

THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7976 of 2020

=====

Andalib Hasan S/o Md. Manzar Hossain Resident of Mohalla- Durgapur,
M.G. Road, P.O. and P.S.- Katihar, District- Katihar- 854105 (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, P.H.E.D. Technical, Secretariat, Vishvesaraiya Bhawan, Baily Road, Patna.
2. The Engineer -in- Chief -cum- Spl. Secretary P.H.E.D. Technical, Secretariat, Vishvesaraiya Bhawan, Baily Road, Patna.
3. The Joint Secretary P.H.E.D. Technical, Secretariat, Vishvesaraiya Bhawan, Baily Road, Patna.
4. The Project Director (RWSPP)- cum- Special Secretary P.H.E.D. Technical, Secretariat, Vishvesaraiya Bhawan, Baily Road, Patna.
5. The Chief Engineer (Design)-cum- Director PMU, P.H.E.D., Secretariat, Vishvesaraiya Bhawan, Baily Road, Patna.
6. The Executive Engineer P.H.E.D. Nawada, Opposite Circuit House, District- Nawada.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Ms. Anukriti Jaipuriyar
For the Respondent/s : Ms. Shilpa Singh, GA-12

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date : 16-12-2020

The finding of the proceeding of meeting held under the Chairmanship of Chief Engineer-cum-Special Secretary, Public Health Engineering Department (hereinafter referred to as ‘the *PHED*’) on 20.04.2020 for conducting personal *online* interaction of the Specialist Officers working under Neer Nirmal Pariyojna (*NNP*) with a view to absorb them into the new project of Jal Jeevan Mission (*JJM*) has been challenged in the



present writ application to the extent that the petitioner's candidature for absorption in *JJM* has been rejected on the ground that his work in *NNP* was unsatisfactory. The said proceedings of the meeting has been circulated *vide* memo No. 63 dated 27.04.2020, which has been brought on record by way of Annexure-P-14 to the writ application. The petitioner has also sought for a direction to the respondents to absorb him as a Nodal Officer at Bhabhua or any place under the new project of Jal Jeevan Mission for which he was originally selected *vide* letter dated 15.04.2020 issued by the Mission Director of *JJM*.

2. Certain foundational facts stated in the writ application are not in dispute as it appears from the counter affidavit filed on behalf of the respondent Nos. 2 to 6. It has, therefore, been considered appropriate to extract admitted facts from the counter affidavit itself, which are as under.

3. The Bihar State Water and Sanitation Mission is the executing agency of Rural Water Supply and Sanitation Project-Low Income State (RWSSP-LIS) in the State of Bihar, aided by the World Bank and Ministry of Drinking Water and Sanitation (Government of India and Government of Bihar). The State Project Management Unit (SPMU) has been constituted at the State level and at the level of the District, the District



Project Management Unit (DPMU) have been constituted for effective implementation of the project. The scheme was for six years, beginning from the financial years 2013-15. In the district of Nawada, following posts were made available in the DPMU:-

- “i. District Project Manager-Executive Engineer of PH Division Nawada.
- ii. Assistant Project Manager
(Assistant Engineer of Project Area)
- iii. Five Consultant/Specialist
 - a. Procurement Specialist
 - b. Social Development and Communication Specialist.
 - c. M & E/MIS Specialist
 - d. Environment Specialist
 - e. Project Supervisor”

4. A notice for walk-in-interview to fill up the post was published and a walk-in- interview was held. On the basis of merit list someone else was appointed as Procurement Specialist. This is not in dispute that subsequently the petitioner was appointed as Procurement Specialist in DPMU, Nawada



vide letter dated 11.07.2019. Clause-E of the appointment letter specifically stated that the contractual appointment could be terminated without giving any notice in the event of continuous absence for seven days.

5. Through letter dated 04.02.2020 the Engineer-in-Chief-cum-Special Secretary, PHED informed the Executive Engineer-cum-District Project Manager, Nawada that the World Bank had informed the Government of India and the Government of Bihar that the work of NNM Scheme shall terminate with effect from 31.03.2020.

