

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7225 of 2021

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Mukesh Kumar Son of Sri Parmeshwar Prasad Resident of village- Makanpur,
P.S.- Barara, District- Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department, Bihar, Patna
2. The Chairman-cum-Member, Board of Revenue, Bihar-cum-Chairman, Bihar Combined Entrance Competitive Examination Board, Bihar, Patna
3. The Chairman, Bihar Combined Entrance Competitive Examination Board, Bihar, Patna
4. The Examination Controller, Bihar Combined Entrance Competitive Examination Board, Bihar, Patna
5. Arvind Chaudhary S/o not known to the petitioner at present working as Examination Controller, BCECEB, Bihar, Patna
6. The Officer on Special Duty, Bihar Combined Entrance Competitive Examination Board, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kumar Kaushik, Advocate
For the BCECE Board	:	Mr. Prasoon Sinha, Sr. Advocate
		Mr. Prabhat Kumar, Advocate
For the State	:	Ms. Abhanjali, AC to GA-12

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 27-02-2025

Heard Mr. Kumar Kaushik, learned Advocate for the petitioner and Mr. Prasoon Sinha, learned Senior Advocate with Mr. Prabhat Kumar, learned Advocate for the Bihar Combined Entrance Competitive Examination Board, Bihar, Patna. The State is represented through, Ms. Abhanjali, learned AC to GA-12.

2. The petitioner was initially appointed as a Daily



Wager in the office of Bihar Combined Entrance Competitive Examination Board (for brevity, "BCECEB), Bihar, Patna. Upon being satisfied with the efficiency and suitability, the case of the petitioner was considered in the meeting of BCECEB, Bihar, Patna and pursuant to the decision of the BCECEB, Bihar, Patna, the petitioner was appointed as Peon-cum-Anusewak on contractual basis vide Memo No. 590/2007 dated 30.03.2007, issued by the respondent no. 4. In course of time, the services of the petitioner was extended time to time by the different orders of the BCECEB, Bihar, Patna and lastly, it has been extended up to 31.12.2021 with enhanced honorarium by the order of the Examination Controller, BCECEB, Bihar, Patna in terms of the decision taken by the Board.

3. While the petitioner was discharging his duty, all on a sudden, in the month of June, 2020, especially on 15.06.2020, when the petitioner went to the office of BCECEB, and marked his attendance in the attendance register, he was not assigned any work. Similarly, on 16.06.2020 and 17.06.2020, though he marked his attendance, but he had not assigned any work and on 18.06.2020 he was directed by the respondent no. 4 not to mark the attendance and the attendance



marked by the petitioner on 15.06.2020 to 17.06.2020 were struck off.

4. The petitioner requested to all the authorities, but no response has come, then he filed a representation on 26.06.2020 before the respondent no. 4 with a request to allow him to mark his attendance and work as an Assistant but to no effect, which compelled the petitioner to file another representation on 07.07.2020, with the same prayer, but this time also it did not pay any heed to the authorities. On 18.07.2020, the respondent no. 6 vide its Letter under Memo No. 535/2020 dated 18.07.2020 issued a show-cause notice to the petitioner alleging therein that it is often seen that the petitioner either not discharging his duty allotted to him or he refused to work; the petitioner is found disobeying the order of his senior and it is said that on 16.06.2020, the petitioner has refused to work allotted by competent authority and hence why not the petitioner be removed from the service. The petitioner has been directed to submit his explanation within three days.

5. The petitioner immediately rendered his explanation and narrated the entire incidence, the copy of which is marked as Annexure-8 to the writ petition and further requested to accept his explanation and allow him to mark



attendance and to pay his salary/remuneration. Neither any order has been passed nor the petitioner was allowed to mark his attendance and discharge his duties and conversely on 24.08.2020, the respondent no. 6 issued another show-cause notice under reference no. 598/2020 dated 24.08.2020 with an imputation that on 05.08.2020 at 09:45 AM, the petitioner had allegedly thrown few grains of the rice on the door of the Examination Controller, and the said act of the petitioner was found to be reprehensible. Hence, he was asked to submit explanation within three days with a cause to be shown as to why not his services on contractual basis be terminated.

