IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20066 of 2021

==========

Rajesh Kumar Prasad, son of Shri Kishun Shah, residence of Village- Deokuli, Police Station- Brahampur, District- Buxar.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Buxar
3. The Deputy Collector (Establishment), Buxar
4. The District Programme Officer, Mid- Day Meal Scheme, Buxar

... ... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Parijat Saurav, Advocate
For the State	:	Mr. Vivek Prasad (GP7)
		Mrs. Manisha Singh, AC to GP-7
		Ms. Mita Kumari, Advocate
For M.D.M.	:	Mr. Girijish Kumar, Advocate
		Mr. Akash Anand, Advocate

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CORAM: HONOURABLE MR. JUSTICE NANI TAGIA
CAV JUDGMENT
Date : 07.08.2026

Heard Mr. Parijat Saurav, learned counsel for the petitioner, Mr. Vivek Prasad, learned GP-7 for the respondent-State and Mr. Girijish Kumar, learned counsel for the respondent-M.D.M.

2. This writ application has been filed by the petitioner challenging the Office Order No. 40/2019-20, dated 13.07.2019 (Annexure-9), issued by the District Magistrate, Buxar, whereby the petitioner's contractual service on the post of Executive Assistant, Mid-Day Meal Scheme Office, Buxar has been terminated. Also under challenge is the show cause notice dated

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01.07.2019 (Annexure-6), issued to the petitioner by the District Programme Officer, Mid-Day Meal Scheme, Buxar.

3. The petitioner, vide order no. 169/2012-13, dated 30.10.2012 (Annexure-1) was appointed on the post of Executive Assistant in the District Mid-Day Meal Scheme Office, Buxar on contract basis by the District Magistrate, Buxar. While the petitioner was working as such, a show cause notice dated 01.07.2019 (Annexure-6) was issued to him along with two other persons, namely, Manoj Kumar Singh and Sudehi Rai (both contractors), by the District Programme Officer, Mid-Day Meal Scheme, Buxar, wherein, it was stated that on 30.06.2019, Buxar edition of *Dainik Bhaskar* featured a photograph of the petitioner consuming alcohol in a vehicle along with two contractors and some unidentified persons. The following day, i.e. on 01.07.2019, the same newspaper published the petitioner's name regarding the alleged alcohol consumption. In the said show cause notice, it was further stated that the District Magistrate, Buxar, had taken cognizance of the matter, noting that the Bihar Government has strictly prohibited the sale and consumption of alcohol and consuming alcohol in the State is an offence. As such, the petitioner was directed to submit a clarification within 24 hours of receiving the notice.

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Subsequently, an FIR being Muffasil P.S. Case No. 181 of 2019 was also lodged under Section 37(C) of Bihar Prohibition and Excise (Amendment) Act, 2018 against the petitioner and others.

4. Pursuant to the aforesaid show cause notice issued by the District Programme Officer, Mid-Day Meal Scheme, Buxar, the petitioner submitted his reply on 06.07.2019 (Annexure-7), to the District Programme Officer, Mid-Day-Meal Scheme, Buxar. In his response, the petitioner denied the allegation of consumption of alcohol stating that the allegation levelled against him is false and the said news item has been published in the newspaper due to the prevailing rural politics.

5. The District Magistrate, Buxar, finding the reply submitted by the petitioner unsatisfactory, has terminated the contractual service of the petitioner vide the impugned order dated 13.07.2019, issued under Memo No. 01-1247/Buxar (Annexure-9) with immediate effect by holding that as the consumption of alcohol is prohibited and is considered an offence in the State of Bihar, consumption of alcohol by the petitioner signifies his indiscipline.

6. The petitioner, thereafter, submitted an application on 18.12.2019 (Annexure-10) before the District Magistrate, Buxar with a prayer to allow him to rejoin the service

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contending that in the FIR being Muffasil P.S. Case No. 181 of 2019 registered against him under Section 37(C) of Bihar Prohibition and Excise (Amendment) Act, 2018, the Investigating Officer has submitted a final report stating that there is no evidence against the petitioner suggesting commission of the alleged offence.

7. The application of the petitioner was forwarded by the Deputy Collector, Establishment, Buxar (Annexure-11) to the District Programme Officer, Mid-Day Meal Scheme, Buxar, seeking a report for further action to be taken in the matter. In response to the Deputy Collector's letter dated 14.03.2020, the District Programme Officer, vide letter dated 10.06.2020 (Annexure-12), confirmed the final report submitted by the police in Muffasil P.S. Case No. 181 of 2019 and also apprised that no other person has been appointed to the post previously held by the petitioner.

8. Since the petitioner did not receive any favorable response regarding his reinstatement despite the submission of the aforementioned application and the ensuing inter-departmental communications, he filed the instant writ petition challenging the impugned termination order dated 13.07.2019, issued by the District Magistrate, Buxar.

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9. Learned counsel for the petitioner has submitted that the impugned termination order was issued by the District Magistrate, Buxar, solely on the basis of a photograph published in the Dainik Bhaskar newspaper dated 30.06.2019, allegedly showing the petitioner consuming alcohol. It is further submitted that the respondent authorities summarily terminated the petitioner's contractual services without conducting any departmental enquiry, despite the petitioner's categorical denial of the allegations in his show-cause reply. Accordingly, the learned counsel for the petitioner pointed out that the respondent authorities acted in a most unfair manner, violating the principles of natural justice and denying the petitioner an opportunity of a hearing to defend himself. Therefore, the impugned order of termination issued by the District Magistrate, Buxar, cannot withstand the legal scrutiny of this Court and is liable to be set aside and quashed.

