

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4461 of 2016

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Arvind Paswan Son of Kamdeo Paswan, resident of Shambhu Mehta Lodge,
Room no. 50, Yadav Lane, Mussalahpur Hat, Police Station- Kadam Kuan, in
the district of Patna.

... .. Petitioner/s

Versus

1. North Bihar Power Distribution Company Ltd. and Ors
2. The Chairman-cum Managing Director, Bihar State Power Holding Company, Ltd. Vidyut Bhawan, Bailey R
3. The Managing Director, North Bihar Power Distribution Company Ltd., Vidyut Bhawan, Bailey Road, Pat
4. The General Manager, Human Resources/Administration, North Bihar Power Distribution Company Ltd. V null null
5. The Deputy General Manager, North Bihar Power Distribution Company Ltd. Vidyut Bhawan, Bailey Road,
6. The Chief Engineer, North Bihar Power Distribution Company Ltd. Vidyut Bhawan, Bailey Road, Patna.
7. The Electric Executive Engineer, Electric Supply Division, Bettiah.
8. The Electric Assistant Engineer, Electric Supply Sub-Division, Narkatiyaganj in the district of Wes

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Raj Kumar
For the Respondent/s : Mr.Vinay Kirti Singh

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

4 21-08-2019 Heard learned counsel for the parties.

2. This application has been filed seeking quashing of order as contained in Memo No.470 dated 16.05.2015, whereby service of the petitioner has been terminated. The petitioner's representation before Respondent No.5 seeking reconsideration of his case which has also been rejected by letter No. 892 dated 15.10.2015, which too is under challenge in the present writ application.



3. Counter affidavit and supplementary counter affidavit have been filed on behalf of the respondents.

4. The facts are not at all in dispute. Pursuant to selection based on Employment Notice No.03 of 2013, the petitioner had joined on the post of Junior Electrical Engineer, Grade-II in North Bihar Power Distribution Company Limited and was posted at Electric Supply Sub-Division, Narkatiyaganj, Bettiah as Electrical Engineer (Projects). He had submitted his joining on 22.02.2014 whereafter he was transferred to Gaunha, Bettiah, *vide* notification No. 158 dated 25.02.2014, which place he joined on 28.02.2014.

5. The offer of appointment dated 18.02.2014 has been brought on record by way of Annexure-3 to the writ application. Evidently, the petitioner was provisionally selected for appointment to the post of Junior Electrical Engineer on probation for two years on the terms and conditions stipulated in BSP(H) CL Employment Notice No. 03 of 2013. Clause (2) of the said offer of appointment reads thus:-

“(2). This appointment is provisional/temporary and may be terminated without assigning any reason after giving one month notice.”

6. It transpires from the materials on record that hardly five months after he had joined his place of posting at Gaunha, the petitioner proceeded on casual leave, on 20.07.2014, after submission



of application seeking casual leave from 20.07.2014 to 22.07.2014. It also appears that thereafter he remained absent for months together and kept on seeking extension of his leave on medical grounds without furnishing any medical prescription in support of his claim that he was suffering from any ailment.

7. It is the case of the respondents that all of a sudden, on 31.12.2014, he appeared and submitted his joining. Considering long unauthorized absence of the petitioner, invoking Clause 16.2 of the Recruitment Policy of the Company, the impugned decision has been taken, terminating his service.

8. Learned counsel appearing on behalf of the petitioner, assailing the impugned order has submitted that Clause 16.2 of the Recruitment Policy could have been invoked only after completion of the probation period. According to him, since in the letter offering employment, period of probation was prescribed as two years, there would have been no question of invocation of Clause 16.2 of the Recruitment Policy. He has further submitted that in any view of the matter, the impugned decision of terminating petitioner's service is arbitrary and in violation of principles of natural justice, inasmuch as no opportunity was given to the petitioner to explain his conduct, for his absence after he had left on casual leave in July, 2014.

9. Mr. Vinay Kirti Singh, learned Senior Counsel, appearing on behalf of the North Bihar Power Distribution Company Limited, has, on the other hand, contended that since the petitioner



was on probation, he did not have any right to hold the post. He submits that his service could be terminated at any point of time during probation, if in the opinion of the employer/competent authority his service was found to be not satisfactory, even without assigning any reason. He submits that there is no requirement of following principles of natural justice when a decision is taken for termination simpliciter of an employee on probation. He has relied on Clause (2) of the letter offering appointment which authorized the competent authority to terminate the appointment without assigning any reason.

10. There cannot be any dispute over the legal position that an employee on probation does not have a right to hold the post and if in the opinion of his employer, his work or conduct is found not to be satisfactory, his appointment/service can be terminated without assigning any reason. The employer, however, can exercise such discretion in accordance with the terms of appointment on probation as disclosed in the appointment letter itself or any rule governing the contract between the employer and the employee. It is clear from the letter containing offer of appointment (Annexure-3) that the appointment on probation was for two years. Clause 16.2 of the Companies new Recruitment Policy reads as under:-

“16.2. On the completion of the period of probation (Original or extended) as the case may be, the company may confirm such employee in his appointment or if his work and/or conduct has, in the opinion of the



Company not been satisfactory, the Company may dispense with his services, if recruited direct or revert him to his former post or Department as the case may be, if recruited otherwise, with a proper justification.”

11. I can be easily seen from unambiguous language of Clause 16.2 of the new Recruitment Policy that the Company may dispense with the services of an employee appointed on probation, if in the opinion of the Company his work or conduct has not been satisfactory on completion of the period of probation. It is quite clear on bare reading of Clause 16.2 of the Policy that the same can be invoked only ‘on completion of period of probation’. It is true that even before completion of period of probation, the petitioner’s appointment/service could be terminated but the same could have been done only by taking recourse to the terms and conditions mentioned in the letter containing offer of appointment. Clause (2) of the offer of appointment has already been quoted hereinabove. For exercising power under Clause (2) of the offer of appointment, it was incumbent upon the Company to have given the petitioner one month’s notice. That having not been done, the impugned action of the respondent Company terminating service of the petitioner dealing with the period of probation deserves interference.

12. The impugned order dated 16.05.2015, is accordingly, quashed.

13. It will be open for the respondents to take a decision



afresh on the question of termination of the petitioner invoking
Clause (2) of the offer of appointment as noted above.

14. This application is allowed with the aforesaid
observation.

(Chakradhari Sharan Singh, J)

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