

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11449 of 2014

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Rana Pratap Singh, Son of Late Awadheshwar Singh, Resident of Village Parariya P.S. Deo, District Aurangabad, Presently Nal Kup Khalasi in the Office of Sub Divisional Officer, Gaya West, District Gaya

... .. Petitioner/s

Versus

1. The State of Bihar
2. Principal Secretary, Public Health Engineering Department, Bihar, Patna
3. The Chief Engineer, Mechanical, Public Health Engineering Department, Patna
4. Superintending Engineer, Public Health Engineering Department, Gaya
5. The Executive Engineer, Public Health Engineering Department, Aurangabad
6. The Executive Engineer, Public Health Engineering Department, Gaya West
7. The Sub Divisional Officer, Public Health Engineering Department, Gaya West
8. The Junior Engineer, Public Health Engineering Department, Bodh Gaya, Prashakha I, Town Gaya
9. The Additional Secretary, Public Health Engineering Department, Bihar, Patna
10. Lakshman Singh, Son of Name Not Known to the Petitioner, Nal Kup Khalasi, Sub Divisional Office, Public Health Engineering Department, Gaya (East)

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Tara Nath Jha
For the State	:	Mr. Mritunjay Kumar, AC to AAG 6
For Respondent No. 10	:	Mr. Ramakant Sharma, Sr. Advocate
		Mr. Rajesh Kumar
		Mr. Prem Shankar Kumar

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 07-01-2019

Heard learned Counsel for the petitioner, respondent State as well as the Counsel appearing for the private respondent.

2. The petitioner claims that in the process of regularisation, whereby fifty employees were regularised in the Public Health Engineering Department taking into consideration



their past services as daily wages employees and seniority based on date of birth, he was ignored and his junior namely, respondent No. 10, was regularised.

3. Referring to various documents he submits that the issue regarding *inter se* seniority of the petitioner with respect to respondent No. 10 on the basis of date of birth was resolved finally on 12.2.2007 when Bihar School Examination Board confirmed the petitioner's date of birth to be 19.1.1961. In view of the said date of birth being confirmed by the Bihar school Examination Board, entry was made in the petitioner's Service Book correcting his date of birth from 2.5.1971 to 19.1.1961. He thus became senior to respondent No. 10 whose date of birth is 1.3.1962.

4. The petitioner's Counsel submits that in view of such rectification he was rightly regularised and respondent No. 10 was rightly removed to accommodate the petitioner. The regularisation has been done under order dated 24.3.2008 (Annexure 14 to the writ petition). The petitioner is at serial No. 34 in the list of persons regularised by decision of the chief Engineer (Technical) dated 24.3.2008. The submission advanced by Counsel for the petitioner is that from 24.3.2008 he has become regular employee of the State Government and, as such, before he is removed from the service he was required to be proceeded against by issuance of



charge memo and only after resorting to a procedure in compliance with principles of *natural justice* could he be removed from service. He submits that prior to the impugned order of termination, dated 8.1.2010, no charge memo was issued to the petitioner nor has he been subjected to any proceeding. He submits that without affording such opportunity and merely on the basis of a show cause his regularisation has been cancelled and his services have been terminated under the order dated 8.1.2010 as well as the order dated 28.2.2014 i.e. the order finally terminating the services of the petitioner issued by the Executive Engineer Public Health Engineering Division, Gaya.

5. Counsel appearing for the State has defended the action. He submits that for the purpose of engagement on daily wage the petitioner had submitted a date of birth on the basis of his Madhyama certificate, which was 2.5.1971. However, at the time of regularisation, coming to realise that he could not sustain the initial engagement on daily wage on the basis of date of birth as had been submitted by him earlier, he has submitted a Matriculation certificate issued by Bihar School Examination Board showing his date of birth to be 19.1.1961.

6. Counsel for the private respondent has also submitted that the petitioner has submitted two different certificates in



support of his claim for date of birth and, as such, his prayer should be rejected by this Court.

7. This Court would find that the Matriculation certificate submitted by the petitioner was duly enquired by the authorities. Bihar School Examination Board has also confirmed the same and the date of birth 19.1.1961 in favour of the petitioner. Having undertaken a verification process the petitioner was duly regularised on 24.3.2008 and he became member of the regular establishment and could only be removed by service of charge memo or after due opportunity in a duly constituted departmental proceeding in compliance with principles of *natural justice* and fair play. The enquiry has not been done. Merely by issuing show cause the services of the petitioner has been terminated by the authorities. Even if the charge is grave, as allegation of forgery is made against the petitioner, this Court would observe that serious and grave allegations are to be brought home in a duly constituted proceeding. Seriousness or gravity of the allegation cannot be made basis of dispensing with the procedural requirement of fairness. This Court would, therefore, hold that the order dated 8.1.2010 issued by the Chief Engineer (Technical) in the Public Health Engineering Department as well as the order dated 28.2.2014 issued by the Executive Engineer, Public Health



Engineering Division, Gaya, in so far as the same are only based on the show cause and without subjecting the petitioner to a departmental proceeding, are hereby quashed. Considering the seriousness of the allegation against the petitioner, this Court would grant liberty to the respondent authorities to proceed against the petitioner in accordance with law by serving a charge memo communicating the charges to the petitioner.

8. Let appropriate action be taken expeditiously and preferably within a period of six months from the date of receipt/production of a copy of this order. The entitlement of the petitioner would abide by final decision in the proceeding if the same is concluded within a period of six months. Respondent No. 10 allegationist would be at liberty to appear in the proceeding to be conducted against the petitioner.

9. The writ petition is allowed to the extent indicated hereinabove

(Madhuresh Prasad, J.)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.01.2019
Transmission Date	N/A