10. Learned counsel for the petitioner has placed reliance on the following judgments of the Hon'ble Supreme Court as well as of this Court, which is as follows:-

(i) **Sur Enamel And Stamping Works Ltd. Versus Workmen** reported in **1963 SCC Online SC 97.**
(ii) **O.K. Bhardwaj Versus Union of India & Ors.** reported in **(2001) 9 Supreme Court Cases 180.**

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(iii) **Hari Ram Maurya Versus Union of India & Ors.** reported in **(2006) 9 Supreme Court Cases 167.**
(iv) **Amit Kumar versus The State of Bihar & Ors. (CWJC No.5537 of 2020)**.

11. Contesting the petitioner's case as set forth in the writ petition, the respondent-State has filed a counter-affidavit. The stand taken by the respondent-State in paragraph nos. 11 and 12 of the said counter-affidavit is extracted hereinbelow for ready reference:

> "11. That in reply to the statements made in Paragraph Nos. 12 and 13 of the Writ Application it is submitted that there is no infirmity in issuance of show cause by the District Programme Officer. It is District Programme Officer who had recommended the petitioner for appointment and on his recommendation the District Magistrate considered the case of the petitioner for appointment which was subject to the satisfactory service of the petitioner. In terms of contractual appointment the contract of the petitioner was held to be fit for termination on his unsatisfactory service.
> 12. That in reply to the statements made in Paragraph Nos. 14, 15, 16 and 17 of the Writ Application it is submitted that the District Magistrate who is the appointing authority of the petitioner considered the reply to the show

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> cause submitted by the petitioner and did not find the explanation to be satisfactory. The act of the petitioner was held to be against the prohibition law of the State Government and holding the petitioner to be guilty his contractual appointment was terminated with immediate effect. The action of the District Programme Officer and the District Magistrate, Buxar is not illegal or arbitrary and the termination order has been issued in all fairness. The decision of termination was taken by District Level Committee for appointment and extension of time of contractual employee in its meeting held on 06.07.2019."

12. Referring to the paragraphs of the counter affidavit as extracted hereinabove, learned counsel for the respondent-State has submitted that the petitioner's appointment as an Executive Assistant under the Mid-Day Meal Scheme was purely contractual. It is contended that after due consideration of the petitioner's reply, his services were found to be unsatisfactory, justifying the termination. Learned counsel for the respondent-State further submitted that since the petitioner was negligent in his duties and displayed irresponsible conduct by consuming alcohol in a public place, which is a statutory offence under the Bihar Prohibition and Excise (Amendment) Act, 2018, the respondent authorities have rightly terminated his services for his unsatisfactory behaviour and, therefore, no interference is warranted by this Court in exercise of its extraordinary jurisdiction

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under Article 226 of the Constitution of India.

13. Upon hearing learned Advocates for the contesting parties, it appears that the petitioner was appointed as an Executive Assistant in the District Mid Day Meal Scheme Office on 30.10.2012 by the District Magistrate, Buxar on contract basis. The appointment order which is annexed as Annexure-1 in the writ petition is extracted hereunder:-

Annexure- 1 (20)

समाहरणालय, बक्सर
(स्थापना शाखा)

आदेश संख्या 169 /2012-13

जिला मध्यान् भोजन योजना पदाधिकारी, बक्सर के पत्रांक 308/म०भो०यो०, दिनांक 01-10-2012 द्वारा निदेशक, मध्यान् भोजन योजना, बिहार, पटना के पत्रांक 1550, दिनांक 05-10-2012 की प्रति संलग्न करते हुए बिहार प्रशासनिक सुधार मिशन सोसाइटी (सामान्य प्रशासन विभाग) बिहार, पटना के अन्तर्गत कार्यपालक सहायक के लिए जिले में निर्मित पैनल के प्रतिक्षा सूची से एक (Executive Assistant) कार्यपालक सहायक के पद पर जिला मध्यान् भोजन योजना कार्यालय, बक्सर में नियोजन करने का अनुरोध किये है।

अतः जिला मध्यान् भोजन योजना पदाधिकारी, बक्सर द्वारा किये गये अनुरोध पर सम्यक् विचारोपरांत Executive Assistant (कार्यपालक सहायक) के पैनल प्रतिक्षा सूची से आरक्षण कोटिवार एक कार्यपालक सहायक का नियोजन संविदा के आधार पर निम्न शर्तो के साथ किया जाता है :-

क्रमांक	अभ्यर्थी का नाम	नियोजित आरक्षण बिन्दु	आवंटित कार्यालय
(1)	(2)	(3)	(3)
1.	श्री राजेश कुमार प्रसाद, पिता–श्री किशुन साह, ग्राम+पो०–देवकुली, थाना–ब्रह्मपुर, जिला–बक्सर, मो० 9939466012	पिछड़ा वर्ग	जिला मध्यान् भोजन योजना कार्यालय, बक्सर