6. The petitioner immediately submitted his explanation on 26.08.2020, explaining in details that due to inadvertence, some grains of rice, which was kept in his pocket as sample for purchase get off from his pocket; and he urged that there had never been any motive against any authorities; thus, he prayed to exonerate him from the charges.

7. Notwithstanding, the categorical show-cause reply on behalf of the petitioner and request to all the authorities concerned to accept his explanation and allow him to mark his attendance and to discharge his work as an Assistant and pay the salary/honorarium since 17.06.2020, neither any order has



been passed nor the petitioner has been allowed to mark his attendance and function as an Assistant. Left with no remedy, the petitioner knocked the door of this Court by invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer as follows:

“For issuance of an appropriate writ, order or direction commanding upon the respondents especially, respondent nos. 3, 4 and 6 to allow the petitioner to mark his attendance in the attendance register and further to allow him to discharge his work as an Assistant (Class-3 employee) of Bihar Combined Entrance Competitive Examination Board, Bihar, Patna (hereinafter referred to as BCECEB, Bihar, Patna) and further pay to the petitioner his salary/remuneration since 14.06.2020 till date with all other emoluments and benefits and further not to interfere in the working of the petitioner as an Assistant of Bihar Combined Entrance Competitive Examination Board, Bihar, Patna save and accept in accordance with law and/or any other relief or reliefs as this Hon’ble Court may think fit and proper in the facts and circumstances of the case.”

8. Mr. Kaushik, learned Advocate for the petitioner while assailing the impugned action of the respondent authorities, especially respondent nos. 3 to 6 contended that admittedly, the petitioner was duly appointed on post of Peon-



cum-Anusewak way back in the year 2007 and only on being found his efficiency and suitability, his period of contract has been extended time to time with proportionate honorarium.

9. Referring to the letter of appointment on contractual basis, it is submitted that it was made clear that during the contractual period, all the service condition applicable to the State Government employees shall be applied to the petitioner and to dispense with the services of the petitioner during the contractual period, a three months prior notice from the either side shall be mandatorily required. It was also explicit from the said letter that the work of the petitioner shall be evaluated yearly and reduced into writing and kept on record. In furtherance to the efficiency of the work of the petitioner for over a period of decade, the respondent Examination Controller, BCECEB, Bihar, Patna vide its order under Memo No. 1745 dated 12.09.2018 (Annexure-3) converted the services of the petitioner as Class-III employee with the prevalent service condition and due honorarium. Subsequent thereto, the BCECEB in its meeting dated 27.02.2020 resolved to extend the services of the petitioner and other contractual employees with enhanced salary/honorarium and accordingly, the BCECEB vide its order contained in



Memo No. 448/2020 dated 09.06.2020 (Annexure-4) extended the services of the petitioner up to 31.12.2021 along with 25 per cent of enhancement of his salary/honorarium.

10. Now in such background, the learned Advocate for the petitioner, by referring to the first show-cause notice and its reply, urged that the show-cause notice issued upon the petitioner, the copy of which is marked as Annexure-7 to the writ petition does not whisper as to what was the duty allotted to the petitioner, which was not done and he refused to do so. It has also not been disclosed that on 16.06.2020 what work was allotted by the competent authority of the Board, which was refused by the petitioner. Surprisingly, the detailed reply has been furnished by the petitioner that on 13.06.2020, he was asked by the Officer on Special Duty to work on the residential house of the Examination Controller. The petitioner in obedience to the order of his superior, went to the residential house of the Examination Controller, where he was asked by the Madam (Wife of Examination Controller) to do sweeping and moping work. It is this work, which was refused by the petitioner; causing enrage to the higher officials and taking it on their ego, not allowed the petitioner to mark his attendance and to function his duty and thus, thereby deprive him from the



salary/remuneration. The authenticity of the statement is writ large for the simple reason that whatever stated in the explanation of the petitioner has never been controverted nor any action has been taken, if the statement of the petitioner was incorrect and false; but surprisingly, the authority concerned did not pass any order. Similarly, the petitioner was served with another show-cause on 24.08.2020 with an allegation that he had thrown some grains of rice at the door of Examination Controller, the charges itself were absurd, though the petitioner had submitted his explanation, but neither the petitioner was informed with his reply to the show-cause notice was accepted or found to be unsatisfactory.

