

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2584 of 2019

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Ashutosh Kumar Santosh, Son of Sri Bageshwar Prasad, Resident of Village-
Salahpur, P.O.- Dindayalpur, Via- Tarwara, District- Siwan

... .. Petitioner/s

Versus

1. The Secretary, Department of Empowerment of Persons With Disabilities (Divyangjan), Ministry of Social Justice and Empowerment, Govt. of India, New Delhi
2. The Joint Secretary, Department of Empowerment of Persons With Disabilities (Divyangjan), Ministry of Social Justice and Empowerment, Govt. of India, New Delhi
3. The Deputy Secretary, (National Institutes-NIS), Department of Empowerment of Persons With Disabilities, Ministry of Social Justice and Empowerment, Govt. of India, New Delhi
4. The Under Secretary, Department of Empowerment of Persons With Disabilities, Ministry of Social Justice and Empowerment, Govt of India, New Delhi
5. The Director, National Institute For Locomotor Disabilities (Divyangjan), B.T. Road, Bon-Hooghly Kolkata 700090
6. The Dy. Director (Admn.) National Institute For Locomotor Disabilities (Divyangjan), B.T. Road, Bon- Hooghly Kolkata 700090
7. The Composite Regional Centre for Persons With Disabilities, Patna through its Director
8. Dr. Abhishek Biswas, Son of Mr. Mohitosh Biswas, Director, National Institute For Locomotor Disabilities (Divyangjan), B.T. Road, Bon-Hooghly Kolkata 700090.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mayank Rukhaiyar, Advocate
For the Respondent/s	:	Ms. Punam Kumari Singh, CGC
		Ms. Rinki Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 24-03-2025

Heard Mr. Mayank Rukhaiyar, learned Advocate

for the petitioner and Ms. Punam Kumari Singh, learned

Advocate for the Union of India.



2. The petitioner is aggrieved with the Office Order, as contained in Memo No. CRC-Patna- Accounts 2507/Acct/2017/NILD/259(8) dated 25.01.2019, issued by the Director, National Institute For Locomotor Disabilities, Kolkata (respondent no.8) (hereinafter referred to as 'the NILD') whereby the services of the petitioner has been dispensed with. Although the petitioner had made a prayer for a direction upon the respondents to reinstate him on his actual post with all his consequential benefits, but in view of subsequent development, as the petitioner has offered another appointment and he accepted the same, hence this relief has not been pressed.

3. Considering the grievance of the petitioner, which is under a limited bound to the extent of legality of the impugned order, hence only the relevant facts are being enumerated hereunder:

(i) It is pertinent to note that Composite Regional Central, Patna (in short 'CRC') is an independent entity under the administrative control of National Institute For Locomotor Disabilities (Divyangjan), Kolkata, which is an autonomous body created and registered under the Societies Registration Act. The CRC, Patna, along with other like centres, was set up in furtherance to a scheme for Implementation of Rights of



Persons with Disabilities Act in the year, 2009. To implement the scheme aforementioned, the Government of India created 19 permanent posts corresponding to their regular pay scale. In furtherance to the efforts for setting up a new CRC, Patna, an Advertisement was duly issued on contract basis calling upon the eligible candidates for appointment on different posts.

(ii) In response to the advertisement, the petitioner applied for the post of Assistant Professor (Clinical Psychology). However, it is the case of the petitioner that notwithstanding the fact the petitioner appeared and faced interview for the post of Assistant Professor (Clinical Psychology) before the Selection Committee. He was offered appointment on the post of Lecturer (Clinical Psychology) on contract basis. Since the petitioner had accepted the offer, hence the issue is not required to be dealt with.

(iii) While the petitioner was discharging the duty on the aforementioned post, the petitioner submitted a complaint against the then incharge CRC, Patna alleging harassment and hostile discrimination at the hands of the Incharge, apart from other complaints, inter alia, taking forcible signature of the petitioner on various blank cheques. In the meanwhile, the then Officer-in-charge, CRC, Patna was directed to hand over the charge to the



petitioner vide order dated 06.09.2017, accordingly, the petitioner submitted his joining as Incharge, CRC, Patna on 06.09.2017. The relevant records pertaining to Financial year 2016-2017 and 2017 – 2018 was duly examined by the Nodal Officer, NILD, Kolkata and after preliminary enquiry, an F.I.R. has been lodged with the police for the reported embezzlement at the CRC, Patna. The petitioner sensing larger conspiracy, wrote a letter to the Joint Secretary with regard to unauthorized withdrawals in the account of CRC, Patna and also requested for an enquiry into the matter. However, all of a sudden the services of the petitioner came to be dispensed with by the order dated 25.01.2019, as contained in Annexure- P/13.

