

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2262 of 2011

Bijendra Kumar S/o Dharamjeet, R/o village Chindiya, Post Patna,
Tahsil Baikunthpur, District Koriya

---- Petitioner

Versus

1. The State Of Chhattisgarh through its Secretary, Law Department,
DKS Bhawan, Raipur
2. District and Session Judge, Koriya, Baikunthpur
3. Incharge Officer, Nazarat Anuvibhag, Baikunthpur, district Koriya
4. Collector, Koriya, Baikunthpur

----Respondents

For Petitioner	:	Mr. Parag Kotecha, Advocate.
For State	:	Ms. Ishwari Ghritlahre, P.L.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

08/11/2019

1. The challenge in the present writ petition is to the order Annexure P-6 dated 05.04.2011 whereby the services of the petitioner stood discontinued.
2. The facts relevant for adjudication of the present writ petition are that the petitioner was appointed as a temporary employee under the respondent No.2 vide order dated 30.08.2010. The petitioner was appointed on temporary basis and was ordered to be paid wages from the contingency fund. The petitioner was initially appointed as a sweeper. Subsequently, the petitioner was ordered to discharge the duties of a Chowkidar which the petitioner voluntarily accepted.

However, the officer Incharge of Nazarat, Manendragarh submitted a report in respect of the performance of the petitioner based upon which the impugned order Annexure P-6 dated 05.04.2011 was passed whereby the respondent no.2 discontinued the services of the petitioner on the ground of unsatisfactory work. It is this order which is under challenge in the present writ petition.

3. The contention of the petitioner is that the order impugned is a punitive order and a punitive order without conducting departmental inquiry is per se illegal and therefore the order deserves to be set aside and the petitioner needs to be taken back in service with all consequential benefits. The Further contention of the petitioner is that the discontinuance of service was punitive as the petitioner was on an earlier occasion issued with a show cause notice dated 12.01.2011 Annexure P-4 and there was another complaint made against the petitioner by one of the judicial officers on 16.03.2011 Annexure P-5. Referring to Annexures P-4 & P-5 it was argued by the counsel for the petitioner that the averments made in these two show cause notices would show that the action of termination from service or discontinuance of service was punitive in nature. According to the petitioner, once when the respondents issued a show cause notice, in all probability they should have conducted an inquiry after giving a reasonable opportunity of hearing to the petitioner to substantiate his case and only thereafter the respondents should have taken a decision. For this reason also the impugned order deserves to be set aside with consequences to follow.

4. State counsel, on the contrary, opposing the petition submits that it is a case where the petitioner was not a regular employee of the respondent no.2 establishment. The petitioner was a temporary employee engaged on the wages paid under contingency fund. Since the petitioner was not a permanent employee of the District Court establishment, the need for conducting a departmental enquiry does not arise and as such, there is no discrepancy so far as the order is concerned and the writ petition being devoid of merits deserves to be rejected.
5. Having heard the contentions put forth on either side and on perusal of the record if we look at Annexure P-1 dated 30.08.2010, it clearly reflects that the petitioner was given appointment temporarily and the wages were to be paid from the contingency fund available. The very fact that the petitioner's salary was being paid from the contingency fund itself would show that the petitioner did not have the status of a regular employee or for that matter a permanent employee neither was the petitioner appointed on a permanent fixed pay scale. The wages paid to the petitioner were at the Collectorate rate. If we look into the documents which have been enclosed along with the writ petition, it would reflect that the petitioner's performance of duty was not satisfactory to the authorities under whom he was discharging. The officer concerned had initially issued the petitioner with a show cause notice on 12.01.2011. Subsequently, the petitioner while posted under a judicial officer, again showed dereliction of duties inasmuch as not obeying the commands of the officer which was immediately reported by the judicial officer before the respondent

no.2 vide Annexure P-5 dated 16.03.2011. Subsequently, again the officer incharge of the Nazarat, Manendragarh submitted a report to the respondent no.2 in respect of the performance of duty of the petitioner and which appears to be unsatisfactory. Based upon the said report of the Officer Incharge, the services of the petitioner were ordered to be discontinued vide order Annexure P-6 dated 05.04.2011.

6. So far as the contention of the petitioner that the order being a punitive order is concerned, this Court would not accept such contention for the reason that the impugned order Annexure P-6 dated 05.04.2011 does not reflect any allegation against petitioner. All that the impugned order reflects is that the Officer Incharge of the Nazarat, Manendragarh under whom the petitioner was discharging his duties has given a report that his services were not satisfactory and that he did not obey the commands and orders given by the superior authorities. The said observations itself cannot be considered to be a stigmatic order. The Officer Incharge has given a report so far as the services of the petitioner being unsatisfactory and not to the expectations of the officer concerned. Moreover, the service of the petitioner was not regular employment nor was it in any manner a regular appointment made on temporary basis or on ad hoc basis. Annexure P-1 is an order which clearly shows that the service of the petitioner was purely temporary in nature and was appointed on payment to be made from contingency fund which again shows that the petitioner was not appointed or engaged against any sanctioned vacant post in the department. Thus, the

petitioner cannot claim himself to be a regular employee or for that matter the petitioner cannot claim of being discontinued from service only after conducting a departmental enquiry.

7. The judgment which has been referred by the petitioner i.e. 2007 (10) SCC 71 (Jaswantsingh Pratapsingh Jadeja Vs. Rajkot Municipal Corporation and another), this Court is of the opinion that the said judgment would not apply in a straight jacket formula in the present case also for the simple reason that the employee concerned in the said judgment was appointed by following a due process of law. The services of the petitioner therein were kept under probation and the probation period was also extended from time to time and during the extended period of probation, the services of the petitioner were discontinued on the ground of dereliction of duty shown by the petitioner. Such is not the fact in the present case. Therefore, the said judgment is quite distinguishable on its facts itself.
8. Considering the nature of appointment of the petitioner and also considering the fact that the petitioner had rendered services only for a brief period of just about 8 months and also taking note of the fact that the services of the petitioner have been discontinued on account of unsatisfactory performance of work, this Court does not find any strong case made out by the petitioner calling for interference with the impugned order Annexure P-6 dated 05.04.2011.
9. The writ petition fails and is accordingly dismissed.

**Sd/-
(P. Sam Koshy)
Judge**