

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5445 of 2015

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Santosh Kumar Jha son of Late Vikal Jha Village and P.O. - Bina
Bhamangama, Via- Supual , District- Supual, Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principle Secretary cum Appellate Authority, Social Welfare
Department , Government of Bihar, P
3. The District Magistrate-Cum-Collector, Katihar, District- Katihar, Bihar.
4. The Director , ICDS, Social Welfare Department, Government of Bihar,
Panta
5. The ICDS Director , Patna , Bihar
6. The District Supply Officer, District- Katihar, Bihar.
7. The District Programme Officer, ICDS, District- Katihar, Bihar.
8. The Superintendent of Police, District- Katihar, Bihar.
9. The Dy. S.P. Police Headquarters , Katihar, District- Katihar, Bihar.
10. The SHO, Katihar Town Police Station, District- Katihar, Bihar
11. The Investigating Officer, Katihar Town Police Station, District- Katihar,
Bihar.
12. Shashi Bhushan Bhagat son of Ram Lochan Bhagat, resident of Village and
P.O- Dighari, P.S.- Korha, District Katihar.
13. Lucy Kumari daughter of Shashi Bhushan Bhagat, resident of Village and
P.O.- Dighari, P.S.- Korha, District- Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Arun Kumar
		Mr. Pradeep Kumar
For the State	:	Mr.Mirtunjay Kumar, AC to AAG 6
For respondent nos.12 & 13		Mr. Suresh Pd. Sah @ Barnwal

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 07-05-2019

Heard counsel for the petitioner and counsel for
respondents-State.

Petitioner has challenged termination of his contractual
service under order dated 25.01.2012 as also rejection of his



appeal against the same by appellate order dated 03.09.2014 issued by the Principal Secretary, Welfare department.

Brief background is that the petitioner was engaged on contractual basis on 08.11.2004 as statistic assistant to assist the Child Development Project. Contractual engagement was for one year and was to be renewed after satisfactory service of the petitioner during subsisting contract. Petitioner thereafter continued in his contractual identity which was extended from time to time. From 20.07.2011 to 04.08.2012 i.e. period for more than one year, petitioner was under custody in connection with criminal case which was on account of allegation that the petitioner had demanded Rs 50,000/- bribe to facilitate same appointment.

Writ petition has been filed alleging that by virtue of his period of custody for more than one year, show cause dated 23.10.2013 could not be served on the petitioner as such he has been deprived of opportunity to put forward his response to show cause.

Counsel for the petitioner further submits that without conducting any proceeding action has been taken against the petitioner as such termination of his contractual service is illegal and arbitrary.



Counsel for the petitioner further submits that the petitioner could not respond to show cause because same was not served upon him.

Claim of the petitioner is that order could not have been passed without initiating proceeding. Therefore, same is not sustainable in law.

Counsel for the State, placing reliance on clauses 5 and 8 of the original contractual engagement of the petitioner under office order dated 08.11.2004, submits that the contract itself permitted termination at any point of time without any prior intimation. It is also pointed out that contract was for one year and renewed from time to time for a period of one year. Petitioner admittedly in view of his custody has remained out of work for more than one year.

Fact is clear that at least for one year petitioner had not performed his duty. Protection under Article 311 of the Constitution of India, granted by Bihar CCA Rule, 2005 does not apply to contractual employees as said protection is granted only to the permanent Government employees in the establishment.

This court however holds that the order dated 25.01.2012 may not be considered as attaching stigma on the petitioner. Petitioner cannot be denied opportunity/consideration



for contractual appointment on basis of order dated 20.01.2012. However, petitioner's contractual engagement was terminated long back, i.e. on 25.01.2012. Thus, and for reasons indicated above no order can be passed reinstating the petitioner, on his earlier contractual employment.

Writ petition is disposed off with the aforesaid observations.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.5.2019
Transmission Date	NA

