dated 20.4.2015 of the Executive Engineer at Annexure-23 recommending his case for re-employment for the period 2015, it did not lie in the jurisdiction of the Road Construction Department to refuse the candidature of the petitioner for re-employment for the period 2015 because the reasons so assigned was not existing any more.

It is rightly argued by Mr. Gautam Saha, learned counsel for the petitioner that the foundation for rejection itself is incorrect because neither the petitioner went on leave without notice as confirmed from Annexure-15 nor his contract was terminated for his absence rather the petitioner was allowed to join duties on 9.8.2014 vide Annexure-17 after being satisfied on the explanation given by him regarding his illness by the Executive Engineer. The reason and the foundation on which the impugned order is resting, is incorrect and consequently the petitioner was entitled for consideration of his re-employment in view of the



recommendation present at Annexure-23.

In the circumstances discussed and in view of the recommendation of the Executive Engineer present at Annexure-23 coupled with the fact that there are yet 521 vacancies available with the department as manifest from paragraphs 9 and 10 of the supplementary counter affidavit filed today, the Principal Secretary, Road Construction Department, Government of Bihar, Patna is directed to consider the prayer of the petitioner afresh and dispose of the same in accordance with law within a maximum period of six weeks from the date of receipt/production of a copy of this order.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01-06-2017
Transmission Date	NA

