IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1004 of 2024
In
Civil Writ Jurisdiction Case No.9975 of 2022

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Sanjeev Ranjan, Son of Shri Parmanand Sharma, At present resident of Shahpur, P.s. Ram Krishna Nagar, Patna 800027 Permanent resident of Flat no. 109, Dew Fresh Colony, Road No. - 04 Lush Colony, Ashiana nagar, P.S. - Rajeev Nagar, Dist. - Patna, Bihar.

... ... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar Patna.
2. Development Commissioner cum Chairman, Board of Directors Bihar Medical Services Infrastructure Corporation Ltd. Patna.
3. Additional Chief Secretary, Department of Health, Govt. of Bihar, Patna.
4. Officer on Special Duty, Health Department, Government of Bihar, Vikas Bhawan, Patna.
5. Bihar Medical Services and Infrastructure Corporation Limited, through its Managing Director, Shastri Nagar, Off Bailey Road, Patna, Bihar.
6. Managing Director, Bihar Medical Services and Infrastructure Corporation, Limited, Shastri Nagar, Off Bailey Road, Patna, Bihar.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Amit Srivastava, Sr. Adv.
		Mr.Aditya Prakash Sahay
For the Respondent/s	:	Mr.Addl. Advocate General (9)
For BMSICL	:	Mr. Lalit Kishore, Sr. Adv.
		Mr. Vikash Kumar, Adv.
		Mr. Ayush Kumar, Adv.
		Mr. Kanishka Shanker, Adv.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 12-02-2025

The services of the appellant has been terminated by the Managing Director, Bihar Medical

Services and Infrastructure Corporation Limited (BMISCL). Before that, he was restrained to perform the administrative as well as financial duties of the Corporation.

2. The appellant had joined the services of the Corporation against an offer letter to him for joining on the post of Project Engineer at a gross monthly salary of Rs. 60,000/- in July, 2012.

3. Within two years, he was offered and he accepted the post of General Manager (Project & Design) on contractual basis for a period of one year at a consolidated remuneration of Rs. 80,000/-. He was, thereafter, made the General Manager (Project & Design), on which post he continued for a very long time.

4. In the meantime, an FIR was instituted against him by the Vigilance Investigation Bureau for having amassed assets disproportionate to his known sources of income to the extent of Rs. 1,76,72,907/- and was charged for the offences under Sections 13(1)(b) read with (13)2) read with 12 of the Prevention of Corruption Act, 1988 and Section 120B of the Indian Penal Code. The Managing

Director of the Corporation *vide* dated 11.07.2022 contained in memo no. BMSIC/2005026.02.2014/2500 terminated the services of the appellant with immediate effect by invoking the provisions contained in Clause 10(c) (ii) and (iii) of the Professional Service Agreement executed between the Corporation and the appellant.

5. Clause -10 of the agreement provides that the Corporation and the second party would retain the right to terminate the agreement within 30 days notice to either party. For the first 30 days, from the starting of the agreement, the second party would be on probation and during this period, the agreement could be terminated by the Corporation with no minimum period of notice. The agreement may be terminated with no minimum period of notice under the following circumstances:-

> (i) If it is found anytime during the service of the Second Party that he/she has provided false information to support his/her present candidature for the position;
>
> (ii) On the judgment of the Managing

Director that the activities and the behaviour of the second party is inappropriate; is against the interest of the Corporation; endangers the success of the Corporation or contravenes local laws and customs; or government policies and directions;

(iii) On the judgment of the Managing Director, if it is found that the Second Party is using/trying to use the resources of Corporation or his/her present position for personal gains or favours.

6. It appears from the records that on coming to know of the criminal case filed against the appellant and the Enforcement Directorate also contemplating to file a case of prevention of money laundering, the appellant was directed to reply to the show-cause notice issued to him and was restrained from performing the financial duties as he was having exclusive financial powers of the Corporation in his capacity as General Manager (Project and Design).

7. The appellant responded to the show-cause notice which was duly considered by the Managing Director, who thought it fit to terminate the services of the appellant.