6. In the meanwhile, the Government of India commissioned a new project, viz, Jal Jeevan Mission (JJM) to provide potable water supply through functional household tap connection to every household by 2024 by a bottom-up, community centric service approach for which the Annual Action Plan (2020-21) from the State of Bihar was demanded through letter dated 27.03.2020. Considering the requirement of experienced consultant for Jal Jeevan Mission, (JJM), it was resolved to engage existing work force of NNP for the said purpose. Accordingly willingness of the consultant working in the DPMU was sought by the Special Secretary, PHED-cum-Project Director, *vide* letter dated 27.03.2020 addressed to the



Executive Engineer, PH Division, Nawada. He was asked to seek willingness of the specialists of DPMUs to work further in the Project, viz, JJM. The Executive Engineer-cum-District Project Manager, Nawada conveyed the willingness of the specialists working in the DPMU, Nawada, who had given their consent, including that of the petitioner through letter No. 440 dated 28.03.2020. The Chief Engineer(Design)-cum-Director, SPMU, vide his letter dated 15.04.2020 instructed the Executive Engineers, PHED of the concerned Divisions to participate in the online interface/interview (Considering the COVID-19 Lockdown situation) to be held on 18.04.2020 under the Chairmanship of Engineer-in-Chief-cum-Special Secretary for online personal interactions with the Specialist Officers working under Nir Nirmal Priyojana (NNM) in the DPMU to consider their further engagement on contractual basis in the Government of India sponsored scheme, namely, JJM.

7. It is the case of the respondents that the petitioner did not appear in the online interview held on 18.04.2020 nor did he make any request in relation to his inability to participate on the scheduled date. Further, the Executive Engineer, PH Division, Nawada-cum-Project Manager, DPMU informed in the meeting that the petitioner was



absent from his duty with effect from 01.04.2020 without any prior approval of the competent authority. He further informed the Committee that the work of the petitioner was not satisfactory. It is the case of the respondents accordingly that as the petitioner had remained absent from duty for a considerable period without prior approval/consent of the competent authority and his work was not found satisfactory, his candidature was not considered for engaging him as under JJM.

8. It is the case of the petitioner as pleaded in the writ application that because of the outbreak of COVID-19 pandemic and some of the petitioner's neighbours at Ansari Nagar, Nawada had contracted the disease, the area was sealed as Containment Zone. The petitioner was staying at Anasari Nagar, Nawada and since there potential danger to his safety, he had sought leave by informing the superior Officer, namely, Executive Engineer, Nawada through whatsapp message on 14.04.2020 and had thereafter left for his hometown at Katihar to look after his sick mother, who had fallen seriously ill. The petitioner has relied on a whatsapp message sent to the Executive Engineer in respect to his compulsion to leave Nawada for Katihar. A copy of the screenshot of the said message has been brought on record by way of Annexure P-7 to



the writ application, which has not been disputed in the counter affidavit. It has been stated in the writ application that through letter dated 15.04.2020, the Chief Engineer-cum-Special Secretary-cum- State Mission Director, JJM had given instructions to all concerned Executive Engineers of PHED to chalk out the district action plan by integrating into it the village action plan along with list of selected specialist officers working under NNP whose services were subsumed under JJM and were given the charge to act as the District Level Nodal Consultant Officer. It is the petitioner's case as pleaded in the writ application with reference to the said communication vide letter dated 15.04.2020 (Annexure P-8) that his name figured in the list of Nodal Consultants of various districts and the petitioner was selected for the district of Bhabhua as the District Level Nodal Consultant Officer. It is his case that only on the basis of statement made by the Executive Engineer, PHED, Nawada that the petitioner's work was unsatisfactory, he has not been assigned the contractual engagement as District Level Nodal Consultant of Bhabhua. There is statement made in paragraph 17 of the writ application that the meeting which was scheduled for 18.04.2020 was re-scheduled for 20.04.2020, which was informed by way of whatsapp communication in