शर्त्ते :–

1- कार्य संतोषप्रद नहीं पाये जाने पर बिना सूचना के संविदा समाप्त कर दी जायेगी।
2- नियोजित अभ्यर्थियों को प्रतिमाह 7000/- (सात हजार रूपये) देय होगा।
3- नियोजित अभ्यर्थियों को कम्प्यूटर सामग्री हेतु कोई अलग से मानदेय देय नहीं होगा।
4- नियोजित अभ्यर्थियों को अपने साथ निम्नांकित कम्प्यूटर सामग्री लाना आवश्यक होगा।
(क) एक डेस्कटॉप / लैपटॉप
(ख) एक प्रिंटर (ब्लैक एण्ड व्हाईट)।
(ग) एक यू०पी०एस०।
(घ) इन्टरनेट कनेक्शन।
5- नियोजित कार्यपालक सहायकों (Executive Assistant) के मानदेय का भुगतान जिला मध्यान् भोजन योजना कार्यालय, बक्सर द्वारा किया जाएगा।
6- नियोजित अभ्यर्थियों को आवंटित किये गये परियोजना में कार्य करना होगा।

नियोजित अभ्यर्थी यदि पत्र प्राप्ति के एक सप्ताह के अंदर अपना योगदान नहीं देते है तो उनका संविदा समाप्त करते हुए प्रतीक्षा सूची के अन्य अभ्यर्थी का नियोजन किया जायेगा।

ह0/-
(विनोद सिंह गुंजियाल, भा०प्र०से०)
जिला पदाधिकारी,
बक्सर

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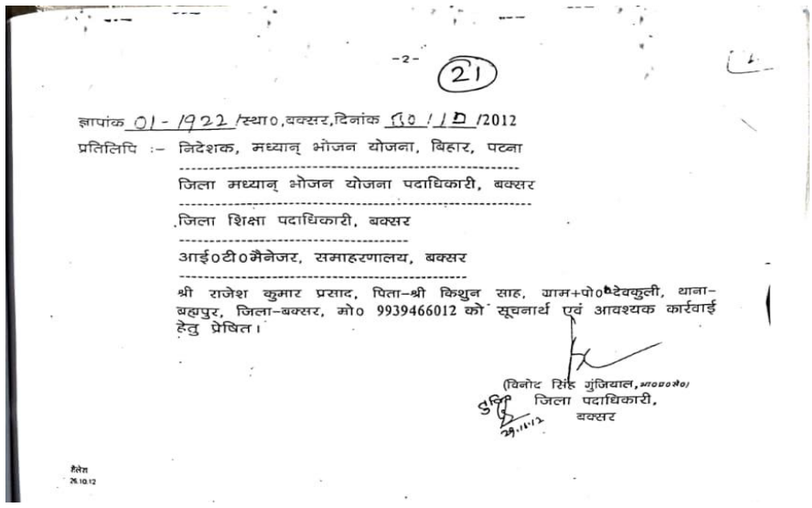

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(21)

ज्ञापांक 01-1922 /स्था०,बक्सर,दिनांक 30/10/2012

प्रतिलिपि :- निदेशक, मध्यान् भोजन योजना, बिहार, पटना

जिला मध्यान् भोजन योजना पदाधिकारी, बक्सर

जिला शिक्षा पदाधिकारी, बक्सर

आई०टी०मैनेजर, सम्माहरणालय, बक्सर

श्री राजेश कुमार प्रसाद, पिता–श्री किशुन साह, ग्राम+पो०देवकुली, थाना–बक्सपुर, जिला–बक्सर, मो० 9939466012 को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

(विनोद सिंह गुंजियाल, I.A.S.)
जिला पदाधिकारी,
बक्सर

29.10.12

रीडर
26.10.12

14. On perusal of the appointment order of the petitioner, it appears that though the petitioner was appointed on contract basis as an Executive Assistant with various conditions stipulated therein but there is no mention of the period/tenure of contractual appointment of the petitioner as an Executive Assistant.

15. Pursuant thereto, it appears that the petitioner joined on 31.10.2012 as an Executive Assistant in the District Mid Day Meal Scheme Officer, Buxar.

16. On 30.06.2019 an FIR was registered at Mufassil Police Station of Buxar district under Section 37(c) of the Bihar Prohibition and Excise (Amendment) Act, 2018 against the petitioner and others for allegedly consuming illicit liquor in the vehicle, featuring photograph in the Dainik Bhaskar newspaper dated 30.06.2019 of the Buxar edition.

