IN THE HIGH COURT OF JUDICATURE AT PATNA

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, Ashiananagar, Patna, Bihar.

... ... Petitioner/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 Petitioner/s	:	Mr. Aditya Prakash Sahay, Advocate
		Mr. Debkinandan Maiti, Advocate
		Ms. Piyush Tiwari, Advocate
		Ms. Ankita Kumari, Advocate
For the State	:	Mr. Pankaj Kumar (SC12)
For the BMSICL	:	Mr. Lalit Kishore, Sr. Advocate
		Mr. Vikash Kumar, Advocate
		Mr. Ayush Kumar, Advocate
		Mr. Kanishka Shankar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

CAV JUDGMENT

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Date : 06-09-2024

1. The Petitioner has filed the instant petition, praying for the following reliefs:-

> *(i) For issuance of order(s), direction(s), writ(s) particularly in the nature of writ of Certiorari for quashing of Impugned Letter bearing no. BMSIC/05099/02-2017/2257 dated 30.06.2022 issued by Managing Director, Bihar Medical Services & Infrastructure Corporation Limited (BMSICL), whereby and whereunder the petitioner has been restrained to perform administrative as well as financial duties of the corporation for the mere reason that one FIR vide Patna Sadar State Vigilance unit case no. 09/22 dated 27.06.2022 was registered against the petitioner for the offences u/s 13(1)b, r/w 13(2), r/w 12 of PC Act, 1988 and 120 (B) of IPC and it has been further directed to submit his reply within three days as to why legal action as per due procedure of law be not initiated against the petitioner.*
>
> *(ii) For issuance of order(s), direction(s), writ(s) particularly in the nature of writ of mandamus for a direction upon the respondent authorities to allow the petitioner herein to continue with his*

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services as a General Manager (Projects & Design) in Bihar Medical Services & Infrastructure Limited (BMSICL) and/or in alternative for a direction upon the respondent authorities herein not to take any coercive steps in relation to the Impugned Letter against the petitioner until final outcome of this petition.

(iii) For issuance of any other relief(s) for which the petitioner is entitled for.

2. Shorn of unnecessary details, pursuant to an advertisement, the Respondent Corporation issued an offer letter to the Petitioner to join the post of Project Engineer at a gross monthly salary of Rs. 60,000/- on 4th July, 2012. The Petitioner joined his service as Project Manager of the Respondent Corporation. Subsequently, on 12th June, 2014, the Petitioner was given offer letter for the post of General Manager (Project and Design) on contractual basis for a period of one year at a consolidated remuneration of Rs. 80,000/- per month. In pursuance of such offer, an agreement was executed by and between the Petitioner and the Corporation for a period of 12 months to serve the Corporation as General Manager (Project and Design). After the expiry of initial 12 months, the Petitioner continued his

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job in the same post, though no agreement was executed. Subsequently, the Petitioner continued with his job successfully to the satisfaction of the Corporation and, therefore, he was granted certificate of excellence in the year 2013, 2016 and 2017. That on 18th September 2018, the Government of Bihar vide notification issued by the General Administration Department acknowledged and approved the regularization of employees on contractual basis until an employee attains the age of superannuation. The Corporation in its 42nd Board meeting, dated 9th September, 2021 adopted the said gazette notification, dated 18th of September, 2018.

3. While the Petitioner was rendering his service, allegation of acquiring disproportionate asset to his known source of income, illicitly and illegally to the extent of Rs. 1,76,72,907/- was made by the Vigilance Investigation Bureau and in the light of the said allegation an FIR, *vide* Patna Sadar Vigilance Unit Case No. 09 of 2022, dated 27th of June, 2022, was registered against the Petitioner for the offences punishable under Section 13(1)b, read with Sections 13(2) and 12 of the Prevention of Corruption Act, 1988 and Section 120(B) of the Indian Penal Code.

4. It is claimed also by the Petitioner that upon

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search conducted in the house, office and bank locker, respectively, in course of investigation, the investigating agency found in all Rs. 4,60,000/- along with some other documents. *Prima facie*, the allegation of acquiring assets, disproportionate to his known source of income, was not even proved, but on the recommendation of the Officer on Special Duty, Health Department, Government of Bihar, the Petitioner was restrained to perform administrative as well as financial duties of the Corporation and was directed to submit his reply showing cause within three days as to why departmental action shall not be taken against him.