8. The appellant challenged the aforenoted termination on several grounds but primarily on the grounds that he ought to have been put to domestic inquiry; the termination order was not termination simplicitor but stigmatic and punitive; and that principles of natural justice were thrown to the winds. The other challenge was that the decision of the Managing Director was based on the suggestions made by the Officer on Special Duty (OSD) in the Health Department to the Managing Director and, therefore, the judgment of Managing Director was coloured.

9. In support of the aforenoted contention, the appellant relied on the judgments of the Supreme Court in ***Dr. Vijaykumaran CPV vs. Central University of Kerala and Others; (2020) 12 SCC 426, K. Ragupathi vs The State Of Uttar Pradesh; (2022) 6 SCC 346*** *and* ***Parshotam Lal Dhingra vs. Union of India; AIR 1958 SC 36***.

10. It was submitted before the learned Single Judge that without a formal inquiry, a punitive termination order could not have been passed against the

appellant. The materials which amounts to stigma in a termination order may not be contained in the order but it could be inferred from any document referred to in the order. Such reference inevitably affects the future prospects of the incumbent and, therefore, such order is a stigmatic order of termination [refer to ***Dr. Vijaykumaran CPV*** (supra)].

11. It was also canvassed before the learned Single Judge that even though the employment is contractual but an employee is entitled to get all the benefits of a regular employee and his services cannot be terminated without following the principles of natural justice [refer to ***K. Raghupati*** (supra)].

12. The learned Single Judge rejected the contentions raised on behalf of the appellant, holding that in the present case, the reference to the FIR cannot be read as stigmatic for it only provides a motive but not the foundation of the charge and there is no discussion with respect to the accusation in the FIR or the probative value of the charge levelled against him. It was also found by

the learned Single Judge that principles of natural justice was followed to the extent of giving a show-cause notice to the appellant.

13. We have perused the records of this case. In our considered view, no interference is required with the judgment of the learned Single Judge for the following reasons:-

(a) The appellant was a contractual employee, whose terms of service was guided by the professional service agreement executed between the employer and the appellant on 16th July 2014.

(b). Clause (10) of the aforenoted agreement 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.

(c) The appellant was given a show-cause notice to which he had replied. The Managing Director was of the view that continuance of the appellant in the Corporation at such a high post of Project Manager would only endanger the work of the Corporation.

(d) Be it noted that the appellant had enormous fiscal powers related to the Corporation. Precisely for this reason, he was restrained from taking any decision. The moment it was made known to the Managing Director that a vigilance case of amassing disproportionate assets has already been filed against him and another case for money laundering is under contemplation.

(e) The decision of the Managing Director does not appear to be influenced by the Officer on Special Duty of the Health Department. The OSD of the Health Department had only informed the Corporation of the vigilance case against the appellant.

(f) The termination order, even though refers to the lodging of the criminal case against him, which reference cannot be read as punitive and stigmatic, for the reasons that the merit *inter se* of the criminal charges have not been discussed in the termination order. The reference to the criminal case is only the motive which galvanized into the Managing Director arriving at a judgment that the appellant ought not be associated with the Corporation.

(g) True it is that lodging of a criminal case would not be the end all of the *bonafides* of an accused and a person is to be held innocent till the time he is proved guilty, but the appellant having been charged with the offence of amassing disproportionate assets, would definitely be a good ground for the Managing Director of the Corporation to take into account for terminating the services of the appellant.

(h) We repeat the order is neither stigmatic nor punitive for the reason that the merits of the case against the appellant has not been discussed (refer to ***State of Haryana and Ors. vs. Sateyndra Singh Rathore, 2005 (7) SCC 518***).

(i) In ***Gujarat Steel Tubes Limited vs. Majdoor Shabha, 1980 (2) SCC 593,*** the Supreme Court had observed that masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reasons for the order, whether disclosed or undisclosed. There could be a situation that when there is suspicion of misconduct, the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping in such person he is not happy with. He may not like to investigate or take the risk of continuing a dubious servant.

(j) In such a case, it is not dismissal but termination simplicitor. If the findings are arrived that in an inquiry as to misconduct without a regular departmental inquiry, the order of termination, even if couched in simple terms, would be treated as one founded on the allegations and will be punitive and stigmatic. But 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.

14. Seen in this perspective, we dismiss the appeal as being groundless.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

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