

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15324 of 2024

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Mithun Kumar, son of Baudhu Saaw, Resident of N/H 80, Village- Garhi Bishanpur, P.O.- Kiul RS, P.S.- Lakhisarai, District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Development Department, Government of Bihar, Patna.
2. Deputy Development Commissioner, Lakhisarai, Bihar.
3. Deputy Secretary, Rural Development Department, Government of Bihar, Patna.
4. District Collector, Lakhisarai, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pushkar Bharadwaj, Advocate
For the Respondent/s : Mr. Niraj Kumar, AC to GA 10

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 17-10-2024

Heard Mr. Pushkar Bharadwaj, learned counsel
appearing on behalf of the petitioner and Mr. Niraj Kumar,
learned AC to GA 10 for the State.

2. Petitioner has *inter alia* prayed for following
reliefs in the paragraph No.1 of the writ petition:-

*(I) Issuance of a direction, order or writ,
including writ in the nature of certiorari quashing the
order dated 06/09/2019 bearing memo no. 1223 issued
by the Office of Deputy Development Commissioner,
Lakhisarai by which the services of the petitioner while
working in the capacity of Rural Housing Assistant
under the control of the Rural Development Department
has been dispensed with in complete violation of the
relevant departmental instructions as contained in letter
dated 21/10/2014 bearing memo no. 205985 laying*



down, amongst others, provisions with respect to dispensation of services and also Article 311 of the Constitution of India, as also principles of natural justice,

(ii) Issuance of a direction, order or writ including writ in the nature of certiorati quashing the order dated 31/12/2022 bearing memo no. 1604 issued from the office of Collector, Lakhisarai by which the appeal preferred by the petitioner against the order dated 06/09/2019 dispensing with the services of the petitioner while working capacity of Rural Housing Assistant has been rejected as misconceived, on the ground that the order dated 06/09/2019 passed by the Deputy Development Commissioner, Lakhisarai dispensing with services of the petitioner has itself been passed on the directions of the Collector, Lakhisarai;

(iii) Issuance of a direction, order or writ including writ in the nature of certiorari quashing the order 05/12/2023 passed by the Secretary, Rural Development Department, Bihar Patna as communicated to petitioner by a letter dated 02/01/2024, by which the revision petition preferred by the petitioner against the order dated 31/12/2022 passed by the District Magistrate, Lakhisarai dismissing appeal of the petitioner against the order dispensing with his services, has been rejected;

(iv) Issuance of a direction, order or writ including writ in the nature of mandamus commanding the concerned respondent authorities under the Rural Development Department to reinstate the petitioner in the capacity of Rural Housing Assistant along with all the consequential benefits including back wages for the period he has been kept out service on account of the illegal order of termination;

(v) Issuance of a declaration holding that



the action on the part of the concerned respondent authorities in dispensing with the services of the petitioner is in complete disregard of Article 311 of the Constitution of India, principles of natural justice as well as the letter dated 21/10/2014 bearing no. 205985 laying down provision with respect to dispensation of service amongst other things;

(vi) Any other relief that the petitioners may be found to be entitled to in the facts and circumstances of the present case.

3. The Brief facts of the case are that a letter was issued by the concerned authorities under the Rural Development Department of the state Government, in light of the decision taken by the government with regard to the making contractual appointment in various capacities including in the capacity of Rural Housing Assistant for proper implementation of Indira Housing Scheme. The petitioner being eligible in all respects applied for the same and having participated in the selection process was appointed on 19.03.2014. Thereafter, the petitioner was working in the capacity of Rural housing Assistant. On 21.10.2014, a memo no. 205985 was issued by the concerned authorities thereby laying down provisions in respect of cancellation of service contract entered into with the employees. A show cause was issued to the petitioner on 18.04.2019 by the Deputy Development Commissioner,



Lakhisarai in respect of alleged financial irregularities committed by the petitioner in distributing funds in favour of some beneficiaries and also in respect of the information received by the Block Development Office, Channan who had informed that a video was viral, wherein petitioner was seen issuing some statement in favour of certain candidates contesting Lok Sabha Elections, 2019 from Begusarai region. The petitioner's reply dated 14.05.2019 has been found not satisfactory. The District Magistrate issued a Show cause dated 25.05.2019 to the petitioner to reply in respect of the charges against him based on evidence. The reply dated 18.06.2019 of the petitioner was found unsatisfactory and *vide* order dated 06.09.2019, issued by the Deputy Development Commissioner, Lakhisarai, the petitioner was terminated from the service, against which, the petitioner has filed the present writ petition.

