

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5642 of 2012

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Girish Chandra Prasad, S/O Late Bishun Deo Lal Resident Of Village-Ba-rauni, P.S.-Teghara, District-Begusarai At Present Residing At C/O Shri Ganesh Chandra Prasad, B-182, Police Colony, Anishabad Patna-2, At Present Functioning As Peon In The Office Of District Education Officer, Madhepura

... .. Petitioner

Versus

1. The State of Bihar.
2. The Additional Secretary To Lokayukta Office, Bihar, Patna
3. The Director Secondary Education, Human Resource Development Department, Patna
4. The Regional Deputy Director Of Education, Saharsa, District-Saharsa
5. The District Education Officer, Madhepura
6. The Sub-Divisional Education Officer, Virpur, District-Saharsa

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ashok Kumar Choudhary, Sr. Advocate Mr. Anil Kumar Tiwary, Advocate Mr. Akshansh Ankit, Advocate
For the Respondent/s	:	Mr. Yogendra Pd. Sinha Ag15 Mr. Deepak Kumar, AC to AAG-07

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 19-07-2024

In the instant petition, the petitioner has prayed for
the following reliefs:

*“(i) to quash the entire on going
proceeding before the hon’ble LOKAYUKTA which
has admittedly been set in motion on the basis of
frivolous complaint of the one Rabindra Thakur
dated 27.04.10, pursuant whereof the
enquiry/investigation proceeded which is prima
facie in the teeth of section-8 of Bihar Lok Ayukta*



Act' 73 and is based in eyes of law as well as such investigation is also violative of Rule 14 of Bihar Lok Ayukta (Investigation) Rules, 1980.

(ii) To quash the final second show cause dated 12.12.2011 as contained in Letter No. 1730 issued under the pen and signature of Respondent No.4 whereby and whereunder the petitioner has been directed to file his show-cause explanation against the proposed dismissed from service on the basis of illegal proceeding wholly without jurisdiction under taken before Hon'ble Lok Ayukta.

(iii) To pass any other consequential order as be deem fit and proper, in the back drop of the facts and circumstances of the case and to which the petitioner may be deemed legally entitled to grant such reliefs.”

2. The petitioner was initially appointed as a Peon in the Education Department. While working as such there was a complaint on 27.04.2010 by one Rabindra Thakur to the extent that petitioner's selection and appointment in the year 1979 was not after following due process of law. Based on such complaint, Lok Ayukta proceeded to investigate the matter. Petitioner was issued a Show-Cause Notice and thereafter, petitioner's services have been terminated. Hence the present petition insofar as assailing the order of termination dated



12.03.2012.

3. Learned counsel for the petitioner submitted that petitioner was a regular holder of the post of Peon from 24.11.1979 till 12.03.2012, the date on which his services were terminated. Petitioner is governed by Bihar C.C.A Rules, 2005 and the same has not been resorted to before imposing any penalty. In fact, the word of termination is not existing in the Bihar C.C.A Rules, 2005. The major penalties are dismissal from service, removal from service, compulsory retirement etc. Therefore, there is a total non-application of mind while passing the termination order.

4. *Per contra*, learned counsel for the Respondent resisted the aforementioned contention and submitted that having regard to the alleged complaint against the petitioner to the extent that his initial selection and appointment was not in accordance with law. Therefore, petitioner cannot be subjected to disciplinary proceedings under Bihar C.C.A Rules, 2005. Therefore, there is no infirmity in the order of termination.

5. Heard the learned counsels for the respective parties.

6. Undisputed facts are that petitioner was appointed as a Peon on 24.11.1979. Based on a complaint



registered by one Rabindra Thakur on 27.04.2010 to the extent that petitioner's selection and appointment was not in order. The department officials proceeded to hold investigation/preliminary inquiry and proceeded to issue show-cause notice followed by termination order. Perusal of the records and it is admitted fact that petitioner is a regular holder of the post of Peon. If there are any error committed by the official respondent insofar as issuing order of appointment to the petitioner in the year 1979. The official Respondents have not apprised this court as to what are the action taken against such of those selecting and appointing authority. That apart, displacing the petitioner after three decades it is not appropriate without holding inquiry. Time and again Courts have held that even for a daily wagers or temporary employee, if his services were required to be terminated on allegations, in such circumstances, formal domestic inquiry was required and opportunity of hearing shall be provided to such of those aggrieved persons. Taking note of these principles and the fact that official respondents have not resorted to invoke Bihar C.C.A Rules, 2005 insofar as holding inquiry to the extent whether petitioner appointment on 24.11.1979 was after due process of law or not. It is also to be noted that custodian of the selection and appointment records



being the official respondents and they cannot blame the petitioner in not furnishing documents and other things.

7. Accordingly, the petitioner has made out a case so as to interfere with the order of termination dated 12.03.2012 and it is set aside.

8. If the petitioner was in service in the normal course, he would have attained age of superannuation and retired from service. Therefore, what relief could be granted to the petitioner is in calculating arrears of salary from 12.03.2012 to till his date of retirement/age of superannuation. The concerned authority is hereby directed to examine whether petitioner is entitled to annual increment from time to time from the year 2012 till his retirement. In the meanwhile, is he entitled to ACP/MACP or any of his immediate junior has been promoted to next higher post. All these issues are required to be examined by the concerned official respondent. If the petitioner is entitled, all service benefits, in that event, the same shall be calculated and disbursed.

9. It is made clear that no work no pay principle is not attracted in the present case for the reasons that termination of a regular government servant is without resorting to Article 311 read with Bihar C.C.A Rules, 2005. The above directions of



this court shall be complied, including extending monetary benefits, within a period of four months from the date of receipt of this order, failing which petitioner is also entitled to litigation cost and it is quantified at Rs. 50,000/- (Rs. Fifty Thousand).

10. The writ petition is allowed.

(P. B. Bajanthri, J)

Manish/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A
Uploading Date	23.07.2024
Transmission Date	N.A