NNP, Bihar whatsapp group on 18.04.2020. A copy of the screenshot of the said message has also been brought on record by way of Annexure P-11 to the writ application. It is the petitioner's further case that he had duly informed the Executive Engineer about his inability to participate in the online meeting from his office at Nawada in the absence of any transportation, which was sent through whatsapp message on 20.04.2020. It has been pleaded in the writ application that the interaction was held on 20.04.2020 at 3 P.M. for conducting personal online interaction of the Specialist Officers working under NNM, during the course of which the Executive Engineer, PHED, Nawada, despite having knowledge about the petitioner's inability to participate in the online interaction informed the Committee that his work was unsatisfactory and his candidature should be rejected. The petitioner's candidature was accordingly rejected. It is evident from the proceedings of the meeting (Annexure-P-14) that the petitioner's candidature has been rejected on two counts:-

(i) He was absent in the office of DPMU on the date of interaction.

(ii) According to the Executive Engineer, PHED, Nawada, the petitioner's performance while working under NNP



Mission was unsatisfactory.

9. The respondents have not specifically denied the statement made in the writ application that online interaction was held on 20.04.2020 and not on 18.04.2020 in the counter affidavit filed on behalf of the respondents though there is averment in the counter affidavit that the meeting was in fact held on 18.04.2020.

10. In the rejoinder to the counter affidavit, the petitioner has reiterated that the statement to the effect that the meeting was held on 18.04.2020 is false. The petitioner has explained the circumstance in which he could not participate in the interaction/meeting when the petitioner was expected to be present with the Executive Engineer (Respondent No.5) at Nawada. The lockdown imposed because of the outbreak of pandemic has been explained as the reason why the petitioner could not reach Katihar from Nawada to join the online proceedings. On the aspect of the Executive Engineer-cum-District Project Manager, DPMU, Nawada, informing the Committee about unsatisfactory service of the petitioner, the petitioner has relied on letter dated 28.03.2020 issued by the same Officer, addressed to the Special Secretary-cum- Project Director, SPMU, wherein he had specifically mentioned that the



petitioner and other specialists under DPMU were discharging their duties with full devotion. It is accordingly the petitioner's case that it was not proper on the part of the Executive Engineer-cum-District Project Manager (DPMU), Nawada (Respondent No.5) to have informed the committee that the petitioner's performance was unsatisfactory.

11. I have heard Ms. Anukriti Jaipurkar, learned counsel appearing on behalf of the petitioner and Ms. Shilpa Singh, learned Government Advocate No.12, appearing on behalf of the State.

12. Ms. Jaipurkar has argued that the present matter relates to selection in a new scheme, viz, JJM, which is being implemented consequent upon closure of NNP. She has argued that the petitioner has been able to explain the circumstance in which he could not participate in the interaction session/meeting held under the Chairmanship of the Engineer-in- Chief-cum-Special Secretary. She has argued that the petitioner's performance could not have been overlooked, in view of the written suggestion recorded by respondent No.5. She has further argued that based on oral observation and for the petitioner's inability to participate on the online interaction sessions, the petitioner's candidature itself ought not to have



been rejected. She has argued that the action of the respondents refusing to consider the petitioner's engagement on contractual basis under State sponsored JJM is wholly arbitrary, illegal, irrational and, therefore, unsustainable. She has submitted that the petitioner's right to be considered has been taken away on unfounded facts.

13. Ms. Shilpa Singh, on the other hand, has submitted that the petitioner was absent from duty with effect from 01.04.2020 and the respondent No.5 had informed the Committee that the work of the petitioner was not satisfactory. She has argued that it is an undisputed fact that the petitioner was required to participate in the online interview and he was not required to appear physically before the Executive Engineer, rather he had to join the interview Zoom App in respect of which a prior information was sent to him. She has submitted that the petitioner did not make any representation in writing or through other means in respect of his inability to participate in the interview. She has placed reliance on Supreme Court's decision in case of **Director Institute of Management Development UP Vs. Pushpa Srivastava** reported in (1992) 4 SCC 33 that a contractual appointment comes to an end with the efflux of time. She has argued that the petitioner has no



statutory right to continue on contractual engagement after it stood terminated with the efflux of time.