5. It is alleged by the Petitioner that the letter, dated 30th of June, 2022 was illegal, unjust and unfair due to the reason that the Petitioner was not given adequate opportunity to place his case before the Respondent Authority and thereby the Respondent violated the basic principles of natural justice. It is further alleged that the order of termination, dated 11th of July, 2022 was not issued after holding initial enquiry and departmental proceeding. It is contended on behalf of the petitioner that the order of termination passed against the petitioner was not a simpliciter termination, rather it was stigmatic termination as

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it was passed only because an FIR has been lodged against the Petitioner without holding any enquiry and departmental proceeding as envisaged in Bihar Government Servants (Classification, Control and Appeal) Rules, 2005.

6. The Bihar Medical Services and Infrastructure Corporation Ltd. and the Managing Director of the Corporation has been contesting the instant writ petition by filing counter affidavit, denying all the allegations made out by the Petitioner in his petition. It is specifically pleaded by the contesting Respondents that Petitioner's service was terminated in the light of the provisions contained in Clause 10 (c) (ii) and (iii) of the Professional Service Agreement made between the Corporation and the Petitioner. It is also pleaded by the Respondents that on 29th June, 2022, a raid was conducted by Special Vigilance Unit at the residence, office and other places in order to work out a secret information that the Petitioner had acquired disproportionate asset to his known source of income. Simultaneously, Officer on Special Duty, Health Department, Government of Bihar by his letter, dated 30th June, 2022, informed the Managing Director of the Corporation that he received a letter from the Superintendent of Police, Special Vigilance Unit, Patna

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informing therein about registration of FIR against the Petitioner for the offences punishable under Section 13 (1) b, read with Sections 13 (2) and 12 of the Prevention of Corruption Act, 1988 and Section 120 (B) of the Indian Penal Code, the Managing Director of the Corporation was informed to take immediate departmental action against the Petitioner. The Managing Director by a letter, dated 30th of June, 2022, directed the Petitioner to show cause as to why necessary departmental action shall not be taken against him within three days from the date of communication of the said letter. The Petitioner submitted his reply to the show-cause on 5th of July, 2022. His reply was duly considered and in the light of the relevant provisions of the service agreement of the Petitioner, he was terminated from service with effect from 11th July, 2022. The contesting Respondents also submits that huge quantity of valuable ornaments, life insurance, cash money and other valuable documents were seized from the house, office, bank and other places, having access of the Petitioner and a case under the Prevention of Money Laundering Act has also been registered against the Petitioner. Therefore, for the sake of the interest of the Corporation, Petitioner was not allowed to perform his duties

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any more and he was terminated from service with effect from 11th July 2022. The Respondent also contends that since the Petitioner was a contractual employee and as per the terms of agreement, he was liable to be terminated at any point of time without any notice, that the order of termination was valid, legal, and there is no reason to review the said order under constitutional writ jurisdiction.

7. By filing a rejoinder against the counter affidavit, it is contended by the Petitioner that the service agreement is not applicable in the instant case because of the gazette notification, dated 18th of September 2018, issued by the Government of Bihar, as the service of the Petitioner was regularized until he attains the age of superannuation. The said resolution was adopted by the Board of Directors of the Corporation in its 42nd meeting dated 9th September, 2021. So, the Petitioner ought not to have been terminated without any disciplinary proceeding. Moreover, clause 10 (2) of the agreement for service imposes an obligation upon the Managing Director to terminate the service of an employee after applying judicial mind. It is also submitted by the Petitioner that the charge under the Prevention of Corruption Act was not proved against the Petitioner, and therefore, the

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order of termination is premature and stigmatic.

8. The Respondent Nos. 3 and 4 also filed a Counter Affidavit on 6th of August, 2024, narrating the same allegation against the Petitioner as contented by the Respondent Nos. 5 and 6.

9. This is all about the pleadings of the parties.

10. The learned Advocate on behalf of the Petitioner confined his argument on the question as to whether the order of termination dated 11 July, 2022 is simpliciter termination or *ex facie* stigmatic. It is submitted by the learned counsel appearing on behalf of the Petitioner that the petitioner was not terminated from service only on the ground of any departmental misconduct, but he was terminated from service as a result of institution of a case under the Prevention of Corruption Act. The order of termination is obviously stigmatic because the Petitioner was terminated for amassing huge amount of money, disproportionate to his known source of income.

11. In support of his contention, he refers to a decision of the Hon'ble Supreme Court in the case of ***Dr. Vijayakumaran CPV v. Central University of Kerala & Ors.***, reported in ***(2020) 12 SCC 426***. In paragraph 8 of the

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said judgement, it was observed by the Hon'ble Supreme Court that the material which amounts to stigma need not be contained in the order of termination, but might be contained in any document referred to in the termination order. Such reference may inevitably affect the future prospects of the incumbent, and if so, the order must be construed as stigmatic on the face of the record. The Hon'ble Supreme Court in the above-mentioned report, relied on the decision of the Hon'ble Court in ***Indra Pal Gupta v. Managing Committee, Model Inter College, Thora***, reported in ***(1984) 3 SCC 384*** and ***Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors.***, reported in ***(1999) 3 SCC 60***.

