

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6189 of 2020

Rupesh Kumar Sinha Son of B.N. Sinha, Resident of Flat No. 102 Dayananda Apartment, Main Road, Near Pani Tanki, Nehru Nagar, Boring Road, Patna, presently residing at 402, Le Grassia Apartment, Vasundhara Homes, Road No. 4, Nehru Nagar, P.O. and P.S. Patliputra, Town and District Patna.

... .. Petitioner

Versus

1. The State of Bihar through Additional Chief Secretary, Department of Social Welfare, Government of Bihar, Patna.
2. The Additional Chief Secretary cum Chairman, Women Development Corporation, Department of Social Welfare, Government of Bihar, Patna.
3. The Women Development Corporation, through Managing Director, Women Development Corporation, Bihar Department of Social Welfare, Government of Bihar, Patna.
4. The Managing Director, Women Development Corporation, Department of Social Welfare, Government of Bihar.
5. The Administrative Officer, Women Development Corporation, Department of Social Welfare, Government of Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Aashish Giri with	
	:	Mr.Rajat Kumar Tiwary	
For the State	:	Mr.Amit Prakash (GA 13)	
For the Board/Corporation:		Mr.Naresh Dixit	:

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 23-08-2021

This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. The Women Development Corporation, Bihar (Corporation, in short) is a society registered under the Societies Registration Act, 1860 and functions under the aegis of Social Welfare Department, Government of Bihar. The Memorandum of



Association and Articles of Association have been brought on record of by way of Annexure-1 to the writ application.

3. It is the petitioner's case that an advertisement was issued in the local dailies in the year 2001 for appointment on contractual basis as Project Director under World Bank-IFAD assisted Swa-Shakti Project, against which the petitioner had applied. It is admitted by the petitioner himself that he was not selected for the post advertised rather one Smt. Irina Sinha was selected and was appointed. The petitioner's name, according to him, was just below Irina Sinha. He was offered appointment as Training Coordinator, instead on contractual basis as the advertised post of Project Director was already filled up with appointment of Irina Sinha under Swa-Shakti Project. It is the petitioner's own case that Swa-Shakti Project, under which the petitioner was appointed as Training Coordinator, continued till 2004-05.

4. It is noted here that admittedly no post of training Coordinator was advertised against which the petitioner claims to have been appointed on contractual basis in 2002 under the said Swa-Shakti Project. In any view of the matter, his engagement on contractual basis under said Swa-Shakti Project would have naturally come to an end with the termination of the project.

5. It is further case of the petitioner that in the year 2007-08, *Mukhyamantri Nari Sakti Yojna* (in short MNSY) was



approved and various new posts were sanctioned for the Corporation to run programmes under MNSY. *Mukhyamantri Kanya Suraksha Yojna* (MKUY) being a conditional cash transfer scheme was launched by the Corporation and the Corporation was assigned the task of implementation of the said scheme. The petitioner asserts that he was twice given the charge of Project Director, firstly in July 2006 and thereafter in September 2009 by the then Chairman- cum- Managing Director and then CMD-cum-Managing Director of the Corporation respectively.

6. It is, however, not stated in the writ application as to the nature of process undertaken by the Corporation for giving the petitioner charge of Project Director in July 2006 and subsequently in September 2009. There is no reference to any selection process undertaken after the advertisement of 2002 which was limited for Project Director under Swa-Shakti Project.

7. The petitioner further asserts that he was once again selected after an internal screening for the working of *Swawlamban* Project and was offered a service contract assignment on 03.09.2005 with further extension of assignment vide letters dated 20.01.2006, 16.04.2007 and 03.04.2008. According to him, he continued as Training Coordinator till 2008 and played a vital role in smooth implementation of the Self Help Group (SHG) projects.