14. The Court is not going into the dispute in the present adjudication as to whether the interactive session/meeting under the Chairmanship of the Engineer-in-Chief-cum-Special Secretary, PHED was held on 18.04.2020 or 20.04.2020 as the said aspect is not so material for the present adjudication as to await recording of finding in that after calling for the original records; it would albeit matter of serious consequences if specific assertion of the petitioner that the meeting was held on 20.04.2020 instead of 18.04.2020 is correct. The said fact could constitute perjury for making false statement before the Court of law. I am, however, leaving the said point as it is for the present.

15. It is evident on reading of the proceedings of the said meeting, copy of which has been brought on record by way of Annexure P-14 to the writ application that the Executive Engineer, PHED (Respondent NO.5) had informed the Committee that the petitioner was absent from the office (certainly from the office of DPMU, Nawada) and his performance was unsatisfactory. The Executive Engineer did not disclose any material before the Committee based on which he



had formed his opinion about the petitioner's unsatisfactory performance. There is submission made on behalf of the respondents that the petitioner was required to join the interactive session online through Zoom meeting and he was not required to be present in the office of DPMU, Nawada. In this regard, the communication dated 15.04.2020 (Annexure-P-9) to the writ application needs to be looked into. By the said communication dated 15.04.2020 the Executive Engineer of the DPMUs were asked to present themselves 'with the specialists working under them' before the Committee constituted under the Chairmanship of the Engineer-in-Chief-cum-Special Secretary-cum-Director, SPMU. The said communication creates an impression that the Executive Engineer, DPMU were required to appear before the Committee with the Specialist Officers. In any event, failure on the part of the petitioner to participate in the said interaction session is not the reason for rejection of his candidature. The same is mainly because the Executive Engineer informed the Committee that the petitioner's performance was unsatisfactory. I find substance in the submission made on behalf of the petitioner that there is absolutely no material to substantiate as to how the petitioner's work was assessed to be unsatisfactory by the Executive



Engineer, which was relied on by the Committee on the basis of oral disclosure made in this regard. The Executive Engineer had undoubtedly recorded in his letter dated 28.03.2020 that the petitioner and other Specialists under the NNP were performing their respective jobs with full devotion. In such circumstance, the Court has no hesitation in recording a finding that there was no material before the Committee to reach a conclusion that the petitioner's work as Procurement Specialist at DPMU, Nawada was unsatisfactory. Such finding/conclusion recorded by the Committee is manifestly erroneous, without any basis and, therefore, unsustainable.

16. It is true that there is no legal right of absorption on the ground of having worked under contractual engagement. The petitioner is not claiming absorption on the said basis in the present writ application. The petitioner had, however, a right of fair treatment while being considered for his engagement in JJM. It appears that he was tentatively selected for Bhabhua. It has been stated at the bar that the post for which the petitioner was tentatively selected has not yet been filled up.

17. Considering the relevant pleadings on record as noted above and the submissions advanced on behalf of the parties, in Court's opinion, the impugned decision of the



Committee (Annexure P-14) to the extent the same relates to rejection of petitioner’s candidature requires interference by this Court, which is set aside.

18. Accordingly, the Engineer-in-Chief-cum-Special Secretary, PHED (Technical)-cum-Project Director (Respondent NO.2/Respondent No.4) are directed to consider the petitioner’s candidature afresh for the post in question and take a final decision within one month from the date of receipt/production of a copy of this order.

18. This application is allowed.

19. No order as to cost.

(Chakradhari Sharan Singh, J)

arun/-

AFR/NAFR	NAFR
CAV DATE	11.12.2020
Uploading Date	23.12.2020
Transmission Date	

