

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17449 of 2023

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Rahil Ahmed S/o Sirajuddin Ansari, R/o- Ishopur Amrudi Bagicha,
P.O and P.S- Phulwari, District- Patna, Bihar- 801505.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Rural Development Department, Government of Bihar, Patna.
2. The Chief Executive Officer, Bihar Rural Development Society, Government of Bihar, Patna.
3. The District Magistrate, District- Patna, Bihar.
4. The Deputy Development Commissioner, Patna, Bihar.
5. The Block Development Officer, Danapur, District- Patna, Bihar.

... ... Respondents

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Patna High Court Rules—reference to larger Bench—maintainability of the present reference—petitioner has challenged the order of termination passed by the concerned respondent authority; and order of the appellate authority, by which the termination order has been confirmed—petitioner challenged the said orders on various grounds, including violation of Principles of Natural Justice—when the present petition was listed before the learned Single Judge, petitioner had placed reliance upon the order dated 13.01.2021 passed by another learned Single Judge in C.W.J.C. No. 7056 of 2020—learned Single Judge observed that the order of termination was passed without granting opportunity of hearing to the petitioner and it is well settled that no order visiting evil and civil consequences can be passed without compliance of the Principles of Natural Justice—order of termination was passed on the basis of the allegation and, therefore, the learned Single Judge allowed the petition and order of termination was

quashed and set aside—the learned Single Judge has dismissed the petition by taking a different view and thereafter now the question of law has been referred to the Division Bench—it is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, needed to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question—reference made by the learned Single Judge is misconceived and not tenable and, therefore, in the present petition, the same cannot be decided after dismissal of the petition.

(Paras 6, 6.3, 6.11, 7.1)

AIR 1965 SC 1767; (1977) 3 SCC 25; (1998) 5 SCC 637; (2000) 1 SCC 644

—Relied Upon.

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... .. Respondents

Appearance :

For the Petitioner : Mr. Aatish Kumar, Advocate
Mr. Ravi Ranjan Mallick, Advocate
For the Respondents : Mr. Vinay Kirti Singh (GA-2)
Mr. Rajan Prakash, Advocate (AC to GA-2)

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

7 20-02-2025 The present petition has been placed before us pursuant to the order dated 07.05.2024 passed by the learned Single Judge, whereby the learned Single Judge has referred the following question to the larger Bench for consideration: -

“as to whether departmental proceedings, holding departmental enquiry and determination of charge(s) under the provisions of CCA Rules, 2005, are applicable in case of contractual / temporary / daily-wager / adhoc employees working under the State under specific Scheme.”



FACTUAL MATRIX: -

2. The brief facts leading to placing the present matter before us are as under: -

2.1. The petitioner filed the present petition under Article 226 of the Constitution of India, in which the petitioner has challenged the order dated 10.12.2019 passed by the Principal Secretary, Rural Development Department, Government of Bihar, Patna, upholding the order of termination contained in Memo. No. 119 dated 29.01.2019 passed by respondent No.3, District Magistrate, District-Patna, Bihar. The petitioner has also prayed that the order of termination dated 29.01.2019 be quashed and set aside. The petitioner has further prayed that the respondents be directed to reinstate the petitioner with full back-wages.

2.2. The present petition was listed before the learned Single Judge and the learned Single Judge, after considering the decisions rendered by the Hon'ble Supreme Court, referred in the order, dismissed the petition vide order dated 07.05.2024. However, while dismissing the petition, the learned Single Judge observed in paragraphs 16, 17 and 18 as under: -

16. Therefore, the service of the petitioner is terminable by its employer even without following the CCA Rules, 2005.



17. For the reasons stated above, I do not find any merit in the instant writ petition and accordingly it is dismissed.

18. Before I part with, I respectfully record that I have differed from the decision of a Co-ordinate Bench, passed in C.W.J.C. No. 7056 of 2020, which is annexed with the writ petition as Annexure-17. Therefore, in my humble opinion, the instant matter requires a reference to the Larger Bench to decide the question as to whether departmental proceedings, holding departmental enquiry and determination of charge(s) under the provisions of CCA Rules, 2005, are applicable in case of contractual / temporary / daily-wager / adhoc employees working under the State under specific Scheme.