11. The petitioner did not mark his attendance because it is the respondent authorities, who did not allow him to do so and thus, he raised his grievance and sought permission to mark his attendance through various representation, the copies of which are duly marked as Annexure-6 series, 8 series, 11 series and Annexure - 12 for the reason best known to the authorities.

12. Adverting to the aforesaid facts, learned Advocate for the petitioner vehemently contended that the decision not to allow the petitioner to discharge the duty and



extended the contract of service of the petitioner, based on charges involving stigma, clearly involve evil consequences and therefore, could not have been done without conducting formal enquiry and without passing an order in tune with the principles of natural justice. It is the contention of the learned Advocate that even a contractual employee, is not at the whims and fancies of the authorities and his services are required to be dealt with after following the principles of natural justice and principles of equality enshrined under Article 14 and 16 of the Constitution. If services of other have been extended after 31.12.2021 ignoring the claim of the petitioner for his extension since his reply to the charges was not found satisfactory, the same involving stigma and unsustainable. There is no order by which the authorities have dealt with the reply of the petitioner, hence the respondents could not have refused to extend the contract of the petitioner on the basis of certain charges levelled against him merely by issuing a show-cause. In absence of any enquiry into the charges not to allow the petitioner to discharge the duty is illegal and unjustified.

13. Reliance has also been placed on a ruling of the Hon'ble Apex Court in the case of *Swati Priyadarshini Vs. State of Madhya Pradesh and Ors.*, reported in 2024 SCC



Online SC 2139, especially paragraph no. 33 thereof; wherein the Hon'ble Court has emphasized that mere non mention of the background situation or the show-cause notice in the order dispensing the services cannot by itself be determinative of the nature of the order. The form of an order is not its final determinant and the Court can find out the real reason and true character behind terminating/removing an employee.

14. Per contra, learned Senior Advocate Mr. Prasoon Sinha dispelling the contention of the petitioner has submitted that after conversion of the service of the petitioner from Class-IV to Class-III, his behaviour was changed towards his duty and he started avoiding the work and also neglected the orders of his superiors and thus, the petitioner was warned orally for his indiscipline and misconduct, leading to issuance of show-cause notice. The petitioner had further been found engage in some unethical work of throwing grains over the door of Examination Controller of the BCECEB, Bihar, Patna and he was put to show-cause notice. The reply submitted by the petitioner was examined and it was found unsatisfactory. It is the contention of the learned Senior Advocate based upon the averments made in the counter affidavit that apart from his reply found to be unsatisfactory, the petitioner did not mark his



attendance after 13.06.2020, for the reasons best known to him. Hence, the petitioner has been paid his remuneration till 13.06.2020. The period of contract of the petitioner service was only up to 31.12.2021, which was not extended further and now the petitioner is no more in service of BCECEB, Bihar, Patna.

15. Learned Senior Advocate vehemently refuted the allegations of exploiting and harassing the petitioner due to the fact that he denied to discharge household work of sweeping, moping and washing utensils etc. in the house of respondent no. 5, which is said to be completely false, baseless and mischievous. Since the services of the petitioner was no more required and thus, it has not been extended, hence, any claim of the petitioner for extension of his contractual services neither requires for consideration nor said to be unjustified and improper.

16. Heavy reliance has also been placed on a recent decision rendered by the learned Division Bench of this Court in the case of *Sanjeev Ranjan Vs. The State of Bihar & Ors.* (LPA No. 1004 of 2024) which came to be disposed off on 12.02.2025. Referring to the decision aforementioned, it is contended that the learned Division Bench clearly ruled that if



the inquiry is not held and no findings are arrived at and the employer is not inclined to conduct an inquiry, but at the same time, does not want to continue an employee against whom there are complaints, it would only be a case of motive and the order would not be bad on the ground of being punitive.

