

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.993 of 2021

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Raju Pratap Singh, S/o Horil Paswan, Residen of Shanti Nagar, P.O.
Jehanabad, P.S. Jehanabad, District-Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Saharsa District Saharsa.
2. The Principal Secretary, Rural Development Department, Govt. of Bihar,
Patna.
3. The Commissioner Koshi Division, Saharsa, District Saharsa.
4. The District Magistrate Saharsa, District Saharsa.
5. The Deputy Development Commissioner, Saharsa, District Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Subodh Kumar Jha, Advocate Mr. Pranav Kumar Jha, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, GA-2 Mr. Venkatesh Kirti, JC to GA-2

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 03-12-2024

Heard Mr. Subodh Kumar Jha, learned counsel for
the petitioner and Mr. Venkatesh Kirti, learned counsel for the
State.

2. The petitioner is aggrieved with the order as
contained in Memo No. 535, Saharsa, dated 23.05.2017 issued
under the signature of Deputy Development Commissioner,
Saharsa, by which the services of the petitioner came to be
dispensed with from the post of Panchayat Rojgar Sevak. The



petitioner also sought quashing of the order dated 30.07.2020 issued under the signature of respondent no.2 in the appeal so preferred by the petitioner by which the respondent no.2 rejected the appeal.

3. Shorn of unnecessary details, from the materials available on record, it transpired that the petitioner was duly appointed on the post of Panchayat Rojgar Sevak (On Contract) in terms of the letter dated 01.08.2007. While the petitioner had been discharging his duty with entire satisfaction of the authorities concerned, in the meantime, the petitioner received a show-cause notice as contained in Memo No. 867-2 dated 04.08.2016. The show-cause notice clearly demonstrates that from the mobile of the petitioner, three messages were sent to the Senior Deputy Collector, Saharsa, which led to annoyance of the officers, resulted into issuance of the show-cause notice, directing the petitioner to file his reply within three days

4. In response to the show-cause notice, the petitioner submitted his explanation on 23.08.2016. After filing of the reply to the show-cause notice, the matter remained kept pending for a pretty long time and after about nine months of the submission of the reply, the impugned order dispensing the services of the petitioner came to be passed.



5. The petitioner being aggrieved, assailed the order of termination before the respondent no.3 in terms of the Government Letter dated 22.09.2009, however, the same did not find favour and finally it came to be rejected on 30.07.2020. Both the orders are put to challenge before this Court.

6. While assailing the order impugned, learned counsel for the petitioner has contended that admittedly the show-cause notice was issued on 04.08.2016, directing the petitioner to file his reply within three days. The order also demonstrates that an inquiry has been conducted but the copy of the inquiry report was not part of the show-cause, nor it has ever been served to the petitioner. Nonetheless, the petitioner has submitted his explanation on 23.08.2016 but the same has not been considered despite the fact that the impugned order of termination has been passed on 23.05.2017. It is also contended that the impugned order of termination attaches stigma against the petitioner and thus at least principles of natural justice was required to be followed in its letter and spirit. The appellate authority has also committed the similar mistake in not considering the submissions of the petitioner while deciding the appeal, is the contention of the learned counsel for the petitioner.



7. On the other hand, learned counsel for the State, referring to the counter affidavit has submitted that before dispensing the services of the petitioner, he was served with a show-cause notice and given proper opportunity to file explanation but he failed to do so. In absence of his explanation, the competent authority came to the conclusion that on account of the conduct of the petitioner, the senior authorities have been compelled to face trauma and threat, which resulted into termination of the petitioner. It is further contended that since the appointment of the petitioner is contractual in nature, it can be rescinded at any time when his conduct is not found good and contrary to the norms, which was required to be followed by an employee, either permanent or on contractual.

8. This Court has anxiously heard learned counsel for the respective parties and perused the materials on record.

9. Undoubtedly, the appointment of the petitioner on the post of Panchayat Rojgar Sevak was contractual in nature and he had been working since 2007 without there being any complaint with regard to his efficiency. Moreover, the impugned order whereby the services of the petitioner have been dispensed with is based upon certain charges of imputation and not an order of termination simplicitor. Well settled it is that any order



causes stigma on an employee for future recruitment, the principles of natural justice is required to be followed and the concerned employee should be given reasonable opportunity of representation in the inquiry to be conducted and appropriate orders with reasons in support thereof need to be passed.

10. The Hon'ble Supreme Court in **K.C. Joshi v. Union of India and Others [(1985) 3 SCC 153]**, while considering the issue relating to dismissal of a contractual employee based upon certain charges held that *“the contract of service has to be in tune with Articles 14 and 16 of the Constitution of India and if it is to be suggested that one can dismiss anyone without a semblance of inquiry or whisper of principles of natural justice, such an approach overlooks the well-settled principle that if State action affects livelihood or attaches stigma, punitive action can be taken only after an inquiry, in keeping with the principles of natural justice.”*

11. It is trite to say, that when an authority wants to terminate the services of a temporary employee, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it becomes idle to suggest



that the order is a simple order of discharge.

12. In view of the aforesaid settled legal position, this Court is of the view that termination of temporary services on account of misconduct attaches a stigma and is punitive and cannot be done without holding a proper inquiry.

13. This Court is also at a loss that once the show-cause notice is issued on 04.08.2016, directing the petitioner to file reply within three days, even if, any explanation has been filed belatedly on 23.08.2016, the same was required to be considered before passing of the impugned order, which came to be passed on 23.05.2017.

14. This Court also finds that the impugned order came to be passed by making certain allegation against the petitioner based upon certain inquiry report, which has also not been served upon the petitioner before passing the impugned order. Thus, on all these counts, the impugned orders as contained in Annexures-3 and 7 to the writ petition stand set aside.

15. On account of the impugned order being set aside, the consequences shall follow and the petitioner shall be reinstated. However, the petitioner shall not be entitled to any back-wages for the period he remained out of his service.



16. The writ petition stands allowed.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10-12-2024
Transmission Date	