17. The District Programme Officer, Mid Day Meal

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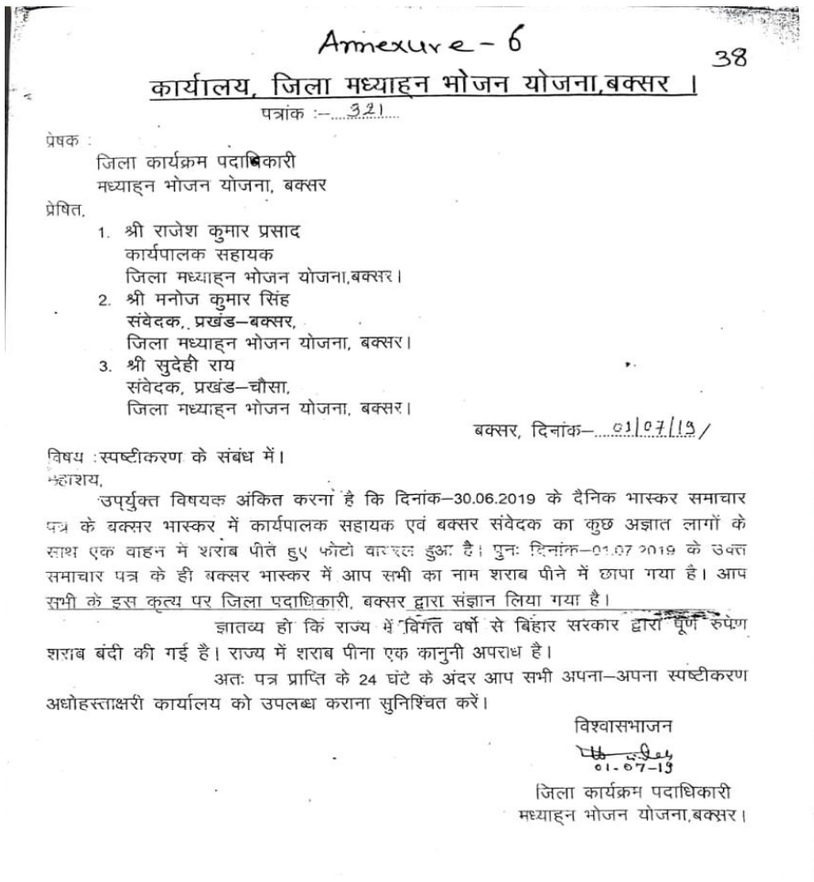
Scheme, Buxar vide letter No. 321 (Annexure-6) had issued a letter to the petitioner along with two others seeking clarification regarding featuring of the photograph in the Buxar edition of the Dainik Bhaskar newspaper dated 30.06.2019, of the petitioner along with others consuming alcohol.

18. A letter dated 321 dated 01.07.2019, issued by the District Programme Officer, Mid Day Meal Scheme, Buxar is referred as hereinbelow:



Annexure-6 38

कार्यालय, जिला मध्याह्न भोजन योजना,बक्सर ।

पत्रांक :– 321

प्रेषक :
जिला कार्यक्रम पदाधिकारी
मध्याह्न भोजन योजना, बक्सर

प्रेषित,
1. श्री राजेश कुमार प्रसाद
कार्यपालक सहायक
जिला मध्याह्न भोजन योजना,बक्सर।
2. श्री मनोज कुमार सिंह
संवेदक, प्रखंड–बक्सर,
जिला मध्याह्न भोजन योजना, बक्सर।
3. श्री सुदेही राय
संवेदक, प्रखंड–चौसा,
जिला मध्याह्न भोजन योजना, बक्सर।

बक्सर, दिनांक– 01/07/19

विषय :स्पष्टीकरण के संबंध में।

महाशय,

उपर्युक्त विषयक अंकित करना है कि दिनांक–30.06.2019 के दैनिक भास्कर समाचार पत्र के बक्सर भास्कर में कार्यपालक सहायक एवं बक्सर संवेदक का कुछ अज्ञात लागों के साथ एक वाहन में शराब पीते हुए फोटो प्रकाशित हुआ है। पुनः दिनांक–01.07.2019 के उक्त समाचार पत्र के ही बक्सर भास्कर में आप सभी का नाम शराब पीने में छापा गया है। आप सभी के इस कृत्य पर जिला पदाधिकारी, बक्सर द्वारा संज्ञान लिया गया है।

ज्ञातव्य हो कि राज्य में विगत वर्षो से बिहार सरकार द्वारा पूर्ण रूपेण शराब बंदी की गई है। राज्य में शराब पीना एक कानुनी अपराध है।

अतः पत्र प्राप्ति के 24 घंटे के अंदर आप सभी अपना–अपना स्पष्टीकरण अधोहस्ताक्षरी कार्यालय को उपलब्ध कराना सुनिश्चित करें।

विश्वासभाजन
01-07-19
जिला कार्यक्रम पदाधिकारी
मध्याह्न भोजन योजना,बक्सर।

19. The aforenoted letter dated 01.07.2019 issued by the District Programme Officer, Mid Day Meal Scheme, Buxar is a letter asking the petitioner along with two others to clarify within 24 hours of the receipt of the letter regarding the photograph featured in the

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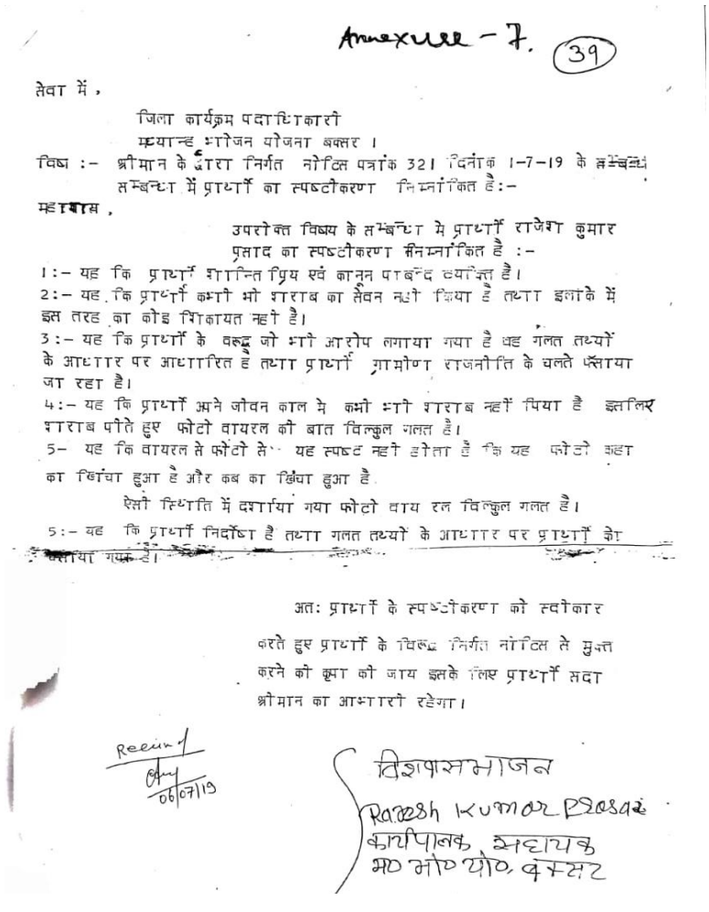
Dainik Bhaskar newspaper dated 30.06.2019 of the petitioner and others consuming alcohol.

