

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5438 of 2009

=====

Arun Kumar, son of Jagdish Singh @ Jagdish Prasad, Resident of Village
Maksudpur, P.S. Meenapur, Dist. Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate-cum-Administrator, Tirhut Dugdh Utpadak Sahkari Sangh Ltd., Muzaffarpur.
3. The Managing Director, Tirhut Dugdh Sahkari Sangh Ltd., Muzaffarpur.
4. The Managing Director, Bihar Co-operative Milk Produces Federation Ltd., B-9, Shri Krishnapuri, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Achal Kumar Sinha, Adv.
For the Resp. No.3 : Mr. Rajesh Prasad Chaudhary, Adv.
For the State : Mr. Neeraj Raj, Adv.
For the COMFED : Mr. Nikesh Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 07-02-2018

Heard learned counsel for the petitioner and counsel for
the Tirhut Dugdh Sahkari Sangh, Counsel for the Federation as also
counsel for the State.

Learned counsel for the Tirhut Dugh Udpadak Sahkari
Sangh has challenged the maintainability of the writ application on
the plea that the judgment passed in the case of *the Organizer, Dehri
C.D. & C.M. Union Limited Vs. The State of Bihar & Ors.* reported in 2014
(1) PLJR 695 having challenged by the State and this order has been
stayed. The plea has been taken by the State that even during
pendency of supersession, any order passed by the Administrator will
not come under the purview of judicial review. This Court earlier in



the *Nand Kishore Rai Vs. The State of Bihar & Ors.* reported in *1988 PLJR 1065* and in the case of *Harender Narain Banker v. The State of Bihar & Ors.* reported in *1985 PLJR 1078* wherein it has been held that any order passed by the Administrator, he will be liable to the judicial scrutiny by the High Court. That judgment still holds the field. In that view of the matter, this Court entertain this writ application and this Court is dealing with the case on its own merit.

In this case the petitioner, being a fourth grade employee, has challenged the order of the Managing Director dated 1.7.2005 (Annexure-4) by which the services of the petitioner has been dispensed with in terms of Clause 9 (iii) of the Standing Order of the Cooperative Society which has been affirmed vide order dated 26.12.2008 passed by the District Magistrate-cum-Administrator, the appellate authority.

In the present case, the petitioner, on account of sudden serious illness of his mother, who was affected by paralysis, rushed to his native village consulted the doctor, namely, Dr. Bibha Verma, Consultant Gynecologist & Obstetrician for treatment of his mother who advised her for complete bed rest on account of profuse bleedings and he sent an application through U.P.C. for leave on medical ground of his mother. As the petitioner remained busy with the treatment of his mother, all of a sudden, he saw a notice published



in the Hindustan Newspaper (Hindi) on 16.6.2005 in the name of petitioner and Umesh Kumar, wherein, it has been mentioned to join the duty by 30.6.2005 and submit their respective explanations, otherwise, Society will initiate a departmental proceeding for dismissal. As the petitioner rushed to the place of posting and joined on 30.6.2005 but, the Managing Director, Tirhut Dugh Sahkari Sangh Ltd. (Respondent no.3) handed over an order of dismissal from service on 1.7.2005 wherein it has been mentioned that as the petitioner has remained absent from 19.4.2005 continuously and in exercise of power under Clause 9 (ix) of the Standing Order, the services of the petitioner was dispensed with with effect from 1.7.2005. In the said letter, nowhere it has been mentioned that even after the notice, the petitioner failed to join his duty and against this order, the petitioner filed appeal before the appellate authority i.e. District Magistrate-cum-Administrator (respondent no.2) on 21.10.2008 but, that remained pending for long compelled the petitioner to approach this Court in C.W.J.C. No. 8674 of 2006 and the appellate authority vide order dated 26.12.2008 dismissed the appeal and affirmed the order of the disciplinary authority but, in this order also, there is no discussion or consideration of the plea which has been taken by the petitioner nor anywhere it has been mentioned that the petitioner failed to report to his duty in terms of the notice



issued by the Tirhut Dugh Sahkari Sangh but, in the counter affidavit, the respondent no.3 has tried to fill up the lacuna that the petitioner failed to report to the duty as per notice so the services of the petitioner was dispensed with.

Counsel for the Federation has further submitted that the past services of the petitioner is also not fair, in the past also, the petitioner was served with show-cause notice on different occasions and he was awarded punishment from time to time and, as such, his past record of service is bad.

In the case of *Mohinder Singh Gill & Anr. Vs. Chief Election Commissioner, New Delhi & Ors.* reported in *AIR 1978 SC 851* wherein it has been specifically held that any lacuna in the order cannot be filled up either by the affidavit or the counter affidavit. The notice itself depicts that if the employee fails to report to the duty and submit his explanation, he will face departmental proceeding. Even presuming that the petitioner failed to report to the duty then it was the bounden duty of the Society to initiate a proper departmental proceeding and could have passed an order in terms of their standing order but, in the present case, nothing has been done, straightway the order of termination has been handed over to the petitioner which is itself dehors to the contents of the notice published by the Tirhut Dugh Udpadak Sahkari Sangh as well as the appellate authority has failed to



take into consideration the grounds which are taken by the petitioner in his memo of appeal.

In that view of the matter, the order passed by the Disciplinary Authority, namely, the Managing Director, Tirhut Dugdh Sahkari Sangh dated 1.7.2005 and the order dated 26.12.2008 passed by the Appellate Authority i.e. District Magistrate cum Administrator, Tirhut Dugdh Utpadak Sahkari Sangh Ltd. are hereby quashed and the matter is remanded back. If they so advised, they may proceed in accordance with law. Any payment will be subject to the final result of the departmental proceeding.

In the result, this writ application is allowed to the extent indicated above.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.02.2018
Transmission Date	NA

