

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.917 of 2018

In
Civil Writ Jurisdiction Case No.11318 of 2016

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Bimal Kumar Mandal son of late Fuldeo Mandal Resident of Mohalla -
Shastri Nagar, Police Station - K. Hat, District - Purnea.

... .. Appellant/s

Versus

1. The State Of Bihar through the Secretary to the Government, Department of Law, Government of Bihar, Patna.
2. The Joint Secretary, Department of Law, Government of Bihar, Patna.
3. The District Magistrate, Purnea.
4. Maharana Pratap Singh Kushwaha, In-Charge Public Prosecutor, Purnea.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rajeev Roy, Sr. Advocate Mr. Amrendra Kumar Sinha No.-1, Advocate Mr. Shashank Shekhar Sinha, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Jha, GA-7 Mr. Gopal Krishna, AC to GA-7

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 09-01-2023

The present L.P.A. is filed assailing the order of the learned Single Judge dated 11.05.2018 passed in C.W.J.C. No. 11318 of 2016.

2. The appellant was appointed as a Public Prosecutor on 31.07.2015 and his tenure was up to the month of July, 2018. On 11.06.2016, there were a news item in respect of recommendation to remove the services of the appellant by the concerned District Magistrate. In this regard, the appellant is



stated to have submitted his explanation on 19.06.2016 to the competent authority. The competent authority proceeded to remove the services of the appellant on 28.06.2016. Hence C.W.J.C. No. 11318 of 2016 was presented in so far as questioning the removal order.

3. Learned counsel for the appellant submitted that no notice has been issued before removal from service on 28.06.2016. Further, the explanation has not been cited and analyzed by the competent authority before taking a decision to remove the appellant from the post of Public Prosecutor. The learned Single Judge has not appreciated the aforementioned contentions. It is also submitted that removal from the post of Public Prosecutor is based on the alleged allegations and it is stigmatic in nature.

4. Per-contra, learned counsel for the respondents resisted the aforesaid contention and submitted that in the light of paragraph No.143 of Bihar Practice and Procedure Manual, appellant is not entitled to notice before removing him from the post of Public Prosecutor. It is further submitted that the competent authority was processing the issuance of show-cause notice proposal to remove the appellant from the post of Public Prosecutor, in the meanwhile, appellant had submitted his



explanation on 19.06.2016 with reference to news item dated 11.06.2016, therefore, the competent authority has taken a decision to waive off the procedure of issuance of notice to the appellant. Hence no infirmity is forthcoming from the order of removal and the order of the learned Single Judge.

5. Heard learned counsel for the respective parties.

6. The appellant was appointed as a Public Prosecutor on 31.07.2015 and his tenure was up to the month of July, 2018. In the meanwhile, there were certain alleged allegation by the District Magistrate in so far as discharging the functions of the post of Public Prosecutor by the appellant. Based on such news item, the appellant in order to defend his action read with the news item, he had submitted his explanation on 19.06.2016. Ignoring the explanation, the respondents proceeded to remove the appellant from the post of Public Prosecutor on 28.06.2016. The learned Single Judge proceeded to dismiss the petitioner's C.W.J.C. No. 11318 of 2016 on 11.05.2018.

7. Learned counsel for the appellant submitted that the appellant's services have been removed from the post of Public Prosecutor based on certain alleged allegations and it is without providing opportunity of hearing. In other words, there



is a violation of principles of natural justice. Further, the explanation dated 19.06.2016 has not been analyzed by the competent authority and discussed in the order of removal. The aforesaid material suffice to interfere with the order of learned Single Judge and order of removal from service.

8. Learned counsel for the respondents submitted that paragraph No.143 of Bihar Practice and Procedure Manual has been taken into consideration for the purpose of removing the appellant from the post of Public Prosecutor. Paragraph No.143 reads as under:-

143. Removal, suspension and other punishment. – *Whenever a Collector shall see cause to recommend the removal or suspension from office or other punishment of a Government Pleader, he shall submit a report of the facts of the case to the Legal Remembrancer, either direct or through the Commissioner, and the Legal Remembrancer shall report the case for the orders of Government.*

9. The aforesaid Bihar Practice and Procedure Manual is in respect of Government Pleaders, Government Advocates, who were dealing with the civil suits, as is evident from Chapter-1- Rules for the conduct of civil suits instituted by



the State Government. Appellant being a Public Prosecutor, he was not handling the civil suits instituted against the State Government or by the Government, therefore, the aforesaid provisions of Bihar Practice and Procedure Manual is not attracted. Accordingly, the contention of the respondents-State is hereby rejected in so far as applicability of paragraph No.143 of Bihar Practice and Procedure Manual.

10. Learned counsel for the respondents submitted that show-cause notice was not issued and seeking appellant's explanation only on this count that appellant, he himself had submitted his explanation on 19.06.2016 with reference to news item dated 11.06.2016. If the real intention of the respondents is that waiver of issuance of notice is to the extent that appellant had submitted his explanation on 19.06.2016 with reference to news item dated 11.06.2016, in that event, the competent authority should have referred, discussed and analyzed the explanation of the appellant dated 19.06.2016 in the order of removal. Therefore, the aforesaid contention of the respondents is only an afterthought. Accordingly, the appellant has made out a *prima facie* case so as to interfere with the order of removal bearing Memo No.3971 dated 28.06.2016 and order of learned Single Judge dated 11.05.2018, hence both the orders stand set-



aside.

11. The appellant is entitled to relief of arrears/ difference of salary/ consolidated pay or remuneration attached to the post of Public Prosecutor for the intervening period from 01.07.2016 to July, 2018 for the reasons that his tenure was up to the month of July, 2018. The aforesaid remuneration shall be calculated and disbursed in favour of the appellant within a period of three months from the date of receipt of this order, failing which, appellant is entitled to interest at the rate of eight percent per annum on arrears of remuneration.

12. The L.P.A. stands allowed.

13. At this stage, learned counsel for the State-respondents submitted that Note- Rules- 140-146 and 149 apply to Public Prosecutor where the post is held separately. In this regard, it is submitted that on 08.06.2016, concerned District Magistrate is stated to have forwarded report to the Law Department. The Law Department has taken note of report of the District Magistrate dated 08.06.2016. Even assuming that para-143 is applicable to Pubic Prosecutor in the light of 'Note', the appellant's services have been removed from the post of Public Prosecutor attaching stigma, in other words, there were allegations levelled against him. Such allegations have been



considered by the Law Department behind the back of the appellant, in other words, he has not been provided opportunity to give his explanation on the report of the District Magistrate dated 08.06.2016. If his removal from the post of Public Prosecutor is upheld with reference to alleged allegation, such stigmatic material cannot be carried throughout his life without he being heard in the matter. In other words, his profession would be affected with the stigmatic order of removal that removal order is based on certain allegations stated to have been made by the District Magistrate in its report dated 08.06.2016. Therefore, the aforesaid contention that 'Note' of Bihar Practice and Procedure Manual (Rules 140-146 and 149) is applicable, still appellant has not been provided opportunity of hearing.

14. The Apex Court time and again held that even administrative order is required to be issued against a person whose rights are likely to be affected after following due procedure of law like issuance of show-cause notice.

15. The Apex Court in the case of ***Esteem Properties Pvt. Ltd. Vs. Chetan Kamble and Others***, reported in ***2022 (4) SCALE 284***, held that even administrative/ quasi-judicial orders must be supported by hearing opportunity to the concerned person. The principle laid down in this case is aptly



applicable to the case in hand.

16. Accordingly, the aforesaid contention of State-respondents stands rejected.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-
balmukund/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	12.01.2023
Transmission Date	