20. It further states that the name of the petitioner was again published in the same newspaper on 01.07.2019 alleging consumption of alcohol by the petitioner.

21. The consumption of alcohol being prohibited in the State of Bihar and the same being treated as an offence, the letter states that the District Magistrate, Buxar has taken cognizance of it and hence sought the clarification by the petitioner.

22. The petitioner submitted his clarification vide annexure-7 which is as under:-



Annexure - 7. (39)

सेवा में,

जिला कार्यक्रम पदाधिकारी
मध्यान्ह भोजन योजना बक्सर ।

विषय :- श्रीमान के द्वारा निर्गत नोटिस पत्रांक 321 दिनांक 1-7-19 के संबंध में सम्बन्ध में प्रार्थी का स्पष्टीकरण निम्नांकित है:-

महोदय,

उपरोक्त विषय के सम्बन्ध मे प्रार्थी राजेश कुमार प्रसाद का स्पष्टीकरण निम्नांकित है :-

1:- यह कि प्रार्थी शान्ति प्रिय एवं कानून पाबन्द व्यक्ति है।

2:- यह कि प्रार्थी कभी भी शराब का सेवन नहीं किया है तथा इलाके में इस तरह का कोइ शिकायत नहीं है।

3:- यह कि प्रार्थी के विरुद्ध जो भी आरोप लगाया गया है वह गलत तथ्यों के आधार पर आधारित है तथा प्रार्थी ग्रामीण राजनीति के चलते फँसाया जा रहा है।

4:- यह कि प्रार्थी अपने जीवन काल मे कभी भी शराब नहीं पिया है इसलिए शराब पीते हुए फोटो वायरल की बात बिल्कुल गलत है।

5- यह कि वायरल से फोटो से यह स्पष्ट नहीं होता है कि यह फोटो कहा का खिंचा हुआ है और कब का खिंचा हुआ है

ऐसी स्थिति में दर्शाया गया फोटो वायरल बिल्कुल गलत है।

6:- यह कि प्रार्थी निर्दोष है तथा गलत तथ्यों के आधार पर प्रार्थी को फँसाया गया है।

अतः प्रार्थी के स्पष्टीकरण को स्वीकार करते हुए प्रार्थी के विरुद्ध निर्गत नोटिस से मुक्त करने की कृपा की जाय इसके लिए प्रार्थी सदा श्रीमान का आभारी रहेगा।

Received
06/7/19

विश्वासभाजन
Rajesh Kumar Prasad
कार्यपालक सहायक
मध्यान्ह भोजन, बक्सर

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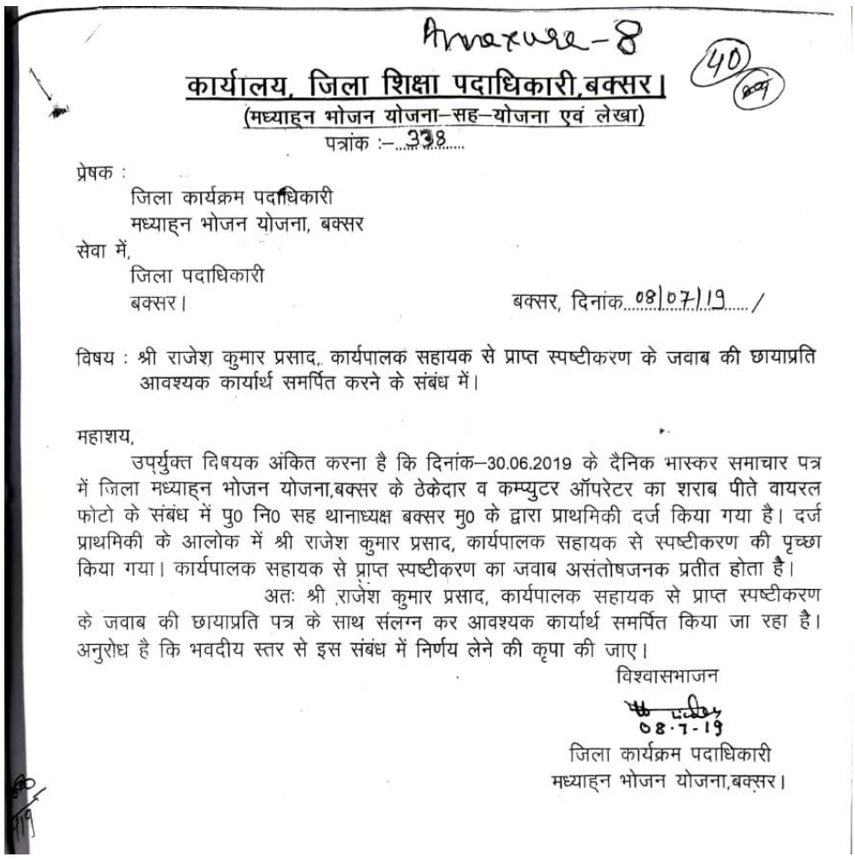
23. By the aforenoted reply, it appears that the petitioner denied the consumption of alcohol, as alleged. The petitioner also stated that he has never consumed alcohol in his life and the viral news and the photograph published in the newspaper showing him as consuming alcohol is absolutely wrong and the same has been published to exploit the petitioner due to the prevailing rural politics.

