

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6572 of 2020

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Sandip Kumar Son of Shri Surendra Prasad Yadav, Resident of Bhupendra Enclave, Flat No. 1/C, Punaichak, P.s.- Sastrinagar, District- Patna

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Secretary, Urban Development and Housing Department, Government of Bihar, Patna
3. The Bihar Urban Infrastructure Development Corporation Ltd., Patna (BUIDCO) through its Managing Director,
4. The Managing Director, Bihar Urban Infrastructure Development Corporation Ltd., Patna (BUIDCO)
5. The Special Secretary of the Government, Urban Development Department, Government of Bihar, Patna
6. The Additional Chief Secretary, Home Department, Government of Bihar, Patna

... .. Respondents

with

Civil Writ Jurisdiction Case No. 6576 of 2020

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Rakesh Kumar Son of Kashi Nath Prasad, Resident of Mohalla- House No. 2/A1, West Anandpuri, West Boring Canal Road, P.s.- Srikrishnapuri, District- Patna

... .. Petitioner

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna
2. The Secretary, Urban Development and Housing Department, Government of Bihar, Patna
3. The Bihar Urban Infrastructure Development Corporation Ltd., Patna (BUIDCO) through its Managing Director,
4. The Managing Director, Bihar Urban Infrastructure Development Corporation Ltd., Patna (BUIDCO)
5. The Special Secretary of the Government, Urban Development Department, Government of Bihar, Patna
6. The Additional Chief Secretary, Home Department, Government of Bihar, Patna

... .. Respondents

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Appearance :

(In both the cases)

For the Petitioner : Mr. Mrigank Mauli, Senior Advocate

Mr. Karandeep Kumar, Advocate

For the Respondent BUIDCo.: Mr. Ravindra Kumar Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

Date : 12-10-2022

As the issues involved in both the cases, for the purpose of adjudication of the core dispute are identical and the orders under challenge in both the writ applications, are identical, passed on the same date i.e. 21.03.2020 by the Managing Director, Bihar Urban Infrastructure Development Corporation Limited ('BUIDCo' in short), with the consent of the parties, both the cases have been heard together and are being disposed of by the present common judgment and order.

The petitioner in C.W.J.C. No. 6572 of 2020 has put to challenge an order issued vide memo no. 99 dated 21.03.2020 passed by the Managing Director, BUIDCo, invoking clause 3.5 and clause 6.10 (f) of the Bihar Urban Infrastructure Development Corporation Limited Service Regulations, 2010 (Regulations), whereby the petitioners' contractual appointment has been terminated. Invoking same clauses, the BUIDCo has, by an order issued vide memo no. 98 dated 21.03.2020, terminated the contractual appointment of petitioner of C.W.J.C. No. 6576 of 2020, which is under challenge in the second writ petition.

The considerations for passing of the impugned orders in both the cases are identical inasmuch as language used in both



the cases by the Managing Director, BUIDCo, is verbatim the same. The petitioners have been removed from service after putting them on a show-cause notice and recording a finding based on an enquiry held about their conduct in discharge of duties. This is an admitted position that both the petitioners were appointed on contractual basis and their term of contract would have come to an end on 30th of June 2021. A common plea has been taken in the counter-affidavit filed on behalf of BUIDCo that clause 6.10 (f) of the Regulations was inadvertently mentioned in both the orders as the said clause of the Regulations is applicable to the employees appointed in BUIDCo on regular basis.

It is the case of the BUIDCo that termination of the services of these petitioners is in accordance with clause 3.5 of the Regulations. Clause 3.5 (i) of the Regulations reads as under:-

“The Services of an employee on contract may be terminated by the MD without assigning any reason by a notice of one month in writing to the employee or on payment of one month’s pay and allowance in lieu of such notice.”

Mr. Mrigank Mauli, learned senior counsel appearing on behalf of the petitioners has submitted that the impugned orders cannot be treated to have been passed in terms of the aforesaid



clause 3.5 of the Regulations, which contemplates termination of services of an employee working on contract basis by the Managing Director without assigning any reason by a notice of one month in writing to the employee or on payment of one month's pay and allowance in lieu of such notice. He has submitted that neither one month's notice was issued nor payment of one month's salary and allowance was made in lieu of such notice. He further submits that evidently, the impugned orders have been passed after holding inquiries, which are stigmatic in nature and cannot be termed as termination simplicitor by invoking clause 3.5 (i) of the Regulations.

Mr. Ravindra Kumar Priyadarshi, learned counsel appearing on behalf of BUIDCo., though has not been able to controvert the aforesaid submissions made on behalf of the petitioners, has argued that there is provision of appeal in terms of the office order issued by the Managing Director, BUIDCo., dated 06.08.2020, against an order of removal from service of a contractual employee. He further submits that the petitioners, as a matter of fact, have preferred appeal invoking the said provision under the office order dated 06.08.2020 and, therefore, they cannot be permitted to maintain these writ applications during the pendency of their appeals.



In response to the aforesaid submission made on behalf of BUIDCo., Mr. Mrigank Mouli, learned Senior Counsel appearing on behalf of the petitioners has submitted that these writ applications were filed on 29.05.2020, which came to be registered on 24.06.2020 when there was no provision for appeal against the impugned order. He has submitted that out of misconception of law, the petitioners preferred an appeal, understandably for the reason that the disposal of present writ application might take some time. He has accordingly submitted that in any case, no tangible purpose would be served, if this Court, at this stage, after having heard these writ applications at length, relegates the petitioner to the appellate forum. He has submitted that the filing of said appeals were apparently under misconception of law.

Considering the admitted facts and the short issue, which these applications involve, I am not inclined to accept the contention on behalf of BUIDCo. that these writ applications should not be entertained because the petitioners have filed appeals against the impugned orders, moreso for the reason that there was no provision for appeal against an order of removal from service of a contractual employee till the date of filing of these writ applications.



Upon perusal of the pleadings in the writ petitions, other affidavits filed on behalf of the petitioners and the counter affidavits filed on behalf of BUIDCo., there does not appear to be any dispute that the impugned order of removal from service has been passed in breach of Clause 3.5 of the Regulations as quoted above. Admittedly, neither prior one-month notices in writing were given to the petitioners nor payments of one month's pay and allowance in lieu thereof were made to the petitioners. In such view of the matter, the impugned orders, both dated 21.03.2020, cannot be sustained and are accordingly set aside. Since the terms of the respective petitioners' contract has expired, consequent upon quashing of the impugned orders, they cannot be directed to be reinstated. However, had such orders, which have been impugned in these applications, been not passed and which have been set aside by this Court, the petitioners could have continued to complete the terms of their respective contractual employments.

Learned Senior Counsel appearing on behalf of the petitioners has accordingly submitted that the petitioners are entitled to backwages consequent upon quashing of the orders, because though the petitioners were willing to discharge their duties, they were wrongfully restrained by issuance of the illegal orders passed by the BUIDCo., from doing so.



However, upon perusal of the pleadings of the petitioners, I find that there is no pleading that after their removal from contractual employments, they were not gainfully employed anywhere else. In such circumstances, the Court does not consider it appropriate to direct for payment of full salary and emoluments for the remainder of the period. However, in the facts and circumstances of the case, it is considered just and proper to direct BUIDCo. to pay to the petitioners a sum of Rs. 50,000/- (Fifty Thousand) each, consequent upon quashing of the orders, which have been held to be illegal being in breach of Clause 3.5 of the Regulations. The payments must be made within three months from the date of receipt/production of a copy of the order before respondent No.3.

These applications are allowed with the aforesaid observations.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.10.2022
Transmission Date	N/A