8. The Court is unable to find out on the basis of pleadings and materials on record as to what kind of internal screening was carried out the petitioner contractual assignment on 03.09.2005 and subsequent extensions when his initial engagement on contractual basis apparently stood terminated with conclusion of Swa-Shakti Project under which he was engaged on the post of Training Coordinator, which post was never advertised nor any selection process was undertaken for filling up the said post.

9. The petitioner further claims that a World Bank supported Jeevika Project (Bihar Rural Livelihood Promotion Society) was conceived by the Corporation during this period. It has been stated in paragraph 6(viii) of the writ petition that a due recruitment process was conducted by the Corporation through open advertisement to fill up some new posts for smooth implementation of various programmes. The petitioner claims that he was selected as State Project Manager (SPM), (Programme Management) on contractual basis by the selection committee and an appointment offer was given to him on 12.12.2008, against which he had joined on 01.01.2009 and continued till 25.02.2019, based on periodic performance appraisal by the competent authority.



10. It has further been asserted that since the post of Project Director became vacant consequent upon resignation of Smt. Irina Sinha, the petitioner was entrusted additional task to act as Project Director vide office order No. 20.06.2013 and 25.01.2019. It is his claim that he managed the affairs of the different programmes successfully for six years while functioning as State Programme Manager. It has further been asserted that in accordance with the provisions of HR policy of the Corporation, the then Managing Director of the Corporation, considering his various representations for promotion made by the petitioner, had referred the matter for the consent of the additional Chief Secretary- cum- CMD, Women Development Corporation, Department of Social Welfare, Government of Bihar. Respondent No. 2 required the Managing Director to take appropriate action and to put up the matter before the next Board meeting.

11. It is the petitioner's further case that he was promoted to the post of Project Director by the then Managing Director of the Corporation which was communicated to the petitioner vide order dated 26.02.2019. The decision to grant promotion was subsequently ratified in the 31st Board meeting of the Corporation by the Managing Director and the Board of Directors.



12. It is the petitioner's grievance that all of a sudden, on 16.03.2020, the petitioner was asked to clarify regarding failure on his part to discharge his duties in appropriate manner and regarding misuse of the Corporation's vehicle by him, incurring losses to the Corporation. On the same date, he received another communication whereby he was asked to submit the details and documents with reference to the posts that he had held in the Corporation from the date of first appointment and his qualification.

13. Immediately, after receiving the communication dated 16.03.2020, the petitioner made a request through e-mail dated 17.03.2020 seeking leave on the ground of his poor health condition and his sufferings from cold and fever and being severely diabetic for last ten years. The petitioner responded to the communications made on 16.03.2020 through e-mail sent on 18.03.2020 and 19.03.2020.

14. On 19.03.2020, the Corporation issued a show cause notice bearing No. 2936 to the petitioner whereby he was asked to explain as to why the promotion given to him to the post of Project Director be not treated to be in violation of the Corporation's Human Resources Policy and established rules and procedure and, therefore, why the same should not be annulled forthwith. The petitioner was asked to submit his reply within seven days. The



petitioner through e-mail dated 23.03.2020 again made request for grant of leave on health reasons. There is reference to subsequent communications made by the petitioner dated 25.03.2020, 03.04.2020, 06.04.2020, 20.04.2020, 28.04.2020, 04.05.2020, 11.05.2020 and 25.05.2020 seeking grant of leave on health ground. The petitioner has asserted in the writ petition that the Corporation had been continuously pressurizing him to join the office as SPM from which post he was promoted to the post of Project Director, despite his applications seeking grant of medical leave.

15. In the aforesaid background, the petitioner filed this writ application seeking quashing of the show cause notice dated 19.03.2020 issued by the Corporation whereby the petitioner was asked to explain as to why the promotion granted to him to the post of Project Director be not treated in violation of the Corporation's HR policy. The petitioner's promotion to the post of Project Director was kept in abeyance by the said notice dated 19.03.2020. The petitioner has asserted that he had preferred appeal against the interim decision taken in respect of his promotion to the post of Project Director before Respondent No. 2 which was not being disposed of. The petitioner, accordingly, sought for direction for payment of salary from the month of January 2020 till date.