4. Mr. Mayank Rukhaiyar, learned Advocate for the petitioner while assailing the impugned order of termination has contended that the respondents have committed manifest illegality while dispensing the services of the petitioner without conducting any enquiry. Before passing the impugned order, the petitioner has not been accorded any opportunity, irrespective of the fact the impugned order, on the face of it, is stigmatic in nature, apart from being mala fide. It is specifically contended that the petitioner has not been made accused even remotely for committing any offence nor there is any finding against the



petitioner in preliminary enquiry report. There has never been any other enquiry/investigation conducted against the petitioner and no adverse finding have ever been recorded against him.

5. It is further contended that though the appointment of the petitioner is said to be on contractual basis, but the pattern of appointment made in pursuance of the Employment notice is self-explicit that his employment was in the nature of permanent, inasmuch, as no agreement/contract had ever been executed to the parties to the employment. To substantiate the nature of appointment, as permanent appointment in substance, and while assailing the action of the respondent authorities and the impugned order of dispensing the services of the petitioner, reliance has been placed on a decision rendered by the Constitution Bench of the Apex Court in the case of ***Parshotam Lal Dhingra v. Union of India, AIR 1958 SC 36*** and submitted that for determining whether the termination of the service of a government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post, the termination of his service will by itself be a punishment and he will be entitled to the protection of Article 311 of the Constitution of India. Crystallizing the position, the



Hon'ble Court observed that Article 311(2) of the Constitution will apply to those cases where the government servant, had he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank.

6. Further reliance has been placed on a judgment rendered by the two Judges Bench of the Apex Court in the case of *Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna & Ors., 2016 (1) PLJR 135 (SC)/(2015) 15 SCC 151* to the effect that if an ex parte enquiry is held behind the back of the delinquent employee and there are stigmatic remarks, that would constitute foundation and not the motive. Therefore, when the enquiry commenced and thereafter without framing of charges or without holding an enquiry the delinquent employee was dismissed, definitely, there is clear violation of principles of natural justice.

7. Since the impugned order of termination is based on the premise of gross embezzlement of fund at CRC, Patna, the same was required to be passed after adhering to the principles of natural justice, in absence thereof the impugned order lost its sanctity, is the contention of learned Advocate for the petitioner.



8. On the other hand, Ms. Punam Kumari Singh, learned Advocate for the Union of India has refuted the contention of the learned Advocate for the petitioner and urged before this Court that the very appointment letter clearly speaks that the same was contractual in nature. Moreover, the order impugned has been passed after careful consideration of the petitioner's representation and various evidences gathered by the Ministry. It has been directed by the Government of India, Department of Empowerment of Persons with Disabilities, New Delhi, dated 22.01.2019 that the service of the petitioner may be dispensed with in connection with gross financial embezzlement of funds at CRC, Patna with immediate effect. Accordingly, as per the aforementioned direction, the petitioner's service was dispensed with by the impugned order dated 25.01.2019, issued by the competent authority. The petitioner was duly appointed on contract basis; therefore his service is not covered under CCS (CCA) Rules, 1965.

9. It is also contended that since the petitioner has accepted another offer of appointment, hence in any view of the matter, the writ petition has become infructuous.

10. Having heard the learned Advocate for the respective parties and after going through the materials available



on record, especially the impugned order, this Court finds substance in the writ petition.

11. It is true that judicial review of matters that fall in the realm of contracts is also available before the superior courts, but the scope of any such review is not all pervasive. It does not extend to the Court to substitute its own view for that taken by the decision-making authority. Judicial review and resultant interference is permissible where the action of the authority is *mala fide*, arbitrary, irrational, disproportionate or unreasonable [vide ***Gridco Limited and Anr. Vs. Sadananda Doloi and Ors.; (2011) 15 SCC 16***].

