

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13127 of 2021

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Sachin Anand Son of Sri Muneshwar Prasad Mandal Resident of Village Mahada, P.S.- Bamdev, District- Banka.

... .. Petitioner/s

Versus

1. The Union of India, through its Secretary Ministry of Tourism, Government of India, New Delhi.
2. The State of Bihar Through the Principal Secretary, Department of Tourism, Government of Bihar, Patna.
3. The National Council for Hotel Management and Catering Technology Noida through its Director (Admn. and Finance).
4. Institute of Hotel Management Catering Technology and Applied Nutrition at Bodh Gaya through its Principal.
5. The Principal Institute of Hotel Management, Catering Technology and Applied Nutrition at Bodh Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arjun Kumar, Adv. Mr. Alok Kumar, Adv.
For the State	:	Mr. Nalin Vilochan Tiwari, AC to G.A.-9
For Union of India	:	Mr. Manoj Kumar Singh (CGC)
For Respondent Nos. 4&5	:	Mr. Manindra Kishore Singh, Adv. Mr. Prem Prakash, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

4 12-09-2024 Heard learned counsel for the petitioner, learned counsel for the State, learned counsel for the Union of India and learned counsel for respondent nos. 4 &5.

2. By filing the present writ application, the petitioner has prayed for the following reliefs:

i) For issuance of writ in nature of certiorari for quashing the letter bearing Ref. No. IHM:BG/Personel/2020-1423 dated 30.09.2020 issued by the Principal, Institute of Hotel Management, Catering



Technology and Applied Nutrition at Bodh Gaya (the IHM, Bodh Gaya for the sake of brevity) whereby the service of the petitioner as Teaching Associate was not extended/renewed stating therein that the petitioner is no more required in the IHM Bodh Gaya and the same is not sustainable in the eyes of law.

ii) For issuance of a writ in the nature of mandamus directing the respondent Authorities to reappoint the petitioner and renew the service contract further as it has been done with other Teaching Associate, who was selected and appointed with the petitioner.

iii) For directing the respondents to release the salary also for the period starting from the order dated 30.09.2020, the date of expulsion till the date of reappointment and renewal of the contract of the petitioner with the IHM Bodh Gaya.

iv) For grant of other relief/reliefs for which the petitioner may be found entitled under the facts and circumstances of the case.

3. The fact of the case, in brief, is that after completion of due process of selection in view of notification, as annexed at Annexure-2 in the writ application, the petitioner was appointed on the post of Teaching Associate at IHM Bodh Gaya on contractual basis through a letter bearing Ref. No. IHM:BG(Selection)/2019-1083 dated 01.10.2019 with certain terms and conditions including the terms of salary as a lump-sum consolidated salary of Rs. 25,000/- per month. The



petitioner submitted his joining to the post of Teaching Associate at IHM Bodh Gaya and started discharging his duty of teaching students very sincerely. In the meantime, the Indian Tourism Development Corporation Ltd. (ITDC for the sake of brevity) invited applications for the selection of Assistant Lecturer. The petitioner finding himself eligible for the same applied for the aforesaid post. His interview was held on 05.08.2020 through Video Conferencing and thereafter he was selected. The petitioner was asked to submit character certificate, experience certificate and No Objection Certificate from the previous employer and join the post on or before 15.09.2020. In view of the above, the petitioner requested the Principal, IHM Bodh Gaya on 27.08.2020 to issue the aforesaid required certificates, but very surprisingly, on 31.08.2020, he was asked for resignation with one month prior notice to obtain all the certificates as desired. After several requests, Experience Certificate as well as No Objection Certificate was issued in his favour except Character Certificate. In the said No Objection Certificate, it was mentioned that "He will be relieved to join on and from 1st October 2020 after his contract at IHM Bodhgaya expires." The petitioner could not join ITDC merely on account of misleading 'No Objection Certificate' and non issuance of



Character Certificate and he was debarred from joining the better post. Having no alternative, the petitioner filed his application for extension of the contract as service of another candidate was being extended, but the same was not considered by the Principal IHM Bodh Gaya. All of a sudden, vide letter dated 30.09.2020 bearing Ref. No. IHM:BG/Personel/2020-1423, the service of the petitioner was terminated.

4. Learned counsel for the petitioner submits that on the one hand, the petitioner has been debarred from joining the better posts in other institutions merely on account of mala fide intentions of respondent nos. 4&5 and on the other hand, his service has not been extended. This arbitrariness on part of the respondent Authority is not sustainable in the eyes of law.

5. He further submits that one person, who was selected and appointed on the post of Teaching Associate at the time of appointment of the petitioner, was reappointed through extension of his service, but the same opportunity was not granted to the petitioner, which is against the fundamental principles of Constitution.

6. Per contra, learned counsel appearing on behalf of the Institute of Hotel Management submits that the petitioner was engaged as Associate Teacher at IHM Bodh Gaya purely on



contractual basis for one year due to lack of faculty and accordingly, his contract period got expired on 30.09.2020. He was appointed as Guest faculty on part time basis on fixed and consolidated remuneration of Rs. 25000/-. It is further submitted that a contractual appointee has no feasible right to be continued in service and can be removed from service at any time when his/her service is not required.

7. It is submitted that after joining on the said post, the petitioner failed to perform his duty as Teacher to the satisfaction of the institute and therefore, show cause notice was also issued to him on 06.01.2020 for not properly attending the classes and creating nuisance, time and again in the institute, but the petitioner did not choose to reply. Thereafter, reminder show cause notice was also issued to him on 20.01.2020, but that was also not replied.

8. It is further submitted that the petitioner was asked to resign before getting No Objection Certificate as the contract of the petitioner was going to be expired on 30.09.2020, but he has denied for the same and now held the respondent Authority responsible.

9. A rejoinder has been filed by the petitioner in reply to the counter affidavit filed on behalf of the Institute of Hotel



Management stating therein that there is glaring violation of recruitment rules as advertised in the advertisement because there was invitation for the application for the post of Teaching Associate, but very suprisingly, the selection was made as a role of the guest faculty misusing the authority of the person concerned.

10. Learned counsel for the petitioner submits that the allegation levelled against the petitioner that he did not file any reply to the show cause notice is totally baseless, as he has responded to the show cause notice issued to him and the explanation to the show cause notice was found satisfactory as it was not questioned further.

11. Considering the facts abovementioned, it is an admitted fact that there was a contractual hiring for one year in lack of faculty and the petitioner's period of contract was expiring on 30.09.2020 and seeing his conduct during his service period, his contract was not renewed by the concerned Authority. He was not being paid wages or salary, but a fixed remuneration of Rs. 25,000/- every month for the work done by him. Usually in contractual service, whatever remuneration has been fixed, shall made available to a person provided that service has been rendered by such person on the basis of



contract for service. If for whatever reason, such a person, who has been hired by the Authorities, does not render service, even if there is the case of him being prevented from rendering service for mere reason; fair and foul, that person cannot expect to be compensated by payment of honorarium for the period when that person didn't render service.

12. In such view of the matter, I do not find any merit in the present writ application. Accordingly, this writ application stands dismissed.

(Anjani Kumar Sharan, J)

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