Submissions:

4. The learned counsel appearing on behalf of the petitioner submitted that the petitioner was a contract appointee and he was working in the capacity of Rural housing Assistant after being appointed on 19.03.2014. Learned counsel further stated that letter of contract, so issued in favour of the Petitioner, stipulates certain terms and conditions for termination of the



contract of appointment. Learned counsel submitted that insofar as the allegation that he was seen issuing some statement in favour of certain candidates, contesting Lok Sabha Election, 2019 from Begusarai Lok Sabha region and that allegedly he was unauthorizedly away from the place of work on 25.04.2019, and the petitioner was given only 24 hours to furnish reply in respect of the same in violation of principle of natural justice. The petitioner submitted categorical reply to the show cause but the same was rejected and the services of the petitioner was terminated and communicated *vide* memo no. 1223 dated 06.09.2019. Learned counsel next submitted that the petitioner preferred an appeal against the termination order, but the same was also rejected and thereafter he filed revision as per the general instruction, contained in memo no. 205985 dated 21.10.2014. Learned counsel further submitted that as per the terms and conditions of the instruction, any disciplinary action against a contractual employee, as in case of the present petitioner, can only be taken by the District Magistrate upon receiving recommendation of the Block Development Officer and not by the Deputy Development Commissioner but in the case of the petitioner, against the terms and conditions of the said circular, the petitioner has been terminated by the Deputy



Development Commissioner, which is patently illegal and the termination order is fit to be quashed. Learned counsel submits that though the said plea was not taken before the appellate authority, an objection was taken before the Revisional Authority against the termination order of the Petitioner. On these grounds, the learned counsel submitted that the impugned orders are required to be interfered by this Court.

5. *Per contra*, learned counsel appearing on behalf of the State submitted that the petitioner was appointed on contract on 19.03.2014 on certain terms and conditions contained in the appointment letter. While the petitioner was posted as Rural Housing Assistant, show cause was issued to the petitioner *vide* memo no. 495 dated 26.04.2019, as contained in Annexure- 5 and subsequent to the said show cause, the petitioner was again issued show cause, contained in memo no. 1197 dated 20.05.2019 on the basis of the report of the BDO that he has misappropriated the fund, the conduct of the petitioner was not found satisfactory and in terms of the appointment letter, the services of the petitioner has been terminated by the Deputy Development Commissioner, Lakhisarai, who was the appointing authority of the petitioner which authorizes him to take action in terms of Clause 11 of the Circular contained in



Memo No.165209 dated 03.10.2013. Learned counsel further submitted that the petitioner in a very misconceived manner has tried to mislead the Court by taking help of subsequent circular, which is not applicable in the case of the petitioner and also on the ground that the said circular, in no manner, has diluted the terms and conditions of the circular dated 03.10.2013 (Annexure- P/1), therefore the circular dated 21.10.2014 is not relevant in the case of the Petitioner and termination order cannot be interfered with.

6. Heard the parties.

7. Having considered the rival submissions made on behalf of the parties and pleadings of the respective parties, it appears that the main contention of the petitioner is that the termination order, passed by the Deputy Development Commissioner, is without jurisdiction and not in accordance with the circular contained in memo no. 205985 dated 21.10.2014, which empowers the District Magistrate to pass termination order on the recommendation of Block Development Officer.

