

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.164 of 2020

In
Civil Writ Jurisdiction Case No.23457 of 2019

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Jitendra Kumar Son of Sadhu Manjhi Resident of Village- Rewan, Post Office- Rewan, Police Station- Masaurhi, Block- Masaurhi, District- Patna, Presently posted as Tola Sewak in Primary School, Rewan Mushahri, Block- Masaurhi, District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The District Education Officer, Patna.
3. The District Programme Officer, (R.M.S.A) Literacy, Patna.
4. The Block Education Officer, Masaurhi, District- Patna.
5. The Headmaster, Primary School, Rewan Mushari, Block- Masaurhi, District- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Arun Kumar, Advocate
For the State	:	Mr. Prabhat Ranjan Singh, AC to A.A.G-15

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

5 23-08-2024 The present appeal has been filed under Clause 10 and 11 of the Letters Patent of the Patna High Court Rules against the order dated 28.11.2019 rendered by learned Single Judge, by which the learned Single Judge has dismissed the writ petition filed by the present appellant/original petitioner.

2. Heard Mr. Arun Kumar, learned counsel for the appellant and Mr. Prabhat Ranjan Singh, learned A.C to A.A.G-15.



3. Learned counsel for the appellant would mainly contend that the appellant/petitioner was appointed on the post of Tola Sevak *vide* order dated 11.08.2009, initially, for a period of one year and thereafter his services were extended from time to time. It is thereafter contended that the respondent-State Government thereafter issued the resolution, copy of which has been produced with Annexure-2 compilation. It is submitted that by the said resolution the State Government decided to extend the services of all Tola Sevaks up to the age of sixty years, and, therefore, the appellant was entitled to work up to the age of sixty years. At this stage, it is submitted that the Respondent Authority passed the office order dated 26.02.2018 copy of which is produced at Annexure-4 of the compilation. It is submitted that by way of said office order, the Respondent Authority has decided that work is not to be given to the appellant as Tola Sevak. In the said office order, the reason, which was assigned by the Respondent Authority, that the petitioner was arrested in connection with the offence punishable under the Excise Act as he has consumed liquor and he remained in judicial custody for about one month. Thereafter, also, when he submitted an application for joining the duty he has tried to misguide the authority by not giving the correct



reason.

4. Learned counsel submits that petitioner waited for one and half year, despite which the Respondent Authority did not give work to the petitioner and, therefore, he preferred the Civil Writ Jurisdiction Case No. 23457 of 2019. However, learned Single Judge *vide* order dated 28.11.2019 dismissed his petition and, therefore, the present appeal has been filed by the appellant-petitioner.

5. Learned counsel for the appellant has assailed the order passed by the learned Single Judge by mainly contending that because of the resolution passed by the Respondent-State Government, right has been created in favour of the petitioner and before terminating the services of the petitioner at least show-cause notice was required to be issued to him. It is further submitted that without following any procedure of law and without giving any opportunity of hearing, the services of the petitioner were terminated and thereby the Respondent Authority has violated the principles of natural justice. Learned counsel, therefore, urges that the impugned order passed by learned Single Judge be quashed and set aside.

6. On the other hand, Learned counsel for the Respondent Authority has supported the reason assigned in the



office order dated 26.02.2018 as well as the reason assigned by the learned Single Judge while dismissing the writ petition filed by the petitioner. Learned counsel for the Respondent urges that the present appeal may not be entertained.

7. Having heard the learned Advocates appearing for the parties and having gone through the material placed on record, it would emerge that the petitioner was engaged as Tola Sewak under welfare scheme of the State Government. The petitioner was appointed by order dated 11.08.2009 for a period of one year. In the said order, it has been specifically observed that after considering the work of the petitioner his services will be extended. The Respondent-State Government issued a resolution by which it was decided to extend the services of Tola Sewak up to the age of sixty years. We have gone through the said resolution passed by the Respondent-State. It is not in dispute that the petitioner was arrested in connection with Excise Act and it was alleged that the petitioner had consumed liquor. It was also not in dispute that he remained in judicial custody for the period of one month. At this stage, it is relevant to note that when the petitioner was released from jail after period of one month, he had submitted an application on 02.02.2018, copy of which is placed on record at Annexure-3



compilation. In the said application also, the petitioner did not assign the correct reason why he remained absent during period between 28th November, 2017 to 28th December, 2017. When the respondents came to know with regard to the fact that the petitioner was arrested in connection with the excise case and it is alleged in the said case that he had consumed liquor. After considering the averments made in the application given by the petitioner, the respondent authority thought it fit to issue office order dated 26.02.2018, whereby it was decided that work will not be given to the petitioner till further orders.

8. From the aforesaid aspects, it is clear that the Respondent Authority has not assigned the work till further order for the reasons stated in the office order. The service of the petitioner is not terminated as contended by the learned Advocate for the petitioner. The only grievance of the petitioner that at the relevant point of time he was not allowed to work as Tola Sewak. It is pertinent to note that the petitioner never made any representation to the Respondent-Authority that now the work be allotted to him. Even otherwise, we have gone through the reason assigned in the office order passed by the Respondent Authority as well as reason assigned by the learned Single Judge while passing the impugned order. We are of the view that no



error has been committed by learned Single Judge as well as Respondent Authority while passing the impugned order. Hence, we are not inclined to interfere with the same.

9. Accordingly, the present appeal stands dismissed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

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