

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1486 of 2015

In
Civil Writ Jurisdiction Case No.4499 of 1999

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Ram Binay Roy Son of late Ram Narain Roy Resident of Village- Salempur,
P.o. Rupauli, Police Station -Sarai, Ranjan, district samastipur.

... .. Appellant/s

Versus

1. The High Court Of Judicature At Patna and Ors
2. The District and Session Judge, Madhubani District Madhubani.
3. The Registrar civil court madhbuani, District Madhubani.
4. The State of Bihar through the secretary, Law Department Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Yogendra Mishra, Sr. Advocate Mr. Arvind Kumar Jha, Advocate
For the Respondent/s	:	Mr. Satyabir Bharti, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

10 24-11-2022 Pursuant to the order dated 06.07.2022, learned

counsel for the respondent no. 1, 2 and 3 reiterated his

argument that grievances of the appellant is belated by more

than three years, appointment was illegal, procedures to appoint

him have not been followed by the District Judge. On

06.07.2022 the following order was passed:

*“Heard learned counsel for
respective parties. Matter relates to
selection and appointment to the post of
Peon. The appellant was appointed as a
Peon on 21.12.1994.*



Such appointment order was issued by the District and Sessions Judge, Madhubani who was due for retirement within a period of six months from the date of the appellant appointment. The then District and Sessions Judge is stated to committed an error in appointing the appellant. In other words, in the absence of clear vacancy of Peon post Appellant was appointed. The same noticed in the year 1995 show cause notice was issued to the appellant. The appellant is stated to have submitted explanation to the show cause notice. Thereafter, the District and Sessions Judge, Madhubani proceeded to terminate the services of appellant among others. Order of termination dated 14.02.1996 reads as under:-

“Order No. 63 of 1996 The services of the following temporary peons namely 1. Sri Ram Binay Roy 2. Sri Viscient Kanhchap, 3. Sri Bijendra Prasad, 4. Sri Tunna Kumar Singh and 5. Sri Rakesh Kumar Singh, is, hereby terminated with immediate effect. Inform all concerned. Sd/- illegible District & Sessions Judge, Mahdubani Office of the District and Session Judge, Madhubani Memo No. 530-10/G Dated, Madhubani, The 14th Feb, 1996.”

Learned Single Judge has taken note of merits of the case that the appellant has no right to appointment against Peon post in the light of the fact that such appointment was

against non existing vacancy. In other words, the then District and Sessions Judges had appointed Peon more than the vacancy notified. Further, order of termination dated



14.02.1996 was questioned by the appellant after three years in the year 1999 even the aforesaid delay issue has been taken note of. Having regard to the fact that order of termination is very vague and there is no reference to the issuance of show cause notice and petitioner's explanation to the extent of consideration. In other words, issuance of show cause notice and seeking explanation is only an empty formality. The appellant was appointed on 21.12.1994 and followed by termination on 14.02.1996 has a civil consequences. Therefore, order of termination should have been speaking order. We find prima facie case that the order of termination is not happily worded. In other words, there is no consideration of appellant's explanation. In order to give quietus to the litigation learned counsel for the respondent is hereby directed to get instruction to the extent that appellant is entitled to compensation of Rs. 2,00,000/- (Two Lakhs) as there was no fault on his part. Recently, Hon'ble Apex Court in one of the matter instead of extending service benefits awarded compensation of Rs. 1,00,000/- (One Lakh). In this regard, learned counsel for the respondent is hereby directed to get instruction on next date of hearing. Relist this matter on 20.07.2022."

The matter was referred to Lok Adalat for amicable settlement, further on 12.11.2022 in the Lok Adalat it was ordered as under:

"Heard Mr. Umakant Tiwari, learned counsel for the petitioner and



Satyaveer Bharti, learned counsel for the High Court.

It is stated by the learned counsel of the High Court that no copy of the LPA has been served to the learned counsel for the State.

Accordingly, let the matter be placed before appropriate bench.”

The respondent no. 1, 2 and 3 have not shown interest for amicable settlement. The learned counsel for the respondent no. 1, 2 and 3 on instructions submitted that compensation as suggested by this Court cannot be extended by the respondent no 1, 2 and 3. Compensation is required to be paid only by the State of Bihar-4th respondent.

Aforementioned submission cannot be appreciated for the reasons that there is a default on the part of the District Judge in appointing the appellant and it is contrary to vacancy position. In other words, District Judge while recruiting the appellant was in excess to the notified vacancy to that extent there is an error committed by the then District Judge. In such circumstances liability cannot be fastened on the 4th respondent-State for payment of compensation, therefore, the aforesaid contention of the counsel for the respondent no 1, 2 and 3 is hereby rejected.

Learned counsel for the respondent no. 1, 2 and 3



submitted that there is delay in invoking writ jurisdiction before this Court. It is to be noted that there is no laches on the part of the appellant as he was pursuing his right before the authorities. For no fault on the part of the appellant, the appellant had faced hardship. Order of appointment was issued and thereafter, his services were terminated. Order of termination is not a speaking order. Even if the order of termination is set aside, at this distance of time and asking the concerned authority to reinstate him and follow the procedure like providing ample opportunity and passing of speaking order by the competent authority would be a lengthy process. In order to overcome the lengthy procedure and further in the event of setting aside the order of termination and remanding the matter to the authorities concerned respondent, still the appellant is entitled to monetary benefits during the intervening period from the date of termination till further action is taken. In order to overcome these issues we are of the view that appellant is entitled to lump-sum compensation of Rs. 2 lakhs, the same shall be paid to the appellant Ram Binay Roy.

In the light of these facts and circumstances and that appellant had faced undue hardship as there was no fault on his part and due to the error committed by the then District



Judge in the process of selection and appointment of appellant.

The appellant shall not be penalized.

Moreover, it is to be noted that no action has been taken by the competent authority against the then District Judge who has committed error in selecting and appointing the appellant.

Accordingly, the concerned second respondent is hereby directed to pay the compensation to the appellant as determined by us within a period of three months from the date of receipt of this order.

Accordingly, the present LPA stands disposed of.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

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