24. On receipt of the reply of the petitioner, the District Programme Officer, Mid Day Meal Scheme, Buxar vide his letter dated 338 dated 08.07.2019 had forwarded reply of the petitioner to the District Magistrate, Buxar (Annexure-8).



Annexure-8

(40)

कार्यालय, जिला शिक्षा पदाधिकारी,बक्सर।

(मध्याह्न भोजन योजना–सह–योजना एवं लेखा)

पत्रांक :– 338

प्रेषक :

जिला कार्यक्रम पदाधिकारी
मध्याह्न भोजन योजना, बक्सर

सेवा में,

जिला पदाधिकारी
बक्सर।

बक्सर, दिनांक 08/07/19

विषय : श्री राजेश कुमार प्रसाद,, कार्यपालक सहायक से प्राप्त स्पष्टीकरण के जवाब की छायाप्रति आवश्यक कार्यार्थ समर्पित करने के संबंध में।

महाशय,

उपर्युक्त विषयक अंकित करना है कि दिनांक–30.06.2019 के दैनिक भास्कर समाचार पत्र में जिला मध्याह्न भोजन योजना,बक्सर के ठेकेदार व कम्प्युटर ऑपरेटर का शराब पीते वायरल फोटो के संबंध में पु0 नि0 सह थानाध्यक्ष बक्सर मु0 के द्वारा प्राथमिकी दर्ज किया गया है। दर्ज प्राथमिकी के आलोक में श्री राजेश कुमार प्रसाद, कार्यपालक सहायक से स्पष्टीकरण की पृच्छा किया गया। कार्यपालक सहायक से प्राप्त स्पष्टीकरण का जवाब असंतोषजनक प्रतीत होता है।

अतः श्री राजेश कुमार प्रसाद, कार्यपालक सहायक से प्राप्त स्पष्टीकरण के जवाब की छायाप्रति पत्र के साथ संलग्न कर आवश्यक कार्यार्थ समर्पित किया जा रहा है। अनुरोध है कि भवदीय स्तर से इस संबंध में निर्णय लेने की कृपा की जाए।

विश्वासभाजन

08.7.19

जिला कार्यक्रम पदाधिकारी
मध्याह्न भोजन योजना,बक्सर।

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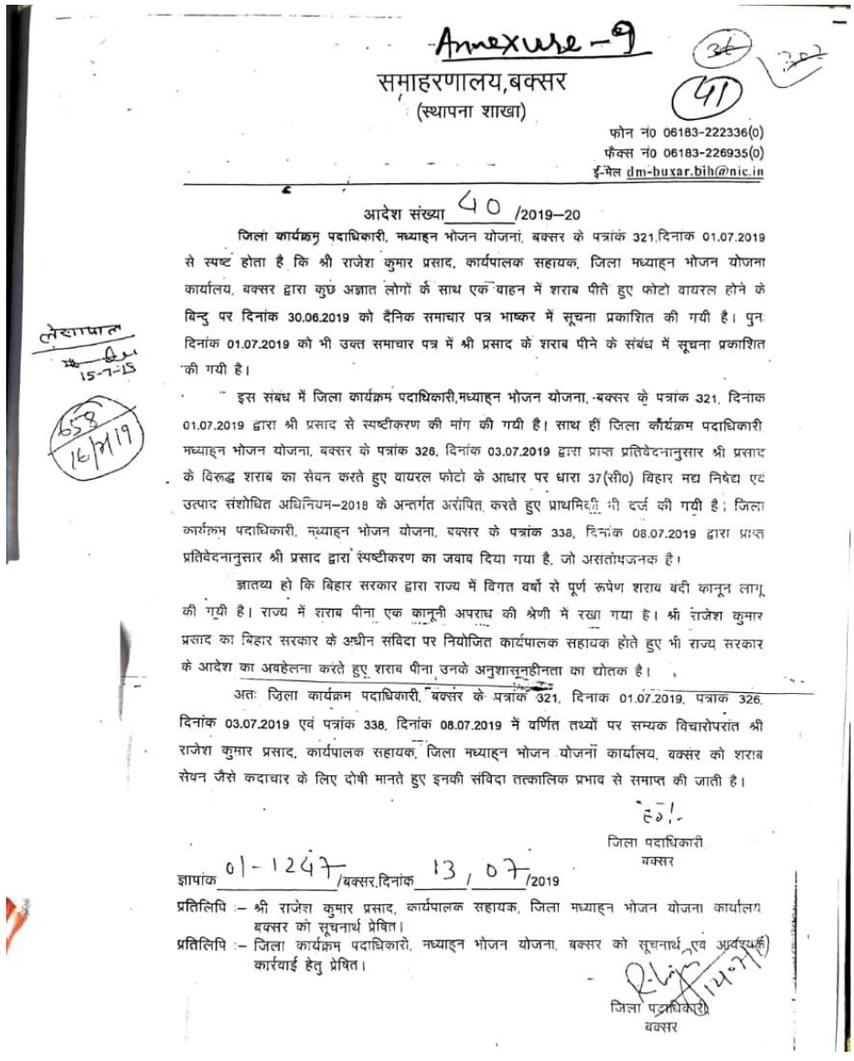
25. The District Magistrate, Buxar, thereafter, passed the impugned order dated 13.07.2019 (Annexure-9), whereby the petitioner's service was terminated with immediate effect by holding him guilty of misconduct like consumption of alcohol. The impugned order dated 13.07.2019 vide office order No. 40/2019-20 is extracted hereinbelow:-



