

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14783 of 2022

Md. Sabir Ansari, Son of Qutubuddin, Resident of Village - Simri, P.O. - Simri, P.S. - Bihta, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Engineering-in-Chief-cum-Special Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Chief Engineer (Mechanical), Public Health Engineering Department, Govt. of Bihar, Patna.
4. The Chief Engineer, Public Health Engineering Department, Patna Zone, Patna.
5. The Superintending Engineer, PH Circle, Public Health Engineering Department, Patna.
6. The Executive Engineer, PH Mechanical Division, Sasaram.
7. The Managing Director, Bihar Urban Infrastructure Development Corporation Ltd., West Boring Canal Road, Patna.
8. The General Manager, Administration, BUIDCO, Patna.
9. The Executive Engineer (Mechanical), South Bihar (Works Division), BUIDCO, Patna.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr.Amrit Abhijat, Advocate Mr.Upendra Yadav, Advocate
For the State	:	Mr.Upendra Pratap Singh,AC to SC-4
For BUIDCO	:	Mr.Agreya Pratap, Advocate Ms.Arya Vashist, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

- 5 24-07-2023 1. Heard learned counsel for the petitioner and learned counsel for the State, as well as learned counsel representing the respondent-BUIDCO.
2. On a vacancy occurring in BUIDCO, the petitioner was posted as Senior Accounts Clerk, which was cancelled by a



departmental letter dated 19.09.2022. The petitioner is aggrieved by the order.

3. It is submitted by learned counsel for the petitioner that the petitioner has served for more than a decade at other places and his current posting was on his request, having regard to the difficulty being faced by him with reference to illness of his mother. Therefore, the cancellation, which apparently is based on a complain, is punitive in nature and, therefore, unsustainable.

4. Learned counsel for the State as well as learned counsel for the respondent-BUIDCO have referred to a notification dated 06.04.2018. Clause 3 iii of the notification which is bearing No.485 reads as follows:-

“iii. उपर्युक्त निर्णय तुरन्त के प्रभाव से लागू होंगे । परन्तु पूर्व से लेखा लिपिक / वरीय लेखा लिपिक के पदों पर कार्यरत कर्मी अपने पद पर बने रहेंगे और जैसे-जैसे पद रिक्त होते जायेंगे, वे पद स्वतः सामान्य लिपिकीय संवर्ग में सम्मिलित /समाहित माने जायेगे । ”

5. Placing reliance on this provision, it is stated that on account of a vacancy occurring on the post of accounts clerk, the post merged in the general clerical cadre and, therefore, there was no occasion for the petitioner's posting as Senior Accounts Clerk as the post has merged in the cadre of Clerk. Such posting was contrary to Clause 3 iii of notification dated



06.04.2018. For rectifying the mistake so as to bring it in accordance with the notification dated 06.04.2018, the order impugned has been issued on 19.09.2022.

6. This court, on consideration of the rival submissions, finds that the rule position is clear in its intent. The cancellation of petitioner's posting as Senior Accounts Clerk in BUIDCO by the impugned order dated 19.09.2022 is only because it is apparently in teeth of the Clause 3 iii, noticed above. The post of Senior Accounts Clerk has since merged in the cadre of Clerk. It cannot be said that the order cancelling his transfer to BUIDCO as Senior Accounts Clerk is punitive or suffers from any other illegality so as to interfere with the same in exercise of jurisdiction of judicial review under Article 226 of the Constitution of India.

7. Writ application is accordingly dismissed.

(Madhuresh Prasad, J)

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