

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4409 of 2020

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1. Bipin Kumar Singh S/o Ram Kishun Mahto Resident of Village-Bartelaunch, Ward no.12, P.S. Chautham, District-Khagaria.
 2. Arun KUMar S/o Late Prithwilal Yadav , Resident of Krishna Nagar Behind Animal Hospital, P.S-Chitagupta nagar, District-Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secreary, Social Welfare Department, Bihar, Patna.
2. Director, Integrated Child Development Service, Social Welfare Department, Bihar, Patna.
3. District Magistrate, Khagaria.
4. District Programme Officer, Integrated Child Development Service, Khagaria.

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms. Shilpi Keshri, Advocate
For the Respondent/s : Mr. Gyan Prakash Ojha (GA7)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 21-10-2021

1. Heard the learned counsel for the petitioners and Sri Gyan Prakash Ojha (GA 7) assisted by Sri Gopal Krishan, the learned counsel appearing for the respondent State.

2. The present writ petition has been filed for quashing the order dated 13.01.2020, passed by the District Magistrate, Khagaria, whereby and whereunder the petitioners have been removed from their services.

3. The brief facts of the case are that the petitioners had applied for being appointed as Executive Assistants and upon



qualifying the requisite examination held for the said posts, their names had appeared in the provisional merit list of successful candidates at serial no. 17 and 20 respectively. It is the further case of the petitioners that in the light of an advertisement issued by the Directorate of Integrated Child Development Service (hereinafter referred to as "I.C.D.S."), Social Welfare Department, Government of Bihar, Patna for the purposes of making appointments on different posts in the various Districts of Bihar on contractual basis, the District Programme Officer (I.C.D.S.), Khagaria vide letter no. 533 dated 04.06.2013, had requisitioned six Executive Assistants from the District Establishment, whereafter the District Establishment vide letter dated 19.06.2013 had sent the names of six selected candidates to the District Programme Officer, Khagaria, which also included the name of the petitioners and from the said list, the petitioners were appointed on the post of Lower Division Clerk, whereupon appointment letter dated 28.06.2013 was issued to the petitioners by the District Programme Officer, Khagaria.

4. It is the case of the petitioners, as canvassed by the learned counsel for the petitioners, that the petitioners had been working under various District Programme Officers to their full satisfaction as also had been transferred/ deputed at various



places by the order of the District Magistrate, Khagaria, however suddenly, the petitioners were removed from their services illegally and arbitrarily vide the impugned letter dated 13.01.2020, without any fault or wrong being committed by the petitioners or without any show cause notice being issued to them, much less any departmental proceedings being conducted qua them. Thus, the simple case of the petitioners is that since, no show cause notice has ever been issued to the petitioners, prior to termination of their services, vide the impugned order dated 13.01.2020, the same has resulted in violation of Principles of Natural Justice, hence the impugned order dated 13.01.2020 stands vitiated in the eyes of law.

5. The learned counsel for the petitioners has relied on a judgment reported in **2013(2) PLJR 671 (Birendra Kumar and others v. The State of Bihar and others)**, rendered by the learned Division Bench of this Court to submit that without the appointment being a forged appointment, merely on the basis that the procedure has not been adequately followed while making appointments, the appointment cannot be held to be illegal.

The learned counsel for the petitioners has also relied on a judgment rendered by the learned Division Bench of this Court



in the case of ***Pramod Narayan Tiwary and others v. the State of Bihar and others***, reported in ***2017(3) PLJR 778***, paragraphs No. 23 to 25, whereof are reproduced herein below:-

"23. In the totality of the fact situation we are of the considered view that the order of termination is violative of principles of natural justice being post decisional hearing. It is also unsustainable in view of the fact that after seven long years the decision to cancel appointment was taken in the backdrop of the fact that in the case of others the Advocate General opined not to grant the same relaxation treating the case of the petitioners as precedent is unreasonable and arbitrary.

24. We also find substance in the submission of learned senior counsel for the appellant that the entire action of cancellation of appointment of the appellant and termination is founded on the premise that in the matter of selection and appointment of the appellant there was no decision by the Government was non est. The notings on the file which was considered by the Court in Civil Review No. 226 of 2012 discussed above is clinching on the point that in the matter of selection and appointment of the petitioners the Government has taken the decision to relax the physical test standard.