Annexure-9

समाहरणालय,बक्सर
(स्थापना शाखा)

फोन नं0 06183-222336(0)
फैक्स नं0 06183-226935(0)
ई-मेल dm-buxar.bih@nic.in

आदेश संख्या 40 /2019–20

जिला कार्यक्रम पदाधिकारी, मध्याह्न भोजन योजना, बक्सर के पत्रांक 321 दिनांक 01.07.2019 से स्पष्ट होता है कि श्री राजेश कुमार प्रसाद, कार्यपालक सहायक, जिला मध्याह्न भोजन योजना कार्यालय, बक्सर द्वारा कुछ अज्ञात लोगों के साथ एक वाहन में शराब पीते हुए फोटो वायरल होने के बिन्दु पर दिनांक 30.06.2019 को दैनिक समाचार पत्र भाष्कर में सूचना प्रकाशित की गयी है। पुनः दिनांक 01.07.2019 को भी उक्त समाचार पत्र में श्री प्रसाद के शराब पीने के संबंध में सूचना प्रकाशित की गयी है।

इस संबंध में जिला कार्यक्रम पदाधिकारी,मध्याह्न भोजन योजना, बक्सर के पत्रांक 321, दिनांक 01.07.2019 द्वारा श्री प्रसाद से स्पष्टीकरण की मांग की गयी है। साथ ही जिला कार्यक्रम पदाधिकारी मध्याह्न भोजन योजना, बक्सर के पत्रांक 326, दिनांक 03.07.2019 द्वारा प्राप्त प्रतिवेदनानुसार श्री प्रसाद के विरूद्ध शराब का सेवन करते हुए वायरल फोटो के आधार पर धारा 37(सी0) बिहार मद्य निषेध एवं उत्पाद संशोधित अधिनियम–2018 के अन्तर्गत अरोपित करते हुए प्राथमिकी दर्ज की गयी है। जिला कार्यक्रम पदाधिकारी, मध्याह्न भोजन योजना, बक्सर के पत्रांक 338, दिनांक 08.07.2019 द्वारा प्राप्त प्रतिवेदनानुसार श्री प्रसाद द्वारा स्पष्टीकरण का जवाब दिया गया है, जो असंतोषजनक है।

ज्ञातव्य हो कि बिहार सरकार द्वारा राज्य में विगत वर्षो से पूर्ण रूपेण शराब बंदी कानून लागू की गयी है। राज्य में शराब पीना एक कानूनी अपराध की श्रेणी में रखा गया है। श्री राजेश कुमार प्रसाद का बिहार सरकार के अधीन संविदा पर नियोजित कार्यपालक सहायक होते हुए भी राज्य सरकार के आदेश का अवहेलना करते हुए शराब पीना उनके अनुशासनहीनता का द्योतक है।

अतः जिला कार्यक्रम पदाधिकारी, बक्सर के पत्रांक 321, दिनांक 01.07.2019, पत्रांक 326, दिनांक 03.07.2019 एवं पत्रांक 338, दिनांक 08.07.2019 में वर्णित तथ्यों पर सम्यक विचारोपरांत श्री राजेश कुमार प्रसाद, कार्यपालक सहायक, जिला मध्याह्न भोजन योजना कार्यालय, बक्सर को शराब सेवन जैसे कदाचार के लिए दोषी मानते हुए इनकी संविदा तत्कालिक प्रभाव से समाप्त की जाती है।

जिला पदाधिकारी
बक्सर

ज्ञापांक 01-1247 /बक्सर,दिनांक 13/07/2019

प्रतिलिपि :– श्री राजेश कुमार प्रसाद, कार्यपालक सहायक, जिला मध्याह्न भोजन योजना कार्यालय, बक्सर को सूचनार्थ प्रेषित।

प्रतिलिपि :– जिला कार्यक्रम पदाधिकारी, मध्याह्न भोजन योजना, बक्सर को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

