

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15117 of 2022

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Anand Kumar Singh Son of Late Baban Singh, resident of village Kanoudi, Police Station Gurua, District Gaya presently residing at B1, Block, House No. B1 36, Street (Gali) No. 27, Madhu Vihar, Varat Vihar Road, Uttam Nagar - 69, Official address - Office of Resident Engineer, Building Construction Department, Bihar Niwas, 15 Chankyapuri, New Delhi.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Principal Secretary, Building Construction Department, Government of Bihar, Vishwashwaraiya Bhavan, Bailey Road, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Old Secretariat Building, Patna - 800015.
4. The Principal Secretary, Department of Cabinet Secretariat, Government of Bihar, Old Secretariat Building, Patna - 800015.
5. The Principal Secretary, Finance Department, Government of Bihar, Old Secretariat Building, Patna - 800015.
6. The Deputy Secretary, Building Construction Department, Government of Bihar, Vishwashwaraiya Bhavan, Baiely Road, Patna.
7. The Engineer-in-Chief, Building Construction Department, Vishwashwaraiya Bhavan, Baiely Road, Patna.
8. The Chief Engineer, Building Construction Department, Government of Bihar, Vishwashwaraiya Bhavan, Baiely Road, Patna.
9. The Superintending Engineer, South Bihar Circle, Building Construction Department, Government of Bihar, Punaichak, Patna.
10. The Executive Engineer-cum-Resident Engineer, Bihar Niwas, 15 Chankyapuri, New Delhi.
11. The Resident Commissioner, Bihar Bhawan, 15 Chankyauri, New Delhi.
12. The Chief Administrative Officer, Bihar Niwas, 15 Chankyapuri, New Delhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Teg Bahadur Singh, Sr. Adv.

Mr. Vatsal Verma, Adv.

Mr. Bishnu Kant Dubey

Mr. Sanjeev Kumar, Advocate



For the Respondent/s : Mr.Sushil Kumar (Gp22)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
Date : 20-09-2024

1. The present writ application has been filed for quashing the letter dated 20.08.2022 (Annexure-43) issued by the respondent no. 10 whereby the services of the petitioner as contractual employee has been terminated / dispensed with on the ground that the petitioner submitted casual leave application but without sanction he left the headquarter and further despite the petitioner was asked to submit his request for extension of contractual appointment, he did not furnish any request for extension of the period of contract. The petitioner has further prayed for a direction to the respondent authorities to reinstate the petitioner in service as contractual employee and absorb / adjust / regularize the services of the petitioner in the regular establishment and also for a direction to pay difference of salary with 10% increment per year in accordance with the terms and conditions of contract.

2. Brief facts of the case is that the petitioner was appointed by the respondent no. 11 / Resident Commissioner, Bihar Bhawan on daily wages after getting due approval from the Minister of the Department under the Building Construction



Department vide Memo No. 39 dated 03.02.1997. The petitioner started discharging his duties diligently. On 15.05.1998 the petitioner was promoted as a Skilled Labour by the respondent no. 10 upon approval of the Engineer- In- Chief cum Additional Secretary (Technical) Building Construction. The petitioner started getting salary of Typist vide letter no. 04.06.1999. Being satisfied by the work performance of the petitioner, the respondent no. 10 recommended to the Engineer- In- Chief – cum – Additional Commissioner, Building Construction Department, Government of Bihar vide letter dated 07.12.1999 to regularize the services of the petitioner. Subsequently, by another letter dated 19.09.2001 he recommended for regularization of the services of the petitioner to the Secretary, Building Construction Department, Government of Bihar.

3. Mr. Teg Bahadur Singh, learned senior counsel along with Mr. Vatsal Verma, learned counsel for the petitioner argued that the respondent no. 10 while recommending the name of the petitioner for regularization praised the performance of the petitioner for his work done as Typist, Bill Clerk, Diary Dispatch etc. The respondent no. 11 also vide his letter dated 31.07.2004 duly recommended the name of the petitioner for regularization to the Secretary, Building Construction



Department on being satisfied about the work performance of the petitioner.

4. Despite numerous recommendations made for regularization of the services of the petitioner by the respondent nos. 10 & 11, his service was not regularized, however, the employees, who were employed along with the petitioner in different Departments of the Government of Bihar in the same year have been regularized vide Memo No. 1201 dated 03.02.1997, Memo No. 916 (Annexure-32) & Memo No. 1238 (Annexure-33).

5. Learned counsel further submits that the respondent no. 11 vide his Memo No. 70 dated 01.03.2012 appointed the petitioner as contractual employee where after the petitioner started receiving Rs. 13,000/- per month as salary and from September, 2013 the salary was increased to Rs. 16,400/-. The salary of other similarly situated employee was being increased @ 10 % every year but the petitioner was given increment for only two months and thereafter it was not given. On 12.05.2016 vide letter no. 228 the respondent no. 10 again recommended the name of the petitioner and similarly situated employee Visheshwar Ram, who was appointed along with the petitioner for regularization of their services, however, the said request fell



on deaf ears and no action was taken in this regard.

6. A representation for regularization has been submitted by the petitioner before the respondent no. 10 vide letter no. 07.02.2019 including for payment of increased salary.

7. On the basis of the representation of the petitioner, the respondent no. 10 vide his letter dated 16.01.2020 referred it to the Additional Secretary, Building Construction Department for regularization of the services of the petitioner stating that the petitioner was extremely essential / important for the Departmental work.