16. During pendency of this application the Corporation issued office order dated 08.06.2020 cancelling the petitioner's promotion with retrospective effect from the date of promotion i.e. 26.02.2020. The petitioner has sought for quashing of the said office order by seeking amendment in the writ application through I.A. No. 01 of 2020.

17. By filing I.A. No. 2 of 2020, the petitioner has sought for adding further prayer in the main application by amendment for quashing of office order dated 10.08.2020 issued by Respondent No. 5 whereby the petitioner's request to join the post of State Project Manager after 08.07.2020 had been declined.

18. The Corporation came out with an advertisement for appointment against the post of Project Director vide Advertisement No. 04/2020. The petitioner has sought for further amendment in the writ petition for challenging the said advertisement as, according to him, the post which the petitioner validly held has been advertised, by filing I.A. No. 04 of 2021.

19. In the counter affidavit filed on behalf of the Corporation, it has been stated that the petitioner was paid his salary up to the month of January, 2020 in the month of March, 2020. Salary for the subsequent period has not been paid to the petitioner, according to the Corporation because the petitioner's contractual service has not been extended and resultantly he is no



more in the service of the Corporation. It has been asserted that since the petitioner's engagement as Project Director was found to be in teeth of the service rules (Annexure-8 to the writ application) framed by the Corporation, the decision granting the petitioner so called promotion to the post of present Director, was kept in abeyance.

20. Mr. Ashish Giri, learned counsel representing the petitioner has argued that though it is true that the initial appointment of the petitioner in 2002 was contractual in nature, but it is also true, at the same time, that pursuant to an advertisement issued for the post of Project Director, a selection process was undertaken and one Irina Sinha, who was then working as Training Coordinator in the Corporation, was appointed as the Project Director, her position being the first in the merit list. The petitioner was adjusted against the post of Training Coordinator, which had fallen vacant because of appointment of Irina Sinha, which was offered to him and which he had accepted. He has further argued that based on the recommendation of Selection Committee of the corporation, the petitioner was subsequently offered the post of State Project Manager, as is evident from letter dated 12.12.2008 issued by the Chairman-cum-Managing Director of the Corporation (Annexure-5). Terms and conditions of the petitioner's appointment were appended thereto,



clause-16 of which clearly mentioned that during the period of engagement, the petitioner's services would be governed by the service rules of the Corporation. He has then placed reliance on various provisions of the service rules of the Corporation with particular reference to the provisions under the heading 'recruitment and selection of staff'. With reference to the said provision, according to him, the post of Project Director falls in category-II. He has then referred to clause- 1.2.5 of the said service rules to submit that method of recruitment and selection has been provided thereunder which permits appointment on the post of Project Director in category-II by way of promotion. He has accordingly submitted that the rules and regulations of Women Development Corporation were fully applicable and accordingly grant of promotion to the petitioner to the rank of Project Director is justified which cannot be said to be contrary to the service rules. He has referred to clause-1.3 of the service rules to submit that CMD/MD is authorized to take decision to conduct recruitment and upon completion of one year and based on result of performance appraisal, staff could be retained on the same salary structure or moved to a higher salary structure within the same scale. According to him, in case of exceptional performance, a staff may be considered to be promoted to a higher scale, after one



year. He submits that the petitioner's performance was found to be exceptionally good.

21. Mr. Giri has argued that the termination of the petitioner's service is punitive in nature and, therefore, it was mandatory for the respondents to have held an enquiry in conformity with principles of natural justice. He has further contended that the impugned action is in utter disregard to the principles of natural justice. He has relied on following decisions of Supreme Court and this Court in support of his submissions:-

(i) *Hari Ram Maurya v. The Union of India and Ors* reported in (2006) 9 SCC 167, (ii) *State Bank of India and Ors. v. Palak Modi and Anr.* reported in (2013) 3 SCC 607, (iii) *Poonam v. State of Uttar Pradesh and Ors* reported in (2016) 2 SCC 779, (iv) *Bijendra Kumar Singh v. The State of Bihar and Ors.* reported in 2014 (4) PLJR 490, (v) *Satyendra Kumar Sinha v. The State of Bihar and Ors.* reported in 2015 SCC Online Pat 8860 and (vi) *Renu Kumari and Anr. v. The State of Bihar and Ors.* reported in 2013 SCC Online Pat 1508.