2.3. Thus, pursuant to the observations made in paragraph 18 of the order, the question formulated by the learned Single Judge has been referred to the Larger Bench.

2.4. Hon'ble the Chief Justice, therefore, passed an administrative order pursuant to which the office has placed the present petition before this Division Bench for deciding the aforesaid question of law formulated by the learned Single Judge.



3. We have heard Mr. Aatish Kumar assisted by Mr. Ravi Ranjan Mallick, learned counsel for the petitioner and Mr. Vinay Kirti Singh, learned G.A.-2 assisted by Mr. Rajan Prakash appearing on behalf of the respondents.

SUBMISSIONS ON BEHALF OF THE
PETITIONER: -

4. Learned counsel for the petitioner, at the outset, submitted that the petitioner has placed reliance upon the order dated 13.01.2021 passed by another learned Single Judge in CWJC No.7056 of 2020 (*Ragini Kumari alias Raginee Kumar vs. The State of Bihar and others*). It is submitted that, in the said petition, the concerned learned Single Judge observed that as the concerned respondent authority has violated the Principles of Natural Justice, the order of termination is required to be set aside. Accordingly, in the said case, order was set aside and direction was given to the concerned authority to reinstate the concerned petitioner with all consequential benefits.

4.1. Learned counsel would submit that if the learned Single Judge, in the present case, was not agreeable with the view taken by another learned Single Judge in the aforesaid case, then the learned Single Judge was required to refer the question of law to the Division Bench and the learned Single



Judge ought to have waited till the Division Bench decides the matter with regard to the question of law referred to it. However, in the present case, the learned Single Judge has dismissed the petition by taking a different view and thereafter now the question of law has been referred to the Division Bench.

4.2. Learned counsel for the petitioner, therefore, urged that the present reference itself is not tenable.

SUBMISSIONS ON BEHALF OF THE
RESPONDENT: -

5. Learned counsel for the respondent has also supported the submission canvassed by the learned counsel for the petitioner on this aspect.

DISCUSSION: -

6. We have considered the submissions canvassed by the learned advocates for the parties and perused the material placed on record. It transpires from the record that the petitioner has filed the present petition under Article 226 of the Constitution of India, in which the petitioner has challenged the order of termination passed by the concerned respondent authority and the order of the appellate authority, by which the termination order has been confirmed. The petitioner challenged



the said orders on various grounds, including violation of Principles of Natural Justice. It further transpires from the record that when the present petition was listed before the learned Single Judge, learned counsel for the petitioner had placed reliance upon the order dated 13.01.2021 passed by another learned Single Judge in C.W.J.C. No. 7056 of 2020. In the said case, the learned Single Judge observed that the order of termination was passed without granting opportunity of hearing to the petitioner and it is well settled that no order visiting civil and civil consequences can be passed without compliance of the Principles of Natural Justice. In the said case, the order of termination was passed on the basis of the allegation and, therefore, the learned Single Judge allowed the petition and order of termination was quashed and set aside.

6.1. In the present case, the learned Single Judge passed the order on 07.05.2024 and recorded the contentions of the learned advocates. Thereafter, the learned Single Judge had referred various decisions rendered by the Hon'ble Supreme Court. Further, the learned Single Judge has observed in Paragraph 17 that, for the reasons stated in the said order, the petition is required to be dismissed and, accordingly, the petition has been dismissed. However, thereafter, in Paragraph 18 of the



order dated 07.05.2024, the learned Single Judge has further observed that as he has differed from the decision of the Co-ordinate Bench passed in CWJC No. 7056 of 2020, which is annexed in writ petition at Annexure-17, the question, “*as to whether departmental proceedings, holding departmental enquiry and determination of charge(s) under the provisions of CCA Rules, 2005, are applicable in case of contractual / temporary / daily-wager / adhoc employees working under the State under specific Scheme.*”, formulated by the learned Single Judge, has been referred to the present larger Bench.

6.2. Thus, from the aforesaid discussions made by learned Single Judge in paragraphs 16 to 18 of the order dated 07.05.2024, it would emerge that the learned Single Judge has already dismissed the petition by taking a view different than the view taken by another learned Single Judge in the order dated 13.01.2021. Therefore, once the learned advocate for the petitioner has taken a contention about the maintainability of the present reference, first of all, we would like to decide the issue with regard to the maintainability of the present reference.