8. Learned counsel further submits that the mother of the petitioner fell seriously ill at her native village as such, the petitioner applied for one week casual leave vide his letter dated 05.08.2022 and submitted it in the Office of the respondent no. 10 for seeking leave for the period 08.08.2022 to 15.08.2022. The leave letter was duly received in the Office of the Respondent No. 10 under acknowledgment.

9. Learned counsel next submits that in twenty five years of continuous service the petitioner has never applied for any leave or vacation and the leave application in question was submitted by the petitioner for the first time during his tenure. After availing leave the petitioner returned back for his duties



but was surprised to see the impugned letter of termination dated 20.08.2022 issued by the respondent no. 10 whereby the services of the petitioner was terminated without any notice / show cause on the ground that the petitioner has conducted gross negligence / misconduct by leaving the headquarter without sanction of leave and further no request letter has been submitted by the petitioner before the Office of the respondent no. 10 despite repeated request which amounts to gross negligence and misconduct committed by the petitioner while discharging his duty. Learned counsel further submits that petitioner had duly informed respondent no. 10 about his leave and the same would be evident from the receiving given to the petitioner on his leave application by the Office of the respondent no. 10.

10. As per general practice prevailing in the office of the respondent no. 10 if an employee intends to obtain any casual leave out of twelve sanctioned casual leaves in a year, prior approval was not being given by the superior authority, rather the leave application was to be submitted / intimated to the authorities concerned and leave was availed by the employee.

11. The petitioner duly submitted the leave application prior to going on leave specifically stating in the application that



his mother was seriously ill and due to emergency the petitioner left the headquarter and within time joined his duties. The leave application was not handed over to the respondent no. 10 by the employee working in the office because he was not coming to the office as a raid has been conducted at his premises by the Economic Offences Unit for which Economic Offence P.S. Case No. 29 of 2022 dated 28.07.2022 was instituted against the respondent no. 10 as would transpire from the letter no. 290 dated 31.07.2022.

12. Insofar as another ground of termination of the services of the petitioner that he did not submit any application for extension of the contract period despite demand having been made by the respondent-authority, learned counsel submits that no such letter was ever served upon the petitioner and the same has not been brought on record in this proceeding by the respondent. No contractual agreement containing the terms and conditions was ever signed between the petitioner and respondent authorities as such, continuity of contractual appointment was based upon the performance of the employee and the fact that the petitioner has worked for about twenty five years continuously shows that performance of the petitioner was satisfactory.



13. Learned counsel further submits that the appointing authority of the petitioner is the respondent no. 11 but the order of termination has been passed by the respondent no. 10 who has no jurisdiction to pass such order of termination.

14. Learned counsel at this juncture confines the present writ application against the termination letter dated 20.08.2022 and reserve his right to pursue his remedy for regularization and annual increment in accordance with law separately.

15. On the other hand, learned counsel for the respondent argued that the petitioner left the headquarter without any sanction of leave and also did not submit any application for extension of his contractual period, as such, the respondent no. 10 has rightly terminated the services of the petitioner.

16. On the point of service of show- cause notice before termination, learned counsel for the State submits that no such show cause notice was given to the petitioner.

17. In reply, learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court passed in the case of U.P. State Road Transport Corporation & Ors. versus Brijesh Kumar. In paragraph no. 19 the Supreme Court has said that the order of termination of services, even if on contractual basis, has been passed on account of alleged misconduct without



following the principles of natural justice. The termination order is apparently stigmatic in nature which could not have been passed without following the principles of natural justice.

18. I have heard learned counsel for the parties and have gone through the materials available on record.

19. From the impugned order it appears that the petitioner has been terminated on the ground of gross negligence and misconduct in discharge of his official duty. No show-cause notice was served upon the petitioner before passing the impugned order of termination. The petitioner has taken a stand that his mother was seriously ill in his native village, as such, after having submitted the application for casual leave on 05.08.2022 the petitioner went on leave on 08.08.2022 till 15.08.2022.

20. It is the case of the petitioner that there was no practice prevailing for prior sanction of the leave, however, the application for leave submitted by the petitioner was duly received in the office of respondent no. 10.

21. On close scrutiny of the impugned order of termination it appears that the authorities have terminated the services of the petitioner on the ground of gross negligence and misconduct in discharge of duties. On the face of it the order of termination is



based upon misconduct committed by the petitioner and is stigmatic.

22. The Hon'ble Supreme Court in a judgment reported in (1985) 3 SCC 153 K.C. Joshi Vs Union of India has held that 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.

23. In the present case the judgment relied upon by the petitioner applies in full force. In the facts of the present case it is admitted position that the impugned order of termination has been passed without giving any show-cause notice to the petitioner, which in my opinion is completely arbitrary and violative of the principles of natural justice.

24. In the result, the impugned order dated 20.08.2022 (Annexure-43) is set aside.

25. The respondents are directed to reinstate the petitioner on the post on which he was working prior to his termination without any back wages.



26. Insofar the claim of regularization / annual increment of the petitioner is concerned, the petitioner shall be at liberty to pursue his remedy in accordance with law before the appropriate forum.

27. With the aforesaid observation and direction, the application is disposed of.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07-10-2024
Transmission Date	NA

