

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12774 of 2019

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Bhogendra Lal Son of Late Hari Shankar Lal Flat No. 505, Block-A, Ribhaya Residency, Branch Road of Mauza Rukunpura, Ved Nagar, P.O. and P.S.-Rupaspur, Town- Danapur, District- Patna.

... .. Petitioner/s

Versus

1. State of Bihar Through the Principal Secretary, Department of Industry, Govt. of Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Principal Secretary-cum- Chairman BIADA, Department of Industry, Govt. of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Managing Director Bihar Industrial Area Development Authority, Udyog Bhawan, 1st Floor, East of Gandhi Maidan, Patna.
4. Additional Secretary Department of Industry, Govt. of Bihar, Vikas Bhawan, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Advocate Mr. Mukul Prasad
For the State	:	Mr. Kinkar Kumar (SC9)
For the Respondent No. 3:		Mr. Pankaj Sinha, Advocate Mr. Yashraj Bardhan, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 28-06-2019

Heard the learned counsel for the parties.

Counter affidavit on behalf of Respondent No. 3 has been filed during the course of arguments. Let it be taken on record.

The petitioner has challenged the order dated 11.06.2019 contained in Memo No. 2494 issued by the Additional Secretary, Department of Industry, Government of



Bihar, Patna, whereby the contractual appointment of the petitioner, which was extended by the Managing Director, BIADA up to 23.11.2019, has been cancelled without giving any opportunity to the petitioner to represent his case.

A perusal of the order impugned indicates that the contract was terminated on the basis of the Resolution No. 3978, dated 23.03.2018 issued by the General Administration Department, Government of Bihar regarding engagement of persons on contractual employment and it was held that the resolution related to only government servants who had retired and not to persons who did not fall in such category. For the retired government servants, the contractual appointment could be till the age of 67 years with one year extension after the age of 65. Since the petitioner did not qualify for being engaged on contractual service till such time, his engagement was found to be in derogation of the aforesaid resolution.

Learned senior Advocate for the petitioner has submitted that the General Administration Department, Government of Bihar has issued a resolution in the year 2007 with respect to the appointment / engagement of contractual



employees and it states/stipulates that the engagement could be made till the age of 65 years with yearly extension.

The resolution of the General Administration Department which is not applicable to the petitioner has been applied to him in terminating his service.

It has further been submitted that the Additional Secretary, Department of Industry could not have upturned the decision of the Board of Directors of BIADA which had thought it prudent to appoint the petitioner on contractual basis. The extension was given to the petitioner by the order of the Managing Director, BIADA. Even otherwise, before terminating the contract of the petitioner, he ought to have been noticed.

For these reasons, the order impugned has been challenged as being without jurisdiction and without application of mind.

A representation also has been filed by the petitioner before the Managing Director, BIADA but no decision has been taken over the aforesaid representation as yet.

The counter affidavit filed on behalf of BIADA clearly stipulates that the General Administration Department's



Circular dated 18.07.2007 would be applicable to the case of the petitioner and in the light of such resolution, the contractual appointment of any person could be made up till the age of 65 years. The petitioner, it has been stated, is only 60 years old and there was no anomaly in his being given extension on such post for one year which period ended only in November, 2019. There is no justification of terminating the contract midway and that also without notice.

Under the aforesaid circumstances, the petitioner is directed to make a fresh representation within a period of three weeks before the Principal Secretary-cum-Chairman, BIADA, Department of Industry, Government of Bihar, Patna (Respondent No. 2), ventilating his grievance and challenging the order which has been passed by the Additional Secretary, Department of Industry, Government of Bihar, Vikas Bhawan, Bailey Road, Patna, terminating his contractual appointment midway. The Principal Secretary-cum-Chairman, BIADA shall, after affording hearing to the petitioner and looking at the Circulars / resolution in question, take a decision within a further period of two weeks thereafter. In case the claim of the



petitioner is found to be tenable, the Principal Secretary-cum-Chairman, BIADA shall pass / cause to be passed corrective order and consider the desirability of the recall of the order of termination of the petitioner. While passing the order, the Principal Secretary-cum-Chairman, BIADA shall take into account all the grounds which have been urged by the petitioner in the present petition.

With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	02.07.2019
Transmission Date	

