

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.488 of 2016

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Sunil Kumar Verma son of Shri Radhe Shyam Prasad, resident of- Ganga Mahal,
R.B. Road, P.O.- Chowk, P.S.- Kotwali, District- Gaya

.... Petitioner

Versus

1. The State of Bihar through the Commissioner cum 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. Deputy Secretary, Road Construction Department, Bisheswaraiya Bhawan, Bihar, Patna
4. Superintending Engineer, Road Construction Department, Saran Road Circle, Hajipur, Vaishali
5. Executive Engineer, Road Construction Department, Road Division, Siwan
6. Assistant Engineer/SDO, Road Construction Department, Road Sub-Division, Maharajganj, Siwan
7. Estimating Officer, Road Construction Department, Road Sub-Division, Maharajganj, Siwan

.... Respondents

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Appearance :

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

For the Respondent/s : Mr. Mithilesh Kumar Upadhyay, AC to GP-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 28-02-2018

Heard Mr. Gautam Saha, learned counsel appearing for the
petitioner and Mr. Mithilesh Kumar Upadhyay, learned AC to GP-3,
for the State.

Four orders are put to question in the present writ petition,
namely:

(a) vide order bearing Memo No. 2280 dated 6.6.2014
passed by respondent no.2, Engineer-in-Chief, Road Construction
Department, Bihar, Patna stated to have received by the petitioner
through registered post only on 29.12.2014, the petitioner was



terminated from his contractual appointment. A copy of the order is impugned at Annexure 1;

(b) Vide order bearing Memo No. 5878 dated 30.6.2015 passed by respondent no.3, the Deputy Secretary, Road Construction Department, Bihar, Patna, the claim of the petitioner for re-employment made through his application dated 21.4.2015 has been rejected. A copy of the order is impugned at Annexure 2;

(c) Vide order dated 28.1.2015 of the Road Construction Department they have decided to reduce the number of engagement from 124 to 117 for the ensuing year 2015. According to the petitioner, 7 left out engineers from the list of 124 includes him as well. A copy of the order is impugned at Annexure 3;

(d) Vide office order No. 19 dated 29.1.2015 a list of 117 engineers has been published, who were engaged for a period of one year on contractual appointment and which does not include the petitioner. A copy of the order is impugned at Annexure 4.

In sum and substance the grievance of the petitioner is that although he has been in engagement of the Road Construction Department, albeit on contractual basis since the year 2009, his last contract through office order dated 29.11.2013 vide Annexure 8 to the writ petition was sought to be curtailed by a termination order bearing Memo No. 2280 dated 6.6.2014, impugned at Annexure 1 to the writ



petition. According to the petitioner, this order was not received by him until 29.12.2014.

It is submitted that although termination was, inter alia, on grounds of unauthorized absence of the petitioner from duty but the fact is that the petitioner duly intimated the superiors of his absence on account of ailment of his wife and on her recovery that he gave his joining vide Annexures 17 and 18 and which was accepted on 20.6.2014, whereafter he continued to discharge his obligation until the expiry of the contract. It is the grievance of the petitioner that although the petitioner despite order of cancellation was allowed to complete his tenure and which is supported by the documents of posting present at Annexures 19 and 23 to the writ petition, he was under impression that the leave was sanctioned. It is the case of the petitioner that since the services of the petitioner was dispensed with in the next contractual engagement for the year 2015 that he represented through his letter dated 21.4.2015 and which has been rejected through Annexure 2 vide letter of the Deputy Secretary dated 30.6.2015 and in the meanwhile the appointment order in respect of others was issued on 29.1.2015. Hence, the present writ petition.

Mr. Saha, learned counsel for the petitioner while questioning the orders on arbitrariness and de hors the materials, has very passionately relied upon an opinion of this Court expressed in the



case of **Basant Priyaraj v. the State of Bihar & ors.** arising from C.W.J.C.No. 476/2016 to canvass the case of the petitioner on grounds of illegal termination as well as for re-engagement.