12. So far the aforementioned settled legal position enunciated by the highest Court of the land, it is axiomatic that if the action of the authority is *mala fide*, arbitrary, irrational, disproportionate or unreasonable, the Court while exercising the power of judicial review can interfere in the action of the order of the respondent authorities, if the plea with respect to the grounds aforementioned is taken at the first instance. Well settled it is that the correctness of the ultimate decision is vulnerable to interference, unless the course of the decision itself is so perverse or irrational or in such outrageous defiance of logic.



13. Suffice it to observe that the Hon'ble Apex Court in the case of **Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences & Anr.**, reported in **(2002) 1 SCC 520** has summarized the issue regarding determination of stigmatic order of termination by holding that "one of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full scale formal enquiry (b) into allegations involving moral turpitude or misconduct, which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely, if any one of the three factors are missing, the termination has been upheld."

14. Placing reliance upon the principle enumerated in the case of **Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thora**, reported in **(1984) 3 SCC 384** and **Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors.**, reported in **(1999) 3 SCC 60**, the Hon'ble Apex Court in the case of **Dr. Vijayakumaran C.P.V. Vs. Central University of Kerala & Ors.**, reported in **(2020) 12 SCC 426** has categorically observed that the material which amounts to



stigma need not be contained in the order of termination, but might be contained in any document referred to in the termination order. Such reference may inevitably affect the future prospects of the incumbent, and if so, the order must be construed as stigmatic on the face of the record.

15. Reliance placed by the learned advocate for the petitioner on a decision rendered in the case of **Ratnesh Kumar Choudhary v. IGIMS**, reported in **2016 (1) PLJR 135 (SC)** also finds substance in the matter wherein the Court held that “if the facts revealed in the enquiry are not the motive, but the foundation for the termination of services of the temporary servant or probationer, it would be punitive and principles of natural justice are bound to be followed and failure to do so would make the order unsustainable.”

16. It is well settled that if the purpose of the enquiry is not to find the truth of allegation of the misconduct but to decide whether to retain the employee against whom the imputation has been levelled regarding his conduct, such enquiry would be served as a motive for termination but where the enquiry is held, based on evidence and a definite finding is reached at the back of the employee about his misconduct, there is no hesitation to hold that such order would be punitive



in nature.

17. What emerges from the aforementioned judgment is that an order is based on the imputations and allegations, the order is stigmatic and punitive and thus services of such employee cannot be dispensed without affording him an opportunity of defending the accusations/allegations made against him in a full fledged enquiry.

18. The Court time and occasions has crystallized 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, it becomes obvious that the order is not a simple order of discharge.

19. The Hon'ble Supreme Court in **K.C. Joshi vs Union of India and Ors.**, reported in (1985) 3 SCC 153 has ruled that contract of service has to be in tune with Articles 14 and 16 of the Constitution and if it is to be suggested that one can dismiss anyone without adhering to the enquiry or whisper of the principles of natural justice, then such an approach would certainly transgress the constitutional mandate. It is well settled that if State action affects livelihood or attaches stigma,



the punitive action can be taken only after holding an enquiry in keeping with the principles of natural justice.

20. Suffice it to observe that bare perusal of the impugned order it is manifest that the decision to dispense with the services of the petitioner has taken on account of involvement of the petitioner in gross financial irregularity and thus apparently the services of the petitioner has been determined solely on the ground of misconduct as alleged, but admittedly without holding regular enquiry or affording any opportunity of hearing to the petitioner. It is also admitted position that at no point any show-cause notice has been served upon the petitioner. The order of dispensing the services of the petitioner, even if on contractual basis, has been passed on the premise of alleged misconduct without following the principles of natural justice. The termination/dispensing order is apparent stigmatic in nature, which could not have been passed without following the principles of natural justice.

21. In the light of the discussions made hereinabove, this Court is of the view that the order dispensing the services of the petitioner, as contained in Memo No. CRC-Patna- Accounts 2507/Acct/2017/NILD/259(8) dated 25.01.2019 is wholly illegal, unwarranted and cannot be



sustained. Accordingly, the impugned order stands set aside.

22. On account of the impugned order of termination being set aside, the petitioner shall be entitled to all the left over benefits, including the salary and perks, which has either been withheld by the respondent authorities or found payable to the petitioner till the date of passing of the impugned order along with the cost of Rs.50,000/- as litigation expenses.

23. The writ petition stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.04.2025
Transmission Date	NA