22. Mr. Naresh Dixit, learned counsel appearing on behalf of the Corporation has reiterated the stand taken by the Corporation in the counter affidavit and has drawn the Court's attention to an order dated 19.03.2008 issued by the Corporation (Annexure A to the counter affidavit) which displays the conduct



of the petitioner. From the said order, it appears that some officers/staffs were deputed to make necessary arrangements at Miller School for women members of the SHGs (Self Help Groups) who were coming to Patna to participate in the International Women's Day programme. A complaint was received against officers/staffs of the Corporation regarding use of alcohol by them while on duty. The officers/staffs were given an opportunity to state, as to whether they were actually involved in the reported misconduct. Seven of such staffs including the petitioner, who was then working as Training Coordinator, had accepted the charge and submitted written apologies. Considering the conduct of the petitioner and others to be a case of gross moral misconduct and act subversive to the discipline, the Chairman-cum-Managing Director of the Corporation had directed them to pay a fine equivalent to one month's remuneration/wages. He has argued that the said order projects the conduct of the petitioner. He has thereafter argued that admittedly the petitioner's engagement was on contractual basis and as the term of contract has not been extended, he cannot be said to be associated any more with the Corporation. He has further argued that since the petitioner's promotion as Project Director has been found to be wholly illegal, the Corporation has rightly taken the decision to keep in abeyance



such promotion granted to him w.e.f. the very date of grant of such promotion.

23. In view of the nature of dispute involved in the present case and the facts which are admitted in the pleadings of the petitioner, I need not go into the counter affidavit filed on behalf of the respondent Corporation. In the Court's opinion, the petitioner's very initial entry in the Corporation, in 2002 was illegal and in complete disregard to the requirements of Articles 14 and 16 of the Constitution of India. The post of Training Coordinator against which the petitioner was engaged in 2002 on contractual basis was not advertised. The petitioner could not succeed in the process of selection for appointment against the post of Project Director, which was advertised. The Court cannot approve the conduct of the officials of the Corporation whereby the petitioner was offered contractual appointment on the post of Training Coordinator which had fallen vacant upon appointment of Irina Sinha as Project Director. The petitioner's entry in 2002 as Training Coordinator was apparently a backdoor entry. Further, in any case the petitioner's contractual engagement stood terminated with the termination of Swa-Shakti Project for which he was engaged. There is no clue, as to how, the petitioner could continue with his arrangement with the Corporation after culmination of Swa-Shakti Project inasmuch as he has stated that he was given



charge of Project Director in July, 2006 and September, 2009. It is his own case that after an 'internal screening' for working of *Swawalamban* Project, he was offered a service contract assignment on 03.09.2005. How the petitioner remained part of the Corporation for the purpose of selection on the basis of internal screening as on 03.09.2005 is not conceivable. Less said the better about the petitioner's claim that he continued as Training Coordinator till 2008 and 'played a vital role in smooth implementation of SHGs Project', as asserted in paragraph 6 (vi) of the writ petition. It is the petitioner's case that he was selected as State Programme Manger consequent upon due recruitment process on which post he joined on 01.01.2009 and according to him, continued till 25.02.2019.

24. The person who working as the Project Director had submitted her resignation and it is the petitioner's case that he was continuously making representations for his promotion to the post of Project Director, which was favorably considered and in fact promoted vide Office order dated 26.02.2019.