The arguments of Mr. Gautam Saha, learned counsel appearing for the petitioner, has been contested by Mr. Mithilesh Kumar Upadhyay, learned AC to GP-3, who submits that the services of the petitioner had already been terminated on 6.6.2014 and thus the contention advanced by the petitioner that he discharged his obligation is not correct. Such is statement made in paragraph 33 of the counter affidavit. Although Mr. Upadhyay, learned State Counsel, in reference to the counter affidavit has denied the claim of the petitioner of having discharged his obligation after giving joining on 20.6.2014 vide Annexure 18 but the orders of posting at Annexures 19 and 23 have not been denied.

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

The issue before this Court is whether the termination order at Annexure 1 can be sustained, inter alia, on grounds of violation of principles of natural justice as according to the petitioner he was not put on notice before such order was passed and the second issue raised is whether the petitioner was entitled for a re-engagement alongwith others vide appointment order dated 29.1.2015 at Annexure



4. The corollary to the same would be whether reduction in strength vide Annexure 3 dated 28.1.2015 as well as rejection of the application of the petitioner for re-employment vide letter dated 30.6.2015 requires interference.

In so far as the issue of mid tenure termination arising from the order dated 6.6.2014 impugned at Annexure 1 to the writ petition is concerned, the discussion has been rendered academic because the period has expired and according to the petitioner himself, since after giving joining on 20.6.2014 vide Annexure 18 he was allowed to discharge his obligation through posting order at Annexures 19 and 23 which two posting orders have not been contested. In view of such documents on record I do not deem it necessary to comment on the legality or validity of the order dated 6.6.2014 in view of expiry of contractual period in November/ December, 2014, inasmuch as any expression thereon would hardly be of any consequence considering the nature of engagement which is contractual. May be, if the termination would have been questioned during the currency of the contract, the issue would require an answer but as observed, it would be an academic discussion to express an opinion whether or not termination order had a validity.

The next issue which arises for consideration is whether the petitioner has been wrongfully denied re-engagement for the year



2015 in the circumstances discussed and/or whether the case of the petitioner is covered by the opinion expressed by this Court in the case of **Basant Priyaraj** (supra).

In my opinion, neither the judgment of **Basant Priyaraj** (supra) is applicable to the case of the petitioner for the facts accompanying the two cases are entirely distinct nor delayed action by the petitioner to question his non-engagement would persuade this Court to express any opinion. While in the case of **Basant Priyaraj** (supra) the rejoining of the said petitioner had been accepted by a positive order and on expiry of the contract the controlling authority had also recommended for his re-engagement which two relevant factors were ignored by the respondent State when considering the issue of his re-engagement, none of the two relevant aspects are present in the case of the petitioner herein, even though there are documents to demonstrate that the petitioner was given posting(s) after his joining on 20.6.2014 vide Annexures 19 and 23. The distinctive feature between the case of **Basant Priyaraj** (supra) and the petitioner is, the missing recommendation. While in the case of **Basant Priyaraj** (supra) the controlling authority had recommended for consideration of his case for re-engagement, there is no such recommendation in the case of the petitioner.

The second issue which does not persuade this Court to



express any opinion is that although the decision of the State Government to reduce the number of post from 124 to 117 was taken on 28.1.2015 and the order of posting was issued on 29.1.2015, the petitioner rather leisurely has approached the respondents for re-engagement three months thereafter on 21.4.2015 when more than 1/3rd of the period was over and which application of the petitioner was rejected on 30.6.2015. Even thereafter the petitioner has delayed to take recourse of judicial remedy inasmuch as while the petitioner claims to have filed this writ petition in September, 2015 which again is after a quarter of the engagement period is over, the writ petition on removal of the defect was registered only in January, 2016 when in fact the contract period itself was over.

The circumstances aforementioned do not persuade this Court to grant indulgence to any of the prayer made. The writ petition is dismissed accordingly.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.03.2018
Transmission Date	NA

