IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1308 of 2018

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Satyendra Kumar Sinha, son of Late Bishwanath Prasad Resident of Gopalbad, Police Station - Sarmera, District - Nalanda.

... ... Appellant/s

Versus

1. The Bihar State Building Construction Corporation Ltd. Patna.
2. The Managing Director, Bihar State Building Construction Corporation Ltd. Patna.
3. The Chairman, Bihar State Building Construction Corporation Ltd. Patna.
4. The General Manager, Administration, Bihar State Building Construction Corporation Ltd.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Uday Chand Prasad, Advocate
For the Corporation : Mr. Tej Bahadur Singh, Senior Advocate
Mr. Brisketu Sharan Pandey, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-02-2019

Heard Shri Uday Chand Prasad for the appellant and Shri Tej Bahadur Singh, learned Senior Advocate for the Bihar State Building Construction Corporation Limited.

2. The appellant before us is aggrieved by the impugned judgment dated 14th of March, 2018 whereby the writ petition filed by him assailing the order of the cancellation of his contract of appointment dated 01.12.2015 has been dismissed as the services of the appellant were contractual in nature and the action taken has been found to be supported by principles of natural justice.

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3. Learned counsel for the appellant contends that the appointment has been made by the Construction Corporation which is a Government agency and is performing sovereign functions. Consequently, the Corporation cannot act arbitrarily, but the impugned action being violative of Article 14 of the Constitution of India, the same was appropriately challenged by the appellant in the writ petition giving rise to the present appeal which has been dismissed, hence this appeal.

4. A recruitment notice dated 9th of March, 2015 was floated inviting applications for several posts including the post of an Assistant General Manager (Technical), for which there were six vacancies and the tenure whereof was described as on deputation or on contract. The General Conditions stipulate a contractual appointment as is evident from the Clause-1 of the said General Conditions which is extracted hereunder:

> "**General Condition:**
>
> ***1. The recruitment will be on contract basis for a period of one year at a time which may be renewed every year based on satisfactory performance & conduct at the discretion of the Corporation."***

5. Apart from the aforesaid General Terms and Conditions the process of recruitment on deputation or on contract basis has been provided for under Chapter-III, Clause 3.2 of the Guidelines

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known as Services Regulations, 2013 of the said Corporation. The same are extracted hereinunder:

> ***"3.2 Creation of Post and Appointments:***
>
> *All appointments would be temporary and would be made for the contract/deputation period as determined by the BSBCCL. All the posts indicated in Annexure-I, are temporary in nature. However, the corporation may review the position of human resource as and when required and seek sanction of the Board and Government for creation of additional posts if required as per work load or reduce the number of posts if found not required. All the posts can be filled from either deputation or contract.*
>
> ***(A). Deputation***
>
> *(i) The Corporation shall also be free to take any officer/ employee on deputation from a department of Govt. of Bihar/India/any State Government. The Engineers/Architects shall be taken on deputation from RCD/BCD/Rural works/any other works department.*
>
> *(ii) Ordinarily the deputation period may be for six years subject to further extension with the approval of Government.*
>
> *(iii) One time deputation period for an officer/official shall not be more than eight years.*
>
> *(iv) The Corporation shall take the Engineers/Architects on deputation from Road Construction Department, Bihar / Building Construction Department, Bihar/any other works department. The Corporation may take services of officers, other than Engineer, on deputation from other Departments of State Govt./Union Govt.*
>
> ***(B). Contract Basis***
>
> *(i) All the employees on contract shall sign contract in prescribed format as applicable (Annexure -II). Detail*

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Terms and Conditions for engagement on Contract basis is as on Annexure -III.

(ii) Normally all the contracts shall be for a period of 12 months. Initial three months of the contract will be a probation period of the contract. Depending upon the performance, competence, level and general behaviour of the candidate the contract may be extended for further nine months by the appointing authority.

(iii) In special condition, the contract period may be extended up to three to five years depending upon the competence level and performance of the candidate and requirements of BSBCCL.

(iv) The appointment authority of the Corporation shall be the MD or an officer designated by the MD as per provision in chapter XIII clause 22(A) and 22(B) of AOA.

(v) To adopt the changing role of BSBCCL, certain more professional/Specialists/Consultants may need to be appointed.

Such fresh creation of posts and their package is to be decided by Board of Director as per provision in chapter-XIII clause 24 of AOA."

6. The appellant came to be appointed under the aforesaid process vide order dated 11th of April, 2015, upon being provisionally selected. The letter of appointment in Clause-6 reiterates the nature of appointment to be contractual for a period of one year, out of which the first three months would be on probation. An agreement was entered into which is dated 14th of April, 2015 where also the terms and conditions of appointment

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and cessation of service are clearly stipulated to the same effect with a further provision for termination of the contract in the event it is found that the appointee has violated the terms and conditions of service. It further provides that in the event of any allegation or counter allegation being made, the contract would be liable to be terminated without even recourse to Clause 10 which stipulates the giving one month of notice.

