

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.284 of 2020

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Jai Prakash Mishra, son of Late Ayodhya Mishra, Resident of Mohalla- New Gopalpur (West) Motihari, P.S.- Town, District- East Champaran.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Addl. Secretary, Law Department, Government of Bihar, Patna.
2. The Law Secretary-cum- Legal Remembrancer Law Department, Bihar, Patna.
3. The Joint Secretary Law Department, Government of Bihar, Patna.
4. The District and Sessions Judge East Champaran, Motihari.
5. The District Magistrate East Champaran, Motihari.
6. Girja Prasad Son of not known A.P.P. and Incharge P.P., East Champaran, Motihari, Resident of Motihari Town, P.S.- Motihari Town, District- East Champaran.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Alok Kumar Sinha, Sr. Advocate Dr. Satish Chandra Mishra, Advocate Mr. Rajiv Ranjan, Advocate
For the State	:	Mr. Ajay Kumar Rastogi, AAG-X Ms. Shilpi Keshri, AC to AAG-X Mr. Mithilesh Kr. Upadhyay, AC to GP-3

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

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

Date : 26-04-2022

Heard learned counsel for the respective parties.

In the instant petition, petitioner has prayed for the following reliefs:-

“(i) The order Contained in Memo No. 7617 dated 23.10.2019 passed by Joint Secretary, Law Department, Bihar, Patna relieving the Petitioner of the office of Public Prosecutor -Cum- Chairman, District Level Samiti, Motihari for with the stigma of non-discharge of



his responsibilities and duties.

(ii). The Consequential order passed by the District Magistrate, East Champaran, Motihari contain in Memo No. 4734 dated 30.10.2019 relieving the Petitioner of his duty with immediate effect in the light of the letter dated 23.10.2019 with all consequential effects. (Annexure – 4).

(iii) The order Contained in Memo No. 4734 order District dated 30.10.2019 passed by District Magistrate, East Champaran, Motihari, the Respondent No. 5 authorizing Sri Girja Prasad Addition Public Prosecutor as In-charge Public Prosecutor, East Champaran, Motihari to discharge duties of In-charge of Public Prosecutor, East Champaran, Motihari.

B.A. writ in the nature of Mandamus or other appropriate writ/son of, order/s, direction/s commanding the Respondents for the following:-

(i) To hold the order contained in Annexure-4 and Annexure- 5 to be nullity and non-est in the eye of law.

(ii). To restrain the Respondents giving effect to the orders contained in Annexure-5.

(iii). To restrain the Respondents from entertaining with the functioning of the Petitioner as Public Prosecutor East Champaran, Motihari.

(iv). To hold the order contained in Annexure 4 to be visiting the Petitioner with stigma Consequences effecting his a position as a Public Prosecutor and Advocate of standing.

C. To any other relief/s which the Petitioner is found entitled to.”

Petitioner was appointed as Public Prosecutor on 23.08.2016. On certain allegations, notice was issued on



12.02.2019, however petitioner failed to submit his reply to the notice, thus, the concerned official respondent proceeded to remove the petitioner from the post of Public Prosecutor on 23.10.2019, thus, the petitioner has questioned the validity of the order dated 23.10.2019 (Annexure 5).

Learned counsel for the petitioner submits that without holding domestic inquiry on the alleged allegations stated in the notice and impugned order dated 23.10.2019, the concerned authority has proceeded to remove the petitioner from the post of Public Prosecutor.

Learned counsel for the official respondents resisted the aforesaid contentions and submitted that the petitioner's appointment to the post of Public Prosecutor on 23.08.2016 is for a period of three years and it would be up to 22.08.2019. In the meanwhile, petitioner was issued a notice on certain allegations on 12.02.2019. Since there was no response from the petitioner the competent authority proceeded to remove the petitioner from the post of Public Prosecutor on 23.10.2019, therefore, there is no infirmity in the impugned order dated 23.10.2019.

Heard learned counsel for the respective parties.

Undisputed facts are that the petitioner was



appointed as a Public Prosecutor on 23.08.2016 for a period of three years. The petitioner could not apprise this court that there was a renewal of his appointment beyond 22.08.2019. However, the official respondents have also not renewed the services of the petitioner as and when the tenure was over on 22.08.2019. In other words the official respondents permitted the petitioner to continue to hold the post of Public Prosecutor beyond 22.08.2019. The order dated 23.08.2019 (Annexure 5) is without application of mind for the reasons that there is no reference to the notice dated 12.02.2019. Even though petitioner has not submitted his reply to the notice dated 12.02.2019, the impugned order dated 23.10.2019 must have disclosed that on 12.02.2019 notice was issued, however he has not submitted his reply therefore the concerned authority proceeded to pass order of removal on 23.10.2019. In other words, issuance of notice dated 12.02.2019 is only an empty formalities.

Perusal of order dated 23.10.2019, it is without application of mind so also there were allegations against the petitioner which were required to be adjudicated in a domestic inquiry. On these counts the petitioner has made a prima-facie case so as to interfere with the order dated 23.10.2019 (Annexure 5), accordingly it is set-aside. Reserving liberty to



the concerned authority to proceed in accordance with law within a period of three months from the date of receipt of this order.

The competent authority is also permitted to take necessary steps, as to petitioner could be reinstated, if it is warranted as to whether the petitioner would be continued as a Public Prosecutor or not.

(P. B. Bajanthri, J.)

(Rajeev Ranjan Prasad, J.)

GAURAV
Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.04.2022
Transmission Date	

