

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15753 of 2014

Satish Kumar S/o Bishwanath Rai Resident of Village - Chandwara, P.O. P.S.
- Kartaha, District - Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Department of Urban Development, Government of Bihar, Patna.
2. Nagar Panchayat, Lalganj, District - Vaishali.
3. The Executive Officer, Nagar Panchayat, Lalganj, District - Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Manoj Kumar Ambastha, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 19-07-2023

1. The present writ petition has been filed for quashing the order dated 05.04.2014, passed by the Executive Officer, Nagar Panchayat, Lalganj, District-Vaishali i.e. the respondent no. 3, whereby and whereunder the services of the petitioner has been terminated.

2. The brief facts of the case, according to the petitioner, are that the petitioner had applied in the office of the Nagar Panchayat, Lalganj, District-Vaishali i.e. the respondent no. 2 for being appointed as Clerk after a notice dated 18.02.2011 was published in the Nagar Panchayat office,



whereafter he was called for interview on 30.03.2011 in the office of the respondent no. 3 and was selected and appointed as Clerk on contractual basis vide Memo dated 17.05.2011. After completion of one year, the services of the petitioner was further extended for a period of two years vide Memo dated 27.02.2012, however, in the meantime, one Dilip Thakur had filed a writ petition bearing ***C.W.J.C. no. 23317 of 2012*** and a co-ordinate Bench of this Court vide order dated 25.03.2014, had restrained the petitioner from performing his duties as also it was directed that no payment be made to him till further orders.

3. The learned counsel for the petitioner has submitted that only on account of the aforesaid order, passed by a co-ordinate Bench of this Court on 25.03.2014, the respondent no. 3, without holding any inquiry, has terminated the services of the petitioner, which is illegal and arbitrary.

4. *Per contra*, the learned counsel for the respondents no. 2 and 3 has submitted by referring to the counter affidavit, filed in the present case that the petitioner has not approached this Court with clean hands and has suppressed vital facts. It is



stated that the petitioner was appointed as a Clerk on contractual basis, initially for one year vide Memo dated 17.05.2011 and after completion of one year, the services of the petitioner was extended by a further period of two years vide Memo dated 27.02.2012. Thereafter, the appointment of the petitioner was challenged by one Dilip Thakur, before this Court and when the aforesaid case was heard by a co-ordinate Bench of this Court, the Court had expressed its anxiety regarding appointment of the petitioner in an Office, where his father was working as a Clerk, whereupon the respondent no. 3 had placed the matter before the Standing Committee and the Standing Committee had resolved to remove the petitioner from his post by a decision taken in the meeting held on 31.03.2014. It is also submitted that even otherwise, there is no infirmity in the decision of the Standing Committee, inasmuch the appointment of the petitioner is purely contractual in nature and as per the letter of extension dated 27.02.2012, his services was extended for a further period of two years w.e.f. 24.04.2012, meaning thereby that the contractual appointment of the petitioner was to expire on 24.04.2014, whereas the impugned order issued by the respondent no. 3, terminating the services of the petitioner, is dated 05.04.2014 i.e. almost near to the expiry of the contractual



term of the services of the petitioner i.e. 24.04.2014, hence no interference is required in the present case.

5. The learned counsel for the respondents has also submitted that the remedy for a breach of contractual condition is taking recourse to civil action for damages/ compensation, inasmuch as an action in the realm of contract is not open to judicial review, hence the present writ petition is even otherwise, not maintainable.

6. I have heard the learned counsel for the parties and perused the materials on record and find that a co-ordinate Bench of this Court, by an order ***dated 16.05.2014***, passed in the aforesaid writ petition bearing ***C.W.J.C. no. 23317 of 2012***, has recorded the fact that the private respondent i.e. the petitioner herein has been removed from his services, hence, had dismissed the writ application, filed by the aforesaid Dilip Thakur, as having been rendered infructuous. In such view of the matter, this Court finds that in case, the petitioner was aggrieved by the action taken by a co-ordinate Bench of this Court, he should have approached this Court earlier, in view of the order ***dated 25.03.2014***, passed in ***C.W.J.C. no. 23317 of***



2012, wherein a co-ordinate Bench of this Court had observed as follows :-

“ Respondent no. 6, Satish Kumar is free to appear and file his affidavit for any further modification or clarification of the order passed today ”

7. It may be pointed out here that by the said order dated 25.03.2014, a co-ordinate Bench of this Court had restrained the petitioner from performing his duties and had directed that no payment shall be made to him. Therefore, this Court is of the opinion that since the petitioner has not approached the concerned Court for modification of the aforesaid order ***dated 25.03.2014*** or for that matter the order ***dated 16.05.2014***, passed in ***C.W.J.C. no. 23317 of 2012***, he is precluded from raising the issue regarding his termination in the present proceedings, hence, on this ground alone, the present writ petition is fit to be dismissed.

8. This Court is also of the view that if the respondent- authorities have come to a conclusion that a temporary servant/ employee is not suitable to be continued, it is well within their domain to pass a simple order of discharge by virtue of the power conferred on them by the contract or the



relevant rules and in such a case, it would not be open to the temporary servant/ employee to invoke the protection under Article 311 of the Constitution of India, inasmuch as the impugned order dated 05.04.2014 is not a punitive order. In this regard, reference be had to the judgments rendered by the Hon'ble Apex Court in the case of ***State of U.P. and another v. Kaushal Kishore Shukla***, reported in ***1991 (1) SCC 691*** and the one rendered by the Constitution Bench of the Hon'ble Apex Court in the case of ***Jagdish Mitter v. Union of India***, reported in ***AIR 1964 SC 449***.

9. Yet another aspect of the matter is that once the petitioner has accepted the contractual employment by entering into a contract, though it would be open to him to avail such remedies, as are available to enforce any rights under the contract, which have been denied to him, assuming there are any, and to pursue in the ordinary courts of the land such remedies for a breach, as are available to him, however, Article 311 of the Constitution of India will have no application in the present case. In this regard, this Court would gainfully refer to a Constitution Bench judgment, rendered by the Hon'ble Apex Court in the case of ***Satish Chandra Anand v. Union of India***



reported in *(1953) 1 SCC 420*.

10. Having regard to facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
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