25. It would be relevant at this stage to discuss briefly relevant provisions under the service rules of the Corporation, a copy of which has been brought on record by way of Annexure-A to the writ application. The service rules have been divided in 5 broad Sections namely:-



1. Rules for recruitment and selection of staff.
2. Rules for staff contract policy.
3. Rules relating to transfer.
4. Leave rules.
5. Conduct rules.

26. A careful scrutiny of the service rules does not leave any scope of doubt that provisions are different for recruitment and selection of staff in Section 1 and Section 2, as noted above. Sub-Section 2.2 of the service rules lays down the provisions relating to appointment of persons on contract. Clause 2.2.4 stipulates that duration of contract of staff employed with the Corporation will be for one year, further extendable based on performance and project status. Clause 2.2.9 provides that the authority to renew contract for all employees lower than CMD/MD will be with CMD/MD. No provision under the heading appointment of persons on contract talks about grant of promotion for a person appointed on contractual basis or filling up of a post on contractual basis by way of promotion. Section '1' of the service rules deals with recruitment and selection of staff on regular basis which is distinguishable from those under staff contract policy. A person appointed on contractual basis, in the Court's opinion, cannot claim privileges of regular engagement



under Section-1 of the rules. Submission made by Mr. Giri, learned counsel for the petitioner that he was validly granted promotion to the rank of Project Director by invoking Rule 1.2.5 of the Rules while working on contractual basis is wholly misconceived for the reason that the same does not have any connection with engagement of a person on contractual basis.

27. In my considered opinion, a person appointed against a post on contractual basis even after following due process of selection cannot be promoted to a higher position invoking the provisions of the service rules frame by the Corporation. Situated thus, in the Court's opinion, the decision by the Corporation to appoint the petitioner as Project Director by way of promotion was evidently contrary to the service rules. The conclusion arrived at by the Corporation to the aforesaid effect cannot be faulted with.

28. Further, nothing has been brought to my notice, which can suggest that the petitioner's engagement as State Programme Manager on contractual basis is still continuing. It is evident from the pleadings on record that immediately after the show cause notice was issued to the petitioner, he started filing applications for grant of leave on health grounds. In such circumstance, the question of the petitioner's claim for salary for the period he remained absent from the office needs to be



considered and determined by the Corporation. The Court at this stage observes that the Corporation must ensure payment of salary to the petitioner, if not already paid, for the period during which he in fact discharged the functions of the Project Director, though the Corporation has subsequently found, and validly so, that his promotion to the said post was illegal.

29. Reliance placed by Mr. Giri on Supreme Court's decisions, as noted above, does not serve any useful purpose in the facts and circumstance of the present case for the reason that a show-cause notice was issued to the petitioner pursuant to which he had submitted his response, and since the Court is of the opinion that on the basis of facts pleaded in the writ application and the materials brought on record by the petitioner himself, the impugned action of respondent Corporation to the extent the same relates to annulment of the petitioner's appointment as Project Director does not require any interference.

30. The impugned action of the Corporation, in my view, cannot be said to be punitive in nature nor stigmatic, in the facts and circumstances, as discussed above. Nevertheless, it is observed that in any event, the action of the Corporation shall not be treated to be punitive in nature for any purpose, in respect of the petitioner.



31. Consequently, I do not find any merit in this application, which stands dismissed. It is, however, observed that the respondent Corporation shall ensure that the petitioner is paid his salary for the period for which he served the Corporation. Such payment must be made within two months from the date of receipt/production of a copy of this order. It is made clear that the petitioner shall be paid salary of the post, which he in fact was holding. The petitioner shall be at liberty to make a representation in this regard before the Managing Director of the Corporation, which shall be duly considered. In case, the petitioner's representation does not find favour with the Managing Director of the Corporation, he will be obliged to pass a reasoned and speaking order assigning reasons why the petitioner's claim for salary is not justified.

32. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Rajesh/Akash

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	29.08.2021.
Transmission Date	N/A

