

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2462 of 2019

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Saroja Nand Jha, aged about 59 Years (Male), S/o Late Moda Nand Jha,
Resident of Mohalla-Ayachi Nagar, Ward No. 19, P.S. Madhubani, Dist.-
Madhubani.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Law.
2. The Principal Secretary, Department of Law, Old Secretariat, Patna.
3. The District Magistrate, Madhubani.
4. The District and Sessions Judge, Madhubani.
5. Sri Basudeo Jha, S/o Late Kameshwar Jha, Resident of Mohalla-New Chakdah, P.S. Raj Nagar, Dist.-Madhubani.

... .. Respondents

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Appearance :

For the Petitioners : Mr.Shailendra Kumar Jha, Advocate.
For the Respondents : Mr.Prashant Pratap, G.P. 2.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

2 19-02-2019 Heard learned counsel for the petitioner and learned
counsel for the respondents.

The following reliefs have been sought for on behalf
of the petitioner in the present writ application.

“1(i) For issuance of an appropriate writ or writs, order or direction commanding the respondent Nos. 3 and 4 to set aside the Memo No. 89 dated 10.01.2019 whereby and whereunder the respondent no. 5 was authorised to act as the In-charge Government Pleader till the appointment of permanent Government Pleader in utter violation of the provision of the Code of Civil Procedure, 1908.

(ii) For issuance of an appropriate writ, order or direction to the respondent no. 5 not to act as an In-charge Government Pleader till the approval of the State Government as his authorisation to act as an



In-charge Government Pleader by the respondent nos. 3 and 4 is not in consonance with the provision of C.P.C. and the same has been made under Section 139 of the Bihar Practice & Procedure Manual which is commonly known as P.P. Manual which does not allow them to do so.

(iii) For further issuance of an appropriate writ, order or direction to the respondent nos. 3 and 4 to authorise the petitioner or any other persons who have been working as an Assistant Government Pleader for the last more than 10 years and whose names figure in the approved list of A.G.Ps. as has been done in the case of Late Shyam Bihari Rai in 2006.”

It has been submitted by learned counsel for the petitioner that Sri Basudeo Jha respondent no. 5, has been appointed as ‘In-charge Government Pleader’ in the district of Madhubani, vide Annexure-2 to the present writ petition, after death of the ‘Government Pleader’ Shyam Bihari Rai. It is further submitted that respondent no. 5, has wrongly been appointed as ‘In-charge Government Pleader’, inasmuch as ‘In-charge Government Pleader’ ought to have been appointed from the panel of Assistant Government Pleaders.

The appointment of ‘In-charge Government Pleader’ is made in terms of Rule 139 of Bihar Practice & Procedure Manual. Rule 139 of Bihar Practice & Procedure Manual reads as follows:-



“139.Filling in of temporary vacancy- In the event of a temporary vacancy in the office of Government Pleader, the Collector shall, in consultation with the Sessions Judge, appoint a qualified pleader to act in the office until such pleader is relieved by a Government Pleader duly appointed, or until his appointment is cancelled by the Collector. The Collector shall forthwith report to the Legal Remembrancer through the Commissioner the occurrence of every such vacancy and the making or cancellation of every such appointment for the approval of Government.”

From perusal of Annexure-2, it is evident that the appointment of respondent no. 5, as ‘In-charge Government Pleader’, has been made as per the provision engrafted under Rule 139 of Bihar Practice & Procedure Manual, in consultation with the District & Sessions Judge, Madhubani. I do not find any substance in the submissions made by the learned counsel for the petitioner that such appointment has to be made from the existing panel of ‘Assistant Government Pleaders’ rather the above referred rule provides that in the event of a temporary vacancy in the office of Government Pleader, the Collector shall appoint a qualified Pleader to act in the office i.e. ‘Incharge Government Pleader’ in consultation with the Sessions Judge as a stop-gap arrangement.

The Rule 147(2) of said Manual further makes it clear that such temporary arrangement which is of stop-gap nature



does not give any entitlement for claim to final appointment in the event of the vacancy becoming permanent.

I must take notice of the Bihar Law Officers (Engagement) Rules, 2017, (hereinafter referred to as 'Rules 2017') which has been framed in exercise of powers conferred under Article 309 of the Constitution of India, and has come into force after being published in the Official Gazette on 30th October, 2017. The Rules referred above nowhere contains any provision regarding appointment of 'Incharge Government Pleader' Rule 15 of the said Rules 2017, talks about saving and overriding effect of the said Rule, which is as under.

15. Saving and overriding effect-

“(i) These Rules shall be supplemental to the provisions contained in different statutes regarding engagement of Law Officers.

(ii) Anything contrary to these Rules made or issued by the Government in connection with the matters provided for herein prior to coming force of these Rules or anything contained in the Legal Remembrancer Rules, 1946 shall not have any effect and shall not stand saved from the date of coming in force of these Rules.”



From the conjoint reading of Sub Rule (i) and (ii) of Rule 15, it would be apparent that appointment of 'Incharge Government Pleader' as to fill-up temporary/casual vacancy in the office of 'Government Pleader' has to be made only in terms of Rule 139 of Bihar Practice and Procedure Manual, since there being no provision contained in Rules 2017 any other Statute or Rules regarding appointment of 'Incharge Government Pleader' in the event of temporary vacancy in the office of Government Pleader.

Considering the nature of the Rules 2017, which being supplemental to the provisions contained in different statutes regarding engagement of Law Officers and further Rule 139 of 'Bihar Practice and Procedure Manual' not being in conflict with any of the provisions of Rules 2017, therefore, I am of the view that the order of the District Magistrate, Madhubani, contained in Memo No. 89 dated 10.01.2019 (Annexure-2) does not suffer from any kind of illegality or irregularity.

The Code of Civil Procedure, 1908, does not contain any provision regarding appointment of either 'Government Pleader' or 'Incharge Government Pleader', only the expression 'Government Pleader' is defined in Clause (7) of Section (2) of the Code of Civil Procedure, which reads thus:



“ 2 (7) “Government Pleader” includes any officer appointed by the State Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader”.

The plea, thus, taken by the petitioner that the appointment of ‘Incharge Government Pleader’ impugned hereunder being not made in consonance with provisions of the Code of Civil Procedure is unfounded and misconceived.

In view of the facts and circumstances referred above, I have no hesitation to hold that the present litigation is frivolous and meritless and the same being filed with ulterior purpose or oblique motive, especially, taking the fact into consideration that the petitioner himself is an Advocate and being appointed and working as Assistant Government Pleader for last 10 years in the Civil Court, Madhubani.

The expression ‘litigation’ means a legal action including all proceedings therein initiated in the Court of Law for the enforcement of right or seeking remedy, one who approaches the Court of Law must have a bonafide grievance relating to



enforcement of his legal right or infringement of legal right, be it a statutory or constitutional.

In the present case, the petitioner has not even set out a case that by the impugned action in the matter of the appointment of 'Incharge Government Pleader' his statutory or any other kind of legal right being infringed. Therefore, in my considered opinion, it is a clear case of either luxury litigation or publicity litigation. The petition is wholly devoid of merit, therefore, to discourage the filing of such frivolous and meritless petitions which result only in wasting the valuable time of this Court, at least heavy costs must be imposed upon such petitioner.

Therefore, accordingly, this petition is dismissed with costs quantified at Rs. 50,000/-, which is to be deposited by the petitioner to the Legal Service Committee of Patna High Court, within a period of one month from today.

(Sudhir Singh, J)

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