7. On 23rd of June, 2015, the appellant was served with a notice that he failed to respond on his mobile phone, the location whereof was found to be that of one Binod Kumar Singh, son of Haribansh Naryan Singh, r/o village Khatri Tola, P.O.+ P.S. Thana Road, Jehanabad. On repeated calls from the Corporation headquarters, instead of the appellant one mechanic by the name of Shri Karu responded to the same. The appellant was, therefore, called upon to show-cause as to why this be not treated to be a violation of the terms of conditions of his service as this amounts to an irresponsible act on his part.

8. The appellant on 24th of June, 2015 gave his explanation contending that he was living in a hired premises near the ADR building in the same locality and therefore it was wrong to assume that the location was of a different person. The appellant, however, admitted that he had left his mobile in the ADR premises and when

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he returned back on 23rd of June, 2015, for attending office, he did not find his mobile phone whereafter he went to the ADR building where the said mechanic Shri Karu handed him over the mobile phone. This explanation, therefore, clearly indicates that the mobile during the said period was not possessed by the appellant and was lying with Shri Karu, the mechanic.

9. After having received this explanation, the service contract of the appellant was terminated having found the explanation to be unsatisfactory vide order dated 2nd of July, 2015. This order was challenged by the appellant in C.W.J.C. No. 14720 of 2015, that was allowed on the ground that the impugned order was violative of principles of natural justice inasmuch as the same did not consider the explanation of the appellant. The order further stipulated that the appellant was entitled to be taken back in service but liberty was given to the Corporation to pass a fresh order and the payment of salary, if any, to the appellant of the interregnum period will abide by the decision to be taken by the Corporation.

10. It appears that the appellant was not reinstated and consequently, he filed MJC No. 1252 of 2017 that was not entertained vide order dated 1st of December, 2017.

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11. In the show-cause filed to the contempt application, the Corporation came up with a stand that it had already passed an order on 1st of December, 2015 maintaining the status of termination of the contract on the ground that the appellant had acted irresponsibly by handing over his mobile to someone else and that his explanation was not a genuine explanation. The appellant was not diligent in the performance of his duties and consequently he was not entitled to be retained on the post for which he had been appointed.

12. It is the aforesaid order which came to be challenged before the learned Single Judge in the writ petition giving rise to the present appeal that has been dismissed on 14th March, 2018.

13. Learned counsel for the appellant contends that the order of termination as well as the impugned judgment deserve to be set aside inasmuch as the appellant had called for the call details records of his mobile which was never supplied by the department and even otherwise there was no material so as to warrant an assumption that the appellant had caused any loss to the functioning of the Corporation or was otherwise detrimental so as to warrant the exercise of power of termination by the respondent-Corporation. He, therefore, submits that not only was there a complete absence of material, but even otherwise also the non-

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attending of a mobile phone without any loss to the department cannot be a ground to terminate the contract.

14. A supplementary affidavit has been filed taking additional pleas which were not raised before the learned Single Judge that other such similarly situate employees who had faced identical allegations have been retained in service and, therefore, to selectively terminate the contract of service of the appellant is an act of hostile discrimination. It is, therefore, urged that the impugned order as well as the judgment of the learned Single Judge be set aside and the appellant be directed to be reinstated and continued in service as an Assistant General Manager (Technical).

15. At the very outset, it deserves to be clarified that the status of employment is purely contractual and was for a period of one year only out of which the first three months were on probation. The same was renewable further subject to satisfactory services. It is during the stipulated period of one year itself that the appellant came to be removed even before the expiry of three months of probation.

16. The relevant provisions, therefore, leave no room for doubt that the appointment is purely contractual and there is no

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vested right of continuance except in accordance with the guidelines as extracted hereinabove.

17. The show-cause issued to the appellant categorically indicated the allegations against the appellant and which was to a substantial extent admitted by him in his reply except for the fact that he had not given his mobile to anybody else. However, from the explanation, it is evident that the mobile was not in his possession and admittedly was in the possession of a mechanic. The impugned order records that calls were made on several occasions from the headquarters that was not responded to by the appellant. This was clearly a lapse on the part of the appellant.

18. In the background aforesaid, the impugned decision cannot be said to be not based on any relevant material. Even otherwise, the appointment being contractual the question of extending the principles of natural justice to the extent as claimed by the appellant does not arise. Sufficient compliance has been made of the judgment of the learned Single Judge rendered earlier and the appellant having failed to satisfy the authorities, he cannot instance upon his continuance if the employer has taken a decision to terminate the contract keeping in view the terms and conditions as mentioned in the agreement of contract read with the 2013 Rules under which the appointment came to be made.

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19. One of the arguments advanced by the learned counsel for the appellant on the basis of the supplementary affidavit filed is that selective action has been taken against the appellant whereas other similarly situate have been allowed to continue.

20. The Managing Director shall take notice of this fact and act appropriately keeping in view the allegations made in this supplementary affidavit.

21. We are, therefore, satisfied that the learned Single Judge has not committed any error in dismissing the writ petition. There is no material in the appeal, which is accordingly dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Saif/s.shukla

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