17. This Court has anxiously heard learned Advocate for the respective parties and meticulously perused the materials available on record. Before parting with this case, this Court finds it worth benefiting here to highlight the legal position in the matter of judicial review of the contractual transactions. In *Kumari Shrilekha Vidyarthi & Ors. Vs. State of U.P. and Ors., (1991) 1 SCC 212*, the State of Uttar Pradesh by a circular terminated the engagement of all the government counsel engaged throughout the State on the ground that such appointments being contractual in nature were terminable at the will of the government. The Hon'ble Court having examined the question of reviewability of administrative action in the realm of contract and as to whether the personality of the State Government undergoes a change after initial appointment of the government counsel so as to render its action immune from judicial scrutiny held that the State could not cast off its personality and exercise a power



unfettered by the requirements of Article 14 was claim to be governed only by a private law principles applicable to private individuals.

18. In *Gridco Limited and Anr. Vs. Sadananda Doloï and Ors.; (2011) 15 SCC 16*, the Hon'ble Court to answer the question posed before them that if the appointment was contractual, was the termination thereof vitiated by any legal infirmity to call for interference under Article 226 of the Constitution has held; 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 substituting 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 but impermissible if the petitioner's challenge is based only on the ground that the view taken by the authority may be less reasonable than what is a possible alternative. The legal position is settled that judicial review is not so much concerned with the correctness of the ultimate decision as it is with the decision-making process unless of course the decision itself is so perverse or irrational



or in such outrageous defiance of logic that the person taking the decision can be said to have taken leave of his senses.

19. 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.

20. In *Swati Priyadarshini* (supra) while the appellant being aggrieved with the termination of her contractual appointment on account of her work found to be not satisfactory preferred a writ petition before the High Court of Madhya Pradesh at Jabalpur, the learned Single Judge allowed the writ petition and quashed the order of termination holding it stigmatic in nature, relating to alleged misconduct involving moral turpitude, the same could not have been passed without holding a regular enquiry. The order of the learned Single Judge was questioned by the State of Madhya Pradesh before the



learned Division Bench in writ appeal, wherein, the order of the learned Single Judge came to be overruled. Finally the matter came up for consideration before the Hon'ble Supreme Court. A two Judge Bench of the Hon'ble Supreme Court taking note of Clause-IV, the terms and conditions of the appointment, which makes it clear that ordinarily, for inefficiency, one month's notice is sufficient, has observed that if the impugned order of termination is passed on the premise that it is a case of termination *simpliciter* and non-stigmatic, then one month's notice was required to be issued to the appellant, which admittedly was not done in the instant matter. *Arguendo*, were the impugned order to be seen as falling under the latter part of Clause 4, it would be stigmatic, as made clear by the use of the words "*indulged in undesirable activities amounting to degradation of dignity of Mission*".

21. This Court deems it appropriate to encapsulate paragraph no. 33 of the said decision, wherein the Court emphasized that mere non-mention of the background situation or the show-cause notices in the impugned order cannot, by itself, be determinative of the nature of the order. The Hon'ble Court on being found non compliance of Clause-4, either the first or the second part, set-aside the order of the learned



Division Bench and restored the judgment of the learned Single Judge with certain modification.

“33. In either of the above-noted eventualities, the Impugned Judgment would have to necessarily be set aside. Nevertheless, let us examine the reasoning of the Division Bench, which opined that the order is non-stigmatic and simpliciter non-renewal of contract. The order dated 30.03.2013 was, quite obviously, the culmination of the process set into motion by the two SCNs, which has been overlooked by the Division Bench. The mere non-mention of the background situation or the SCNs in the order dated 30.03.2013 cannot, by itself, be determinative of the nature of the order. As held by this Court in Samsher Singh v. State of Punjab, (1974) 2 SCC 831 and Anoop Jaiswal v. Government of India, (1984) 2 SCC 369, the form of an order is not its final determinant and the Court can find out the real reason and true character behind terminating/removing an employee. Moreover, the Impugned Judgment also does not deal with Clause 4. Interestingly, this Clause also escaped the attention of or/and was not brought to the notice of the learned Single Judge either.”