6.3. In the case of ***Lala Shri Bhagwan v. Ram Chand*** (AIR 1965 SC 1767), Hon’ble Supreme Court has observed that it is hardly necessary to emphasize that considerations of



judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, needed to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety.

6.4. In the case of ***Eknath Shankarrao Mukkawar v. State of Maharashtra***, reported in (1977) 3 SCC 25, the Hon'ble Supreme Court has observed in Para 25 as under:-

“25. Our attention is drawn to a disquieting feature in the procedure adopted by the learned Single Judge (G.N.Vaidya, J.), in disposing of the appeal. The learned Judge ignored the decision of another Single Judge of the same Court (J.M. Gandhi, J.), who had earlier held in a similar case that the appeal by the State was not competent under Section 377(1) CrPC. It is true that the decision is pending before this Court in appeal by special leave. That, however, cannot be sufficient reason for the learned



Judge to ignore it and observe that it is “unnecessary to keep back this matter till the Supreme Court decides the matter”. When there was a decision of a coordinate court, it was open to the learned Judge to differ from it but in that case the only judicial alternative was to refer it to a larger bench and not to dispose of the appeal by taking a contrary view. Judicial discipline as well as decorum should suggest that as the only course.”

6.5. From the aforesaid observation made by the Hon’ble Supreme Court, it can be said that when there was a decision of the Co-ordinate Bench, it was open to the learned judge to differ from it, but, in that case, the only judicial alternative available to him was to refer it to the Larger Bench and not to dispose of the appeal by taking contrary view. The judicial discipline as well as decorum would suggest that as the only course.

6.6. In the case of ***State of Tripura v. Tripura Bar Assn.***, reported in **(1998) 5 SCC 637**, the Hon’ble Supreme Court has observed in Para 4 as under:-

“4. We are of the view that the Division Bench of the High Court which has delivered the impugned judgment being a



coordinate Bench could not have taken a view different from that taken by the earlier Division Bench of the High Court in the case of Durgadas Purkayastha [(1988) 1 Gau LR 6] . If the latter Bench wanted to take a view different than that taken by the earlier Bench, the proper course for them would have been to refer the matter to a larger Bench. We have perused the reasons given by the learned Judges for not referring the matter to a larger Bench. We are not satisfied that the said reasons justified their deciding the matter and not referring it to the larger Bench. In the circumstances, we are unable to uphold the impugned judgment of the High Court insofar as it relates to the matter of inter se seniority of the Judicial Officers impleaded as respondents in the writ petition. The impugned judgment of the High Court insofar as it relates to the matter of seniority of the respondent Judicial Officers is set aside. The appeals are disposed of accordingly. No costs.”

6.7. From the aforesaid observation made by the Hon’ble Supreme Court, it is clear that if the latter Bench wanted to take a view different than that taken by the earlier Bench, the proper course for them would have been to refer the matter to a Larger Bench.



6.8. In the said case, the Division Bench did not refer the matter to a Larger Bench and, therefore, the Hon'ble Supreme Court interfered with the order passed by the second Division Bench of the concerned High Court.

6.9. In the case of ***Sub-Inspector Rooplal v. Lt. Governor***, reported in (2000) 1 SCC 644, the Hon'ble Supreme Court has observed in Para 12 as under:-

“12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of



administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel [AIR 1968 SC 372 : (1968) 1 SCR 455] while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same Court observed thus:

“The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in Pinjare Karimbhai case [Pinjare Karimbhai v. Sukla Hariprasad, (1962) 3 Guj LR 529]



and of Macleod, C.J., in Haridas case [Haridas v. Ratansey, AIR 1922 Bom 149 (2) : 23 Bom LR 802] did not lay down the correct law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by courts of coordinate authority or of superior authority. Gajendragadkar, C.J., observed in Bhagwan v. Ram Chand [AIR 1965 SC 1767] :

'It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that inquiry sitting as a Single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it



is founded on healthy principles of judicial decorum and propriety.’ ”

6.10. In the aforesaid case, the concerned Tribunal was aware about the view taken by the Co-ordinate Bench of the Tribunal, despite which, the subsequent Bench of the Tribunal hold that the view taken by the Co-ordinate Bench of the Tribunal was incorrect. The Hon’ble Supreme Court has, therefore, observed that the subsequent Bench of the Tribunal ought to have referred the matter to a Large Bench so that the difference of opinion between the two Co-ordinate Benches on the same point could have been avoided. The Hon’ble Supreme Court further observed that a Co-ordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a Larger Bench, if it disagrees with the earlier pronouncement.