25. In the result, the writ application is allowed. The impugned communication dated 10.5.2000



(Annexure-16) and the follow up order of termination dated 12.5.2000 (Annexure-17) are quashed. The petitioners shall be deemed to be in continuous service and shall be entitled to all consequential benefits including the monetary benefits for the period they have been kept out of employment due to illegal, arbitrary and misleading decision and stand of the respondents."

6. The next judgment relied upon by the learned counsel for the petitioners is the one reported in **2017 (4) PLJR 765**, rendered by the learned Single Judge of this Court in the case of ***Sanoj Kumar and others v. The State of Bihar and others***, paragraph no. 10 whereof, is reproduced herein below:-

10. The orders of termination impugned at Annexure-1 series to the writ petition are non-speaking, mechanical and bereft of reasons. The orders are also not sustainable in absence of any opportunity of hearing to the petitioners. The cyclostyled order of termination is a confirmation of non-application of mind.

7. *Per contra*, the learned counsel for the respondent State has submitted that the appointment of the petitioners were not made as per the guidelines of I.C.D.S. Department, contained in letter dated 09.12.2011, inasmuch as the Selection Committee was not properly constituted and moreover, though the



petitioners were initially appointed as Executive Assistants but subsequently, they had been designated as Lower Division Clerk by the then District Programme Officer, I.C.D.S., Khagaria without the approval of the District Magistrate, Khagaria, hence the services of the petitioners have been terminated. It is also submitted that the service of the petitioner no. 1 had not been found satisfactory and in fact, a show cause notice dated 07.11.2019 was also issued to him. It is thus submitted that on account of selection procedure being not in accordance with the guidelines dated 09.12.2011, a decision has been taken to remove the petitioners from service, thus the impugned order dated 13.01.2020 has been passed by the District Magistrate, Khagaria, which does not suffer from any illegality.

8. I have heard the learned counsel for the parties and perused the materials on record. A bare perusal of the appointment letter of the petitioners dated 28.06.2013 would show that the appointment of the petitioners is contractual in nature, however the same postulates that an agreement shall be entered into, nonetheless it is the assertion of the petitioners that no agreement was entered into in between the petitioners and the respondents and moreover, the respondents have also not whispered about any agreement having been entered into by the



petitioners with the respondents, thus there does not appear to be any terms and conditions governing the service conditions of the petitioners, inasmuch as the guidelines dated 09.12.2011 also do not provide for any mechanism regarding removal of the contractual employees. Thus, this Court finds that the general principles of law as also the well-established Principles of Natural Justice would be required to be followed prior to removing the petitioners from their services, even in a case of contractual appointment. It is a trite law that even in a case of termination of contractual appointment, a writ Court can examine the validity of a termination order passed by the departmental authority and is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Reference in this connection be had to the judgment rendered by the Hon'ble Apex Court, reported in **(2011) 15 SCC 16 (Gridco Limited and another v. Sadananda Doloi and others)**.

This Court had put a query to the learned counsel appearing for the respondent State as to whether any show cause notice was issued to the petitioners prior to issuance of the order



of termination dated 13.01.2020, to which the learned counsel for the respondent State has not been able to show from the records that any show cause notice was ever issued to the petitioners on the issue of termination of service, although certain show cause notices had been issued to the petitioners but on various other grounds, not connected with the issue in hand.

9. This Court thus finds that admittedly, no show cause notice has been issued to the petitioners prior to passing of the impugned order of removal of the petitioners from their services and moreover, the petitioners have been removed from their services after almost six and a half years of their appointment made on 28.06.2013, by the impugned order dated 13.01.2020, on account of a procedural irregularity said to have been committed several years back, however without any fault on the part of the petitioners. Thus on a short ground of non compliance of the Principles of Natural Justice, the impugned order dated 13.01.2020 stands vitiated in the eyes of law in absence of any opportunity having been granted to the petitioners to put forth their defense, hence the impugned order dated 13.01.2020, passed by the District Magistrate, Khagaria is quashed, however the matter is remitted back to the District Magistrate, Khagaria to proceed afresh, in accordance with law



and pass appropriate orders, within a period of twelve weeks of receipt/ production of a copy of this order. It is needless to state that the payment of the consequential benefits shall abide by the final outcome of the decision to be taken by the District Magistrate, Khagaria, as aforesaid.

10. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

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CAV DATE	NA
Uploading Date	29.11.2021
Transmission Date	NA