जिला पदाधिकारी
बक्सर

26. The impugned order issued by the District Magistrate, Buxar dated 13.07.2019 does not indicate that there

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was any departmental enquiry conducted against the petitioner. The impugned order dated 13.07.2019 shows that the same has been issued upon consideration of letter No. 321 dated 01.07.2019, letter No. 326 dated 03.07.2019 and letter No. 338 dated 08.07.2019. No enquiry is shown to have been conducted before the impugned order is issued. The aforenoted letter No. 321 dated 01.07.2019 is a letter of the District Programme Officer, Mid-Day Meal Scheme, Buxar asking the petitioner along with two others to clarify within 20 hours of the receipt of the letter regarding the photograph that appeared in the Dainik Bhaskar newspaper on 30.06.2019 featuring a photograph of the petitioner as consuming alcohol. Letter No. 326 dated 03.07.2019 is not on record. Letter No. 338 dated 08.07.2019 is a letter of the District Programme Officer, Buxar forwarding the reply submitted by the petitioner to the show cause notice issued to him, to the District Magistrate, Buxar for taking necessary action in the matter. The impugned order of termination has been passed thereafter on the basis of aforenoted two letters. It, thus, is evident from the impugned order of termination itself that no enquiry was conducted against the petitioner and the petitioner’s service has been terminated only on the basis of aforenoted two letters dated 01.07.2019 and 08.07.2019,

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respectively.

27. Since the petitioner was a contractual employee, no specific service rules regulating the disciplinary proceeding against him appears to be in vogue. What, therefore, arises for determination by this Court is whether, in the absence of any specific service rules prescribing the enquiry to be conducted against the petitioner (a contractual employee), a formal enquiry should have been held before the impugned termination order was issued?

28. In that regard two of the decisions rendered by the Hon'ble Supreme Court and cited by learned counsel for the petitioner would throw light on that.

29. In the case of **Hari Ram Maurya Versus Union of India and Others** reported in **(2006) 9 SCC 167**, in paragraph 3 it has been held as under :

> "3. From the order of termination Annexure P-7, it appears that the same refers to the show-cause notice dated 20-8-2002 which is to be found at Annexure P-5. It is stated therein that the appellant demanded kickback with a view to help the complainant to get a favourable order in the pension matter. That being so, there was a clear charge of bribery levelled against the appellant. No doubt, the appellant was a temporary employee, but if he is sought

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> to be removed on the ground that he was guilty of the charge of bribery, it becomes necessary for the respondent Union of India to hold an inquiry and thereafter to act in accordance with law. In this case, admittedly, no inquiry was conducted, and that is obvious even from Annexure P-7, the letter described as disengagement of casual labour. We, therefore, allow this appeal and set aside the order of the High Court as also the order of termination Annexure P-7 dated 30-09-2002. This, however, will not prevent the respondents from taking action in accordance with law."

30. In the case of **Hari Ram Maurya** (supra), where the appellant, who was a temporary employee, was terminated on a charge of bribery without holding an inquiry, it has been held that if the employee is sought to be removed on the ground that he was guilty of the charge of bribery, it becomes necessary to hold an inquiry and thereafter to act in accordance with law, even if the employee was a "temporary employee".

31. In the case of **O.K. Bhardwaj Versus Union of India and Others** reported in **(2001) 9 SCC 180**, it has been held in paragraph Nos. 2 and 3 as under :

> "2. The High Court has recorded its opinion on

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two questions: (i) that the punishment imposing stoppage of three increments with cumulative effect is not a major penalty but a minor penalty; (ii) in the case of minor penalties, "it is not necessary to give opportunity to the employee to give explanation and it is also not necessary to hear him before awarding the penalty": a detailed departmental enquiry is also not contemplating in a case in which minor penalty is to be awarded.

3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."

32. In the aforenoted case of O.K. Bhardwaj (supra), it has been held that even in the case of a minor penalty, an opportunity has to be given to the delinquent employee to have

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his say or to file his explanation with respect to the charges against him and if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for, which is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.

33. From the aforenoted two decisions of the Hon'ble Supreme Court, it appears to be the law that when an employee, even if such an employee is temporary one, is sought to be terminated on a charge of bribery - which is punitive - it becomes necessary to hold an enquiry and thereafter to act in accordance with law. Even in the case of minor penalty an opportunity has to be given to the delinquent employee to have his say in the matter and if the charges are factual and are denied by the delinquent employee, an enquiry should also be held. That is for the reason that adherence to the principle of natural justice cannot be dispensed with in such circumstances.

34. In view of the legal position and the finding recorded hereinabove, the impugned order dated 13.07.2019, terminating the petitioner's contractual service from the post of Executive Assistant, Mid-Day Meal Scheme Office, Buxar, without holding an enquiry with regard to the allegations made

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against the petitioner, cannot be sustained in law.

35. Accordingly, the impugned Office Order No. 40/2019-20, dated 13.07.2019 (Annexure-9), issued by the District Magistrate, Buxar, terminating the petitioner's contractual service from the post of Executive Assistant, Mid-Day Meal Scheme Officer, Buxar and the show cause notice dated 01.07.2019 (Annexure –6) issued to the petitioner by the District Programme Office, Mid-Day Meal Scheme, Buxar are hereby set aside and quashed.

36. The respondents are directed to re-instate the petitioner in service forthwith with all the consequential benefits.

37. The respondents, however, shall be at liberty to proceed against the petitioner by strictly following the due process of law, if so advised.

38. The writ petition is allowed in above terms and the same stands disposed of.

(Nani Tagia, J)

Narendra/-

AFR/NAFR	NAFR
CAV DATE	22.04.2026
Uploading Date	07.08.2026
Transmission Date	N/A

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