

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23774 of 2013

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1. RAJESH KUMAR GUPTA SON OF LATE RAMJI DAS C/O VINOD KUMAR GUPTA, RESIDENT OF VILLAGE - BAKSARIA TOLA BAHARI BEGUMPUR, P.O. - BEGUMPUR, P.S. - BY PASS, DISTRICT - PATNA
 2. VIKRAM KUMAR SON OF ANIL KUMAR SRIVASTAVA C/O GOPAL PRASAD SINGH, ROAD NO. 2, EAST INDIRA NAGAR, KANKARBAGH, P.S. KANKARBAGH, PATNA - 800020

... .. Petitioner/s

Versus

1. The State Of Bihar , Through Secretary, Department Of Rural Development, Bihar, Patna
2. The Commissioner (Manrega) Rural Development Department, Bihar, Patna
3. The District Magistrate, Vaishali At Hazipur
4. The Director, National Employment-Cum-Fund Manager, Manrega, Vaishali, Hazipur
5. The Director Account Administration And Self Employment Department, Vaishali, Bihar
6. The District Panchayat Raj Officer, Vaishali , Bihar
7. The Deputy Development Commissioner, District - Vaishali, Bihar
8. The Block Development Officer-Cum-Programme Officer, Vaishali, At Hazipur
9. The Block Development Officer-Cum-Programme Officer, Patepur, Vaishali

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shakil Ahmad Khan
For the Respondent/s : Mr. Prasoon Sinha

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 16-05-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing order dated 20.08.2013 passed by Deputy Development Commissioner, Vaishali by which petitioners have been removed from the service of Junior Engineer and Panchayat Rozgar Sewak of the Manjhauri Gram



Panchayat, Vaishali.

3. The petitioners were employees under the Manrega Scheme in the district of Vaishali in Gram Panchayat, Manjhauli on the post of Junior Engineer and Panchayat Rozgar Sewak.

4. Petitioner No. 1 was appointed by the District Rural Development Authority, Nalanda on the post of Junior Engineer and joined in Nalanda on 18.08.2010 and was thereafter transferred to Vaishali.

5. Petitioner No. 2 was appointed on the post of Panchayat Rozgar Sewak on the basis of written test held on 10.06.2007 and was appointed in the district of Vaishali and joined on 30.08.2007 in the office of D.D.C., Vaishali. Petitioners were employed under the Manrega Scheme within the Rural Development Department, Government of Bihar and were working in the district of Vaishali from 30.08.2007 and 18.08.2010 to the satisfaction of all.

6. One complaint by Ashiruddin Sah was made against petitioners before the District Magistrate, Vaishali to inquire about the two schemes of Manrega which was completed in the year 2010 in the Gram Panchayat Manjhauli. The scheme related to digging of ponds in the Panchayat and same was completed in 2010.



7. An enquiry was conducted in which irregularities were found as contained in Annexure-5 of writ petition and FIR was registered against petitioners, Mukhia and Technical Assistant in which Anticipatory Bail was granted.

8. After lapse of three years of completion of the scheme present complaint was made and in the enquiry submitted by the Enquiry Officer it has been found that all the beneficiaries of this scheme have taken payment by post office on the advice of Panchayat on completion of scheme.

9. It has been contended that the enquiry is selective and other persons who were also involved in the scheme they have been left out and action has been taken against petitioners only. The complaint concerns two schemes under Manrega being Manrega Yojna No. 02/2010-11 and 06/2010-11 which relates to digging of pond and same was inquired by a team constituted by the District Magistrate and the enquiry report has been enclosed as Annexure -5 to the writ petition. The two schemes which were subject matter of enquiry were completed on 29.09.2010 and 11.10.2010 for which complainant Ashiruddin Sah had lodged a complaint in the Janta Darbar on 08.11.2012 and enquiry was initiated in file No. 10/12-13 and a team was constituted for on the spot enquiry with respect to Yojna No.



02/2010-11 in which it has been alleged that on private land of Ram Swarth Rai pond has been constructed for which estimate of Rs. 1,24,546/- was prepared against which Rs. 1,24,436/- was spent and the team found that the pond has been dug and the scheme was executed by 53 job cardholders and for which a local vigilance team and monitoring team of 10 persons were constituted and they have given a written petition that the scheme was executed and completed in their presence. In the records, photographs of work done and display board is available and measurement was done on 06.03.2010 by the Panchayat Technical Assistant and on 09.09.2010 by the Junior Engineer (petitioner) the work was checked and payment was released. The team found following defects in the execution of scheme:-

Under the Scheme 15 ft. depth was to be dug for which 1064 human days were to be created whereas 1086 human days was actually created. During the enquiry the villagers opined that only 5 ft. depth was dug and accordingly only 523 human days were created and it appears that wrong measurement was done, as such, Rs. 59,622/- became recoverable. The team has made certain observation regarding utility of pond being constructed in this area and utilization of soil in construction of



road which was not the subject matter of enquiry. The finding of enquiry team with respect to scheme No. 02/2010 is based on opinion expressed by some of the villagers on their personal assessment and not based on any scientific finding and same being conducted after three years and scheme being over cannot be relied upon. The report is based on conjectures and surmises and the team has found that it appears to them which is not a conclusive finding with regard to irregularities committed in the project and based upon such perfunctory report no action can be taken against petitioners

10. with regard to Yojna No. 6/10-11 it has been found that no irregularity has been found as reported against the scheme rather the villagers who had assembled there have stated that scheme has been fully implemented as such nothing adverse has been reported against petitioner as far as scheme No. 06/10-11 is concerned in the report as enclosed in Annexure 5.

11. It is true that the petitioners are appointed on contractual basis and they don't have any right to continue on contractual basis if something adverse has been found against them then in terms of contract, their service is liable to be terminated. However, since the employer is the State whose conduct in matter of removal of even contractual employees



should be fair and reasonable there should be finding based upon conclusive enquiry on basis of which action can be taken.

12. Petitioners have relied upon judgment and order dated 05.10.2016 passed by this court under similar circumstances where by also this Court has found that on basis of such enquiry no adverse order can be passed and had remitted the matter to D.D.C., Vaishali for fresh consideration.

13. The order passed is stigmatic and punitive having serious civil consequences and findings and conclusions cannot be based on mere suspicion, assumption and presumption, ipse-dixit, conjectures and surmises and personal opinion and assessment of enquiry team but finding and conclusion has to be arrived on scientific basis, actual measurement and objective analysis by the Enquiry team after taking into account passage of 3 years of completion of scheme.

14. In the present case this Court finds that the report of the enquiry team is based on their personal assessment/ opinion and not on any scientific basis. The order dated 20.08.2013 issued by D.D.C., Vaishali has not considered the defence of petitioner while passing the order of termination of their contract and removal from service. Although petitioners are not regular employees and they don't have protection of Article 311



of the Constitution of India but action of the Welfare State even against its contractual employees should also be fair and based upon reasons which is lacking in present case, as such order dated 20.08.2013 as contained in Annexure-1 is set aside and matter is remitted to the D.D.C. to hear petitioners and pass a fresh order taking into account, the defence of petitioners while passing a fresh order within 3 months from date of production/receipt of copy of this order.

15. The writ petition is allowed to the extent as indicated above.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	22.05.2018
Transmission Date	N.A.

