

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 3344 of 2003

Mr Gyan Prakash, son of late Banshidhar Prasad, Resident of Mohalla – Babunia Road, PO/PS/District – Siwan, posted as Training Officer at Patna in the Institute of Entrepreneurship Development, Bihar

... .. Petitioner/s

Versus

1 The State of Bihar

2 Institute of Entrepreneurship Development, Bihar through the Executive Director of the said Institute (Bihar State Finance Corporation Builder, 05th Floor, Frazer Road, Patna – 800 001

3 Mr K K Pathak, IAS, the Executive Director of the said Institute, BSFC Building, 05th Floor, Exhibition Road, Patna

4 Mr C B P Srivastava, Manager of the said Institute, BSFC Building, 05th Floor, Exhibition Road, Patna

... .. Respondent/s

For the Petitioner/s : Mr Raghav Prasad, Advocate

For the Respondent/s : M/s Kumar Ravish, Kashyap Kaushal, Advocates

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 30-08-2019

Heard learned counsel for the petitioner and the respondents.

2 Petitioner had joined the respondent-Institute on 16.01.1989. The joining was as a Trainer/Motivator. His services were confirmed on 01.07.1991. It is his submission that on account of his good services rendered, he was elevated as a training faculty.

3 Learned counsel for the petitioner submits that the petitioner was forced to submit a voluntary resignation by the Chief Executive Director of the respondent-Institute on 19.07.2002. Since petitioner was being victimized and had no



option, he gave resignation but with effect from a future date that is 01.04.2003. The resignation has been accepted on the same very date, i e, on 19.07.2002 without waiting for the same to reach its date of effect as per the option exercised by the petitioner. It is, therefore, submitted that the order accepting his resignation dated 19.07.2002 is unsustainable in law.

4 The order sheet reveals that earlier the respondent-Institute had taken an objection regarding maintainability of the writ petition as the respondent-Institute was not State within the meaning of Article 12 of the Constitution of India.

5 Petitioner's counsel has taken this Court through the Memorandum of Association and Communication issued by the State from time to time including one Letter dated 02.06.1989 issued by the Secretary, Industry, Government of Bihar, Patna. Placing reliance upon the objects contained in the Memorandum of Association and Correspondence on record, he submits that the functions being discharged by the Institute were essentially State functions. The Authorities of the State enjoyed all pervasive control over the Institute. Board of Management was comprised of State officials. He also draws attention to the fact that the Industrial Development Commissioner, Government of Bihar is the ex officio Chairman of the Institute.



6 It is also submitted by the petitioner's counsel that the Institute was funded by the State Government and, as such, on all counts, the respondent-Institute satisfies the test of Article 12 of the Constitution of India as not only there was all pervasive control of the State but the affairs have been managed on day-to-day by the State Authorities in furtherance of the objective of the State of Bihar and on account of funding by the State of Bihar.

7 This takes us to the next issue whether the nature of employment of the petitioner would entitle him to the protection of the procedural laws and Rules applicable to the State Government also so as to invoke the writ jurisdiction of this Court.

8 Submissions have also been advanced on behalf of the respondent-Institute. Learned counsel for the Institute submits, referring to the averments made in the counter affidavit that the writ petition under Article 226 of the Constitution is not maintainable against the respondent-Institute since the same is not State or other Authority, as contemplated under Article 12 of the Constitution of India.

9 Submissions made on behalf of respondent-Institute appear to be correct. From composition of the Board, as per the Memorandum which is enclosed with the writ petition, it is abundantly clear that the activities of the Institute was limited to the extent of imparting training to accelerate industrial



development and to expand productive employment. The Institute undertakes programmes for disseminating ideas for encouraging industry in the State of Bihar. The activities were sponsored by the financial institutions who were also nominating the Members to the Board. The State Government and State Level Institutions, under the Memorandum, has a right only to nominate four members out of total 15 Members of the Governing Body. The State of Bihar, in the said circumstances, do not exercise all pervasive control over the activities. The nominations and the amount of sponsorship are only to enable the various financial institutions and the State to have a regulatory control over the Institute to ensure that the training programmes of the Institute could be regulated to meet with the requirements of the sponsors having regard to their various schemes which would come into existence from time to time. The fact that the Industrial Development Commissioner or Director (Industries) or any other high officials of the financial institutions were represented in the Governing Body would not clothe the respondent-Institute with the entity of any Authority under Article 12 of the Constitution of India, let alone the State of Bihar.



10 In this connection, respondents have placed reliance on a very recent decision of the Apex Court in the case of Rajbir Surajbhan Singh -Versus- The Chairman, Institute of Banking Personnel Selection, Mumbai, 2019 (3) PLJR (SC) 227.

11 On going through the said judgment, this Court would observe that the nature of duties performed by the respondent-Institute and the manner of funding received from the State Government and various financial institutions, including the representation of the State Authorities in its Governing Body is of such a nature that it cannot be said to be State within the meaning of Article 12 of the Constitution of India. Judgment in the case of Rajbir Surajbhan Singh (supra) of the Apex Court squarely covers the instant case in so far as the nature of the respondent-Institute’s entity is concerned. Placing reliance on the judgment of the Apex Court in the case of Rajbir Surajbhan Singh (supra), this Court would observe that the writ petition under Article 226 of the Constitution against the respondent-Institute is not maintainable.

12 Having regard to the aforesaid submissions, writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.09.2019
Transmission Date	NA