22. Now coming to the case in hand, it is the admitted position that time-to-time, the services of the petitioner were extended and thus, suitability and the efficiency of the petitioner at-least the date on which, it was extended cannot be denied. The cause shown by the respondent authorities at the first instance does not whisper as to what was the order/direction, which was not followed by the petitioner and disobeyed. The



allegation prima facie appears to be vague. Once the explanation of the petitioner was sought for and the same was responded with precision and affirmance at the level of the delinquent, it must be brought to its logical conclusion. Similar was the second show-cause notice, the imputation/charge when it was responded by the petitioner neither any order accepting the explanation nor the explanation has been said to be unsatisfactory and rejected. Both the show-cause affidavit clearly stipulates that in case the petitioner failed to submit his explanation within the period prescribed and was found to be satisfactory, he shall be removed from the services.

23. In the opinion of this Court in the aforesaid background, sitting over the show-cause explanation of the petitioner would certainly be punitive in nature as time without number, the petitioner has made representation that he has not been allowed to mark his attendance and to discharge his function and thus, thereby deprived from the salary/honorarium what more is required to show the mala fide, when the services of the petitioner was extended up to 31.12.2021.

24. The counter affidavit filed by the respondent nos. 2 to 6 specifically says that the reply submitted by the petitioner was examined and it was found unsatisfactory, albeit in absence



of any order by the competent authority, which makes the case of the respondent authorities much worse. The submission to the effect that the petitioner did not mark his attendance for the reason best known to him also did not find substantiated, in view of the fact that the petitioner kept on filing representation and reply to the show-cause notices, but none of them were answered. Had the response of the petitioner been found unsatisfactory and the petitioner is held to be inefficient or unsuited for the post during the period of contract, the respondent authorities must adhere to the terms and conditions of the contract, which contemplates mandatory service of three months prior notice before termination.

25. Now coming to the decision referred to the learned Senior Advocate for the BCECEB, Bihar, Patna, this Court is of the opinion that the said decision was based upon Clause-10 of the agreement which permitted the Managing Director of the Corporation to take a call regarding termination of the services of the appellant, if he arrived at the judgment that the activities and behavior of the appellant was inappropriate; or against the interest of the Corporation; or it would endanger the success of the Corporation; or if it is found that the appellant was using the resources of the Corporation or his position for



personal gains or favours. The Managing Director on consideration of the show-cause notice was of the view that the continuance of the appellant in the Corporation at such a high post of Project Manager would only endanger the work of the Corporation, who was charged with a criminal case for having amassed assets disproportionate to his known sources of income. There was a termination simplicitor without any enquiry. However, in the case in hand, though the show-cause notices were served with certain charges of misconduct, but the delinquent has not been inflicted with any order of termination even simplicitor much less, there is no compliance with the terms of the contract. Hence, in the opinion of this Court, the action of the respondents in not allowing the petitioner to mark his attendance and discharge his duty and thus, thereby depriving him salary/remuneration is wholly unjustified and improper, apart from *mala fide*, arbitrary, irrational, disproportionate or unreasonable.

26. This Court hereby allowed the writ petition in tune with the direction of the Hon'ble Supreme Court rendered in the case of ***Swati Priyadarshini*** (supra) that the petitioner shall be entitled to all consequential benefits including notional continuation in service at par with other similarly-situated



employees, but with the back wages restricted to 50%. Further, in view of the long passage of time, this Court deny the liberty to the respondents to proceed afresh against the petitioner. However, this will not preclude the respondents from taking action against the appellant in accordance with law *in futuro* *apropos* his official duties on the post in question, if the situation so arises. The exercise be completed within three months from the date of receipt of this judgment.

27. Pending application, if any, also stands disposed off.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.02.2025
Transmission Date	NA

