

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15091 of 2012

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Ajay Kumar S/o Ram Tavakaya Singh, Resident of Village + Post- Babu
Amauna, Police Station- Daudnagar, District- Auranagabad

... .. Petitioner/s

Versus

1. The State of Bihar.
 2. The Patna Municipal Corporation through its Commissioner, Patna, Bihar
 3. The Commissioner, G.P.O. Main Bhawan, Municipal Corporation, Bihar,
Patna
 4. The Executive Officer, Kankarbagh Division, Patna, Bihar
- Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Kumar Singh, Advocate. Mr. Abhijeet, Advocate.
For the Respondent/s	:	Mr. Bindhyachal Singh, Sr. Advocate. Mr. Yashraj Bardhan, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 22-07-2024

Heard Mr. Rajeev Kumar Singh, learned counsel
along with Mr. Abhijeet, learned counsel appearing on behalf of
the petitioner and Mr. Bindhyachal Singh, learned senior
counsel along with Mr. Yashraj Bardhan, learned counsel for the
respondents.

2. Learned counsel appearing on behalf of the
petitioner submitted that the petitioner was restrained from
discharging his duty from year 2012 and during the pendency of
the writ petition, no action was taken, however, after the writ
petitions of year 2012 are being listed, the authority has
hurriedly passed the order dated 02.07.2024 contained in Memo
No. 1321. Learned counsel submitted that from perusal of the
order dated 02.07.2024, it appears that no opportunity of hearing



was given to the petitioner to defend himself. The petitioner is aggrieved for non-payment of his salary from year 2006 to year 2012 and therefore his continuation of service on the basis of the fact that respondents have taken work from the petitioner and now at the belated stage the respondents have disputed his identity on the basis of a perfunctory inquiry conducted in respect of identity of the petitioner who was working as a safai Mazdoor by the Sanitary Officer. The inquiry which was held behind the back of the petitioner cannot be held to be in accordance with law.

3. *Per contra*, Mr. Bindhyachal Singh, learned senior counsel appearing on behalf of the respondents submitted that the petitioner has entered into service by committing fraud and impersonating himself as one Ajay Kumar who had filed a complaint before the Municipal Commissioner that the petitioner has obtained appointment by impersonating him.

4. Learned counsel further submitted that employment procured by fraud being not in accordance with law by impersonating a genuine person cannot be protected and his termination from service / cancellation of appointment is only consequential order to be passed. The termination of the petitioner from the service on the basis of valid inquiry is not required to be interfered with by this Court.



5. Heard the parties.

6. The Apex Court in the case of **Union of India & Ors. Vs. M. Bhaskaran** reported in AIR 1996 SC 686 has made following observations:

"...By mere passage of time a fraudulent practice would not get any sanctity. The appellant authorities having come to know about the fraud of the respondents in obtaining employment as casual labourers, started departmental proceedings year back in 1987 and these proceedings have dragged on for number of years."

7. The appointment procured by fraud by impersonating a genuine person cannot be protected and his termination from service / cancellation of appointment can be only consequential order after holding a proper inquiry.

8. From perusal of the order dated 02.07.2024 contained in Memo No. 1321, I find that the same has been passed without providing any opportunity of hearing to the petitioner. A reference of show cause has been made in the said order. The order is based on the inquiry which was held in the year February 2007 and same has been brought on record along with the counter affidavit filed on behalf of respondent nos. 2 to 4.

9. It appears that the inquiry was also held ex-parte behind the back of the petitioner and on the basis of the information given by the then Mukhiya, the petitioner has been made to suffer a penalty of termination from service. The same



cannot be sustained and the inquiry report dated 11.04.2007 contained in Annexure-D to the counter affidavit and order dated 02.07.2024 contained in Annexure-J to the supplementary counter affidavit filed on behalf of respondent nos. 2 to 4 are hereby set aside and quashed.

10. The law in respect of interference by this Court is well settled by the Apex Court that in the case of dismissal, Article 21 of the Constitution of India is attracted and in view of the interdependence of the fundamental right, the punishment/penalty awarded to be reasonable and if it be unreasonable, Article 14 of the Constitution would be violated, however, for the self-imposed limitation while exercising power under Section 226 of the Constitution of India, I find it proper to direct the Disciplinary Authority/Appellate Authority to reconsider the penalty imposed and pass appropriate punishment order with cogent reason.

11. The petitioner may file a detailed representation before the concerned authority. The Disciplinary Authority is directed to proceed afresh to hold a proper inquiry giving all due opportunity to the petitioner to represent himself taking into consideration that he was taken into service of Municipal Corporation in the year 1991 and the petitioner has withdrawn salary till year 2006 and no work was being taken from the



petitioner on the basis of allegation petition filed by one Ajay Kumar claiming to be the real Ajay Kumar.

12. In view of the above, the matter is remanded back to the Disciplinary Authority in light of the **B. C. Chaturvedi Vs. Union of India & Ors.** reported in (1995) 6 SCC 746. I am of the considered opinion that the respondent authorities should hold an enquiry giving due opportunity to the petitioner and thereafter take an appropriate action against him, if he is proved guilty of fraud or impersonation. In case, the petitioner is found to be an impostor, appropriate criminal action should be taken against him according to law. Till such time the decision is not taken, the petitioner will remain under suspension. Final decision in the matter should be taken within four months from the date of communication of this order.

13. The writ petition stands disposed of.

(Purnendu Singh, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	25.07.2024
Transmission Date	N.A.