8. It needs to be clarified that the circular dated 21.10.2014 has been issued in continuation of the circular contained in memo no. 165209 dated 03.10.2013, by which, the



service condition of the contractual employee has been clarified without affecting the terms and conditions of appointment already taken before the publication of circular dated 21.10.2014, which is guided by the circular dated 03.10.2013. From the bare perusal of the circular dated 21.10.2014, it is also clear that certain additional terms and conditions has been added to what is contained in circular dated 03.10.2013. It is also made clear that the circular is clarificatory in nature and has no superseding effect over the Circular dated 03.10.2013. The circular dated 03.10.2013 authorizes the Deputy Development Commissioner to be the appointing authority and he is empowered to take disciplinary action and the petitioner who was appointed on 19.03.2014 has been terminated in accordance with the same guidelines, as contained in circular dated 03.10.2013 by the Deputy Development Commissioner, who is the competent authority. As per the terms and conditions of Clause 11 of the circular dated 03.10.2013, the Deputy Development Commissioner, being the appointing authority, has rightly exercised his jurisdiction to terminate the services of the petitioner after having found that the petitioner has committed misconduct. Subsequent authorization made in favour of the District Magistrate/Collector in regard to making



appointment and taking disciplinary action cannot confer upon him to remove the petitioner.

9. In this regard, I find it apt to place the judgment of the Apex Court in case ***Krishna Kumar vs. Divisional Asstt. Electrical Engineer*** reported in ***(1979) 4 SCC 289*** wherein, *inter alia*, it has been held as follows in paragraph no 4 & 5:-

“4. Article 311(1) of the Constitution provides that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. The simple question for determination is whether, as alleged by the appellant, he was removed from service by an authority subordinate to that which had appointed him. The relevant facts are but these and these only: The appellant was appointed as a Train Lighting Inspector under an order issued by the Chief Electrical Engineer and was removed from service under an order passed by the Divisional Assistant Electrical Engineer, Central Railway, Nagpur. The narrow question, therefore, for consideration is whether the Divisional Assistant Electrical Engineer is subordinate in rank to the Chief Electrical Engineer. None of the affidavits filed by Shri Sarathy, who passed the order of removal says that the post of Divisional Assistant Electrical Engineer is equivalent to that of the Chief Electrical Engineer in the official hierarchy. That the former is not higher in rank than the latter is self-evident. In the circumstances, it seems clear that the appellant was removed from service by an authority which is



subordinate in rank to that by which he was appointed.

5. In defence of the legality of the order of removal, counsel for the respondents relies on para 2 of Respondent 1's affidavit, dated January 7, 1978, wherein he has stated that the power to make Appointments to the post of the Train Lighting Inspector was delegated to certain other officers including the Divisional Assistant Electrical Engineer. It is urged that since the Divisional Assistant Electrical Engineer has been given the power to make appointments to the post of the Train Lighting Inspector, he would have the power to remove any person from that post. We cannot accept this contention. Whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment. It is at that point of time that the constitutional guarantee under Article 311(1) becomes available to the person holding, for example, a civil post under the Union Government that he shall not be removed or dismissed by an authority subordinate to that which appointed him. The subsequent authorisation made in favour of Respondent 1 in regard to making appointments to the post held by the appellant cannot confer upon Respondent 1 the power to remove him. On the date of the appellant's appointment as a Train Lighting Inspector, Respondent 1 had no power to make that appointment. He cannot have, therefore, the power to remove him." (Emphasis supplied)

10. From the records of the case, I find that the petitioner was terminated from service on the allegation that he was absent from the duty, while he was favoring one candidate in Lok Sabha Election, 2019, which according to this Court, falls under the category of misconduct, as such, I find no reason to interfere with the order of termination. It is further made clear that the petitioner has nowhere pleaded in his writ petition,



whether the order of termination is stigmatic, calling for any reasons for interference supported with evidence. Rather, the impugned order has been issued after following the due procedure prescribed in the Circulars issued from time to time.

11. The writ petition is, accordingly, dismissed.

12. Interlocutory Application(s), if any, also stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.10.2024
Transmission Date	NA

