

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11538 of 2009

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1. Most. Shiv Sati Devi , aged about 55 years Widow of late Shankar Rai
 2. Sonali Kumari D/o late Shankar Rai living with her husband separately
 3. Anita Jaiswal (Married) D/o late Shankar Rai living with her husband separately
 4. Niraj Kumar Ranjan, aged about 26 years. Son of late Shankar Rai
 5. Bisakha Kumari(unmarried) aged about 21 year & Six months D/o late shankar Rai
 6. Swati Sinha, Unmarried , aged about 17 years D/o late Shankar Rai

.... Petitioner/s

Versus

1. The State of Bihar through Bihar Industrial Area Development Commissioner, Department of Industries, Bihar, Patna.
2. Director Industries Department, Bihar, Patna.
3. Regional Office, BIADA, Bhagalpur.
4. Managing Director, Bihar Industrial Area Development Authority, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anup Kumar Chongdar,
Mr. Ganesh Singh
For the State : Mr. Subodh Kumar, AC to SC 26

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 28-03-2018

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

2. The original petitioner has died. In the present writ petition, original petitioner has prayed for quashing the order dated 16.5.2007 by which the order of punishment has been passed by the Managing Director thereby he has dismissed the services of the original petitioner treated him to a temporary employee.



3. India is a republic. The law is to be followed by every wing of the Government as well as the Corporation. They cannot run their organization on their whim but has to follow the rule of law, when rule of law is not followed by the Corporation which is State within the meaning of Article 12 of the Constitution certainly it creates concern to the Court as it is expected that person who is in the organization will act in accordance with the constitutional scheme and as per norms of the law.

4. In the present case justice is at casualty in view of the fact that though petitioner has been treated as temporary employee in the order of dismissal but in the charge sheet it has been mentioned as routine clerk in the pay scale of Rs.4000-6000 that letter itself depicts he was not temporary employee. Ashok Kumar Singh was appointed as an Enquiry Officer which is apparent from the Charge sheet (Annexure-4). The enquiry proceeding is showing in what manner enquiry proceeding has been conducted is clear, from narration of following facts, charge sheet was communicated through paper publication dated 6.5.2007 published in the news paper and petitioner was asked to give reply within three days.

5. In pursuance thereof, explanation was received from the delinquent. The order dated 14.5.2007 shows that Ashok Kumar



Singh was busy with official work, the Secretary took up the responsibility of Enquiry Officer. On the next date i.e. 15.5.2007 he proceeded with enquiry proceeding declared that all charges have been proved against the petitioner and final order has been passed on 16.5.2007. So entire process of enquiry proceeding from issuance of charge sheet to the final decision, has completed within a period of ten days. When the Secretary assumed the charge as Enquiry Officer, it was incumbent upon him to give notice to the petitioner, so he could have an opportunity to participate in the proceeding but the order sheet is completely silent and does not show, ever the petitioner was informed for appointment of new Enquiry Officer. It was the duty of new Enquiry Officer to communicate, the petitioner about the next date of departmental proceeding.

6. Learned counsel for the BIADA has submitted that enquiry has been conducted fairly and properly. He was given chance to file explanation which he has filed as well as was also given a chance to participate in the enquiry but he failed to do so.

7. In the present case, it appears to this Court that Enquiry Officer has thrown all norms of enquiry proceeding in the wind, as without following minimum requirement of law completed the enquiry as the petitioner was not granted proper opportunity to participate in



the proceeding and without bringing any material he recorded the finding holding petitioner guilty of charges. The charges have to be proved by the prosecution by examining the witnesses and bring materials connecting with misconduct. If Enquiry Officer has not followed minimum requirement of natural justice the enquiry proceeding is farce having no value in the law. As enquiry has not been conducted fairly and properly, the entire proceeding is vitiated. Hence the order of punishment against original petitioner is set aside. This Court cannot give direction for fresh enquiry as the petitioner has already died and there cannot be any enquiry against dead person. This Court directs the Corporation to make payment of all dues of original petitioner without any delay, preferably within three months from the date of receipt/production of a copy of this order.

8. Accordingly this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
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