6.11. Keeping in view the aforesaid decisions rendered by the Hon’ble Supreme Court, if the facts of the present case, as discussed hereinabove, are examined, it can be said that it was open for the learned Single Judge to differ from the view taken by another learned Single Judge. However, in that case, the only alternative for the learned Single Judge was to refer it to a Larger Bench and not to dispose of the petition by



taking a contrary view. In the present case, as observed hereinabove, the learned Single Judge was not agreeable with the view taken by another learned single Judge in CWJC No. 7056 of 2020. Therefore, the proper course was to refer the matter to the Larger Bench. Further, the learned Single Judge has already dismissed the petition on merits by observing that he has differed from the decision of the Co-ordinate Bench and after dismissal of the petition, the question of law was formulated by the learned Single Judge, which has been referred. As observed by the Hon'ble Supreme Court, the judicial propriety and decorum requires that if a learned Single Judge hearing a matter is inclined to take a view different from the view taken by the Co-ordinate Bench, he should refer the matter to a Division Bench/Larger Bench.

6.12. At this stage, we would also like to refer Rule 1 of Chapter-V of the Rules of the High Court at Patna. It provides for reference to a Full Bench. Rule 1 of Chapter V provides as under: -

Chapter V- Reference to a Full Bench-

1. Whenever a Division Bench desires and the Chief Justice consents that any case shall be referred to a Full Bench, or whenever in any case a Division Bench



differs from any other division Bench upon a point of law or usage having the force of law, such case shall be referred for decision by a Full Bench.”

6.13. From the aforesaid provisions contained in the Rules of the High Court at Patna, it transpires that whenever a Division Bench desires and Hon’ble the Chief Justice consents that any case shall be referred to a Full Bench, such case shall be referred for decision by a Full Bench. Further, whenever in a case a Division Bench differs from any other Division Bench upon a point of law or usage having the force of law, such case shall be referred for decision by a Full Bench.

6.14. Thus, under two circumstances, a Division Bench can refer a matter to the Full Bench. Firstly, the entire matter can be referred. However, for that consent of Hon’ble the Chief Justice is required. Secondly, if a Division Bench differs from any other Division Bench, upon a point of law or usage having the force of law, then such case shall be referred for a decision by a Full Bench.

6.15. In the present case, we are concerned with the second part of the aforesaid Rule. From the second part of the aforesaid Rule, it is clear that if a Division Bench wants to take a view different from the view taken by the other Division



Bench, upon a point of law or usage having the force of law, then the said case is required to be referred to a Full Bench. The word “shall” has been used in the Rule. We are, therefore, of the view that it is mandatory for the Division Bench to refer the matter to a Full Bench if it wants to take a view different than a view taken by the other Division Bench on point of law.

6.16. We are of the view that if the said analogy is applied to a case listed before a learned Single Judge, then the learned Single Judge is required to refer the point of law to the Larger Bench, if the learned Single Judge wants to take a view different than the view taken by another learned Single Judge on a question of law.

6.17. In the present case, the learned Single Judge has already dismissed the petition by taking a view different than the view taken by the Co-ordinate Bench and thereafter referred the issue to the Larger Bench, which is not the correct course adopted by the learned Single Judge. Further, now the issue referred cannot be decided only for academic purpose when the petition itself has already been dismissed by the learned Single Judge.

CONCLUSION: -

7. In view of the aforesaid discussion, we are of the



view that the reference made by the learned Single Judge is misconceived and not tenable and, therefore, in the present petition, the same cannot be decided after dismissal of the petition.

7.2. It is clarified that we have not examined the merits of the case. Therefore, it is always open to the petitioner to challenge the decision rendered by the learned Single Judge by filing appropriate proceedings before the appropriate forum.

7.3. In view of the aforesaid, we direct the office to place the matter before Hon’ble the Chief Justice along with the present order.

(Vipul M. Pancholi, J)

(Alok Kumar Pandey, J)

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