

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4806 of 2016

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Dr. Sunil Kumar Jha S/o Sri Dhaneshwar Jha resident of Vill. - Gajhara, P.S. -
Ladania, Distt. - Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Art Culture and Youth Department, Govt. of Bihar, Patna.
2. The Chairman, Governing Body Bihar Museum Society, Patna.
3. The Director, Bihar Museum, Patna.
4. The Addl, Director, Administrators Bihar Museum, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sunil Kumar Karn, Advocate
For the State	:	Mr.Shakib Ayaz AC to AAG-13
For the Respondent Nos. 3 and 4 :	:	Mr. Rajesh Kumar Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 17-10-2019

Heard learned counsel for the petitioner,, learned counsel
for the respondent- State as well as respondent Authorities of
the Bihar Museum.

2. The petitioner has sought quashing of the order office
order dated 17.02.2016 whereby and whereunder Director of
Respondent -Bihar Museum has terminated with immediate
effect the petitioner's services on the basis of finding of
working being "unsatisfactory".The order is clearly punitive in
nature which is apparent from a bare perusal of the same.

3. Counsel for the petitioner submits that such a penal
order without complying with the principles of natural justice



are unsustainable in the eyes of law.

4. The counsel for the respondent-Authorities has submitted that the service of the petitioner was unconfirmed. He was working as Deputy Director Research in the Bihar Museum though he was regular and permanent employee of Archaeology Survey of India. The assessment of his work was found to be “unsatisfactory” and, therefore, the authorities have rightly terminated the unconfirmed service of the petitioner with immediate effect.

5. This Court had earlier under order dated 20.06.2019 considered the submissions of petitioner’s counsel that another unconfirmed employee, namely, Dr. Aakansha had been terminated on similar grounds on her service being found “unsatisfactory”. Writ Court in the proceedings arising out of C.W.J.C. No. 5035 of 2016 in the case of Dr. Aakansha has set aside the order of termination as being punitive and in violation of the principles of natural justice. The order of the writ Court dated 18.03.2017 was assailed by the authorities by way of intra Court appeal. L.P.A. No. 697 of 2017 filed by the authorities was dismissed on 10.10.2017 affirming the order of the writ Court.

6. This Court would consider it useful to reproduce order



of the Division Bench in the case of **Dr. Aakansha** which reads as follows:

“Having heard learned counsel for the parties, we find that the learned Writ Court has interfered with the order of termination dated 17.2.2016 mainly on the ground that it is punitive in nature, it amounts to termination of services by way of punishment, is not a termination simplicitor, but is by imputing certain acts of omission and commission on the respondent-employee which amounts to misconduct and as a formal departmental enquiry or requirement of principles of natural justice have not been followed, the learned Writ Court has rightly interfered in the matter after considering the issue in question in detail. In doing so, we are of the considered view that the Writ Court has not committed any error warranting reconsideration.

The order impugned dated 17.2.2016 is punitive in nature and the same having been brought into force without following the basic principles of natural justice, no error has been committed by the learned writ Court warranting reconsideration.

The appeal is, therefore, dismissed.”

7. Having regard to the *prima facie* similarity in the case of the petitioner with Dr. Aakansha, this Court, under order dated 20.06.2019, had allowed the respondent Authorities to place on record whether there was any point of distinction between the case of the petitioner and that of Dr. Aakansha. The respondents in paragraph no.19 of their counter affidavit have stated that petitioner's case is different from Dr. Aakansha. Such a



statement is palpably incorrect for in the very next sentence in paragraph 19 the authorities have stated as follows:-

“She (Dr. Aakansha) had been terminated from service for unsatisfactory work. Whereas petitioner was under lien from central Government’s service and his over all performance as per evaluation was not upto mark an unsatisfactory.”

8. The statement, *prima facie*, does not bring about any distinction in the case of the petitioner with that of Dr. Aakansha. Merely by stating that the petitioner case is different, will not distinguish the case of the petitioner with that of Dr. Aakansha. Specific grounds were required to be shown on which case of the petitioner could be distinguished with that of Dr. Aakansha. The alleged distinction quoted hereinabove is clearly incorrect and unsustainable. The only conclusion possible from the stand of the respondents quoted hereiabove is that both the petitioner, as well as Dr. Aakansha have been terminated from the service on account of “unsatisfactory” evaluation of their work. The case of the petitioner is identical to that of the Dr. Aakansha inasmuch the petitioner too has been terminated under office order dated 17.02.2016 issued by the Director of the Bihar Museum without affording any opportunity of hearing and without holding any departmental proceeding against the petitioner in accordance with law. The



order dated 17.02.2016 being punitive, on the basis of charges and without complying the principles of natural justice is clearly unsustainable in the eyes of law, the same is quashed.

9. The writ petition stands allowed.

10. The respondent authorities, however, would be at liberty to proceed in accordance with law.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	19.10.2019
Transmission Date	