12. The learned Advocate for the Petitioner also refers to another decision of the Hon'ble Apex Court in ***Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences & Anr.***, reported in ***(2002) 1 SCC 520***. In order to apprise the point that what should be the stigmatic order of termination, the learned Counsel takes me to paragraph 21 of the aforesaid judgement, which runs as follows-

> *"21. One of the judicially evolved tests to determine whether in substance an*

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> *order of termination is punitive is to see whether prior to the termination there was (a) a full scale formal enquiry (b) into allegations involving moral turpitude or misconduct, which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely, if any one of the three factors is missing, the termination has been upheld."*

13. The learned Advocate on behalf of the Petitioner next takes me to a decision of the Gujarat High Court in ***Minakshiben Laxmanbhai Paraliya v. State of Gujarat***, decided on 8th of February, 2022 (***C/SCA/22681/2019***).

14. Referring to this decision, it is pointed out by the learned Advocate for the Petitioner that in the instant case also, the Petitioner was a contractual employee and she was terminated in view of an FIR being filed against her. The services of the Petitioner were put to an end in accordance with the terms of the contract. It was contented on behalf of the Petitioner that the order of termination was stigmatic and, therefore, ought to be set aside. Coordinate Bench of Gujarat High Court held that the order of

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termination of the Petitioner was stigmatic and the authority has really concluded that the Petitioner was directly involved in financial irregularities and committed defalcation and corrupt practice. This finding was not made after holding a departmental enquiry.

15. On the other hand, a straight way finding was reached and the termination order passed only on the ground that an FIR was registered.

16. Under such circumstances, the Gujarat High Court quashed the impugned order of termination and the petitioner was directed to be reinstated in service.

17. Next, he refers to a decision of the Court in ***Sanjeev Kumar Paswan v. State of Bihar through Principal Secretary, Human Resources, Development Department & Ors.***, reported in ***2023 SCC Online Patna 3169***. This is also a case of contractual employee suffering an order of termination. The Court relied upon the case of ***Ratnesh Kumar Choudhary v. IGIMS***, reported in ***2016 1 PLJR 135 (SC)*** wherein it is held that there are two lines of authorities. In certain cases of temporary servants and probationers, it had taken the view that if the *ex parte* enquiry or report is the motive for termination order, then the

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termination is not to be called punitive merely because the principles of natural justice have not been followed; and in the other line of decisions, the Apex Court has ruled that if the facts revealed in the enquiry are not the motive, but the foundation for the termination of services of the temporary servant or probationer, it would be punitive and principles of natural justice are bound to be followed and failure to do so would make the order legally unsound.

18. The learned Advocate appearing on behalf of the Petitioner also refers to a decision of the Hon'ble Supreme Court in ***Radhey Shyam Gupta v. U.P. State Agro industries Corporation Ltd. & Anr.***, reported in ***(1999) 2 SCC 21***, where the Hon'ble Supreme Court was pleased to trace out the historical development of simpliciter or punitive termination of service.

19. It is observed by the Hon'ble Supreme Court that the test is whether it serves as a motive or foundation of termination. For this purpose, the Court can go behind the order. If the purpose of the enquiry is not to find the truth of allegation of the misconduct but to decide whether to retain the employee against whom the cloud is raised on his conduct, such enquiry would be served as a motive for

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termination but where the enquiry is held wherein on the basis of evidence, a definite finding is reached at the back of the employee about his misconduct and such finding forms the basis of foundation of the order of termination, such order would be punitive.

20. On the same point, the learned Advocate on behalf of the Petitioner refers to the following decisions: -

(a) ***Chandra Prakash Shahi v. State of U.P***., reported in ***(2000) 5 SCC 152;***

(b) ***Bipin Kumar Singh & Anr. v. The State of Bihar through the Principal Secretary, Social Welfare Department & Ors.***, reported in ***2021 (4) PLJR 627;*** and

(c) ***Tripurari Kumar v. State of Bihar (C.W.J.C. No. 5263 of 2015)***.

21. The learned Sr. Counsel appearing on behalf of the Respondents submits that the Petitioner is a contractual employee. He used to perform his duty on the basis of a Professional Service Agreement executed on 16th of July, 2014 (Annexure-B). Clause 10 of the said termination agreement runs thus:

> *"10. Termination of Agreement*
>
> *a. The Corporation and the Second Party retain the right to terminate*

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this Agreement with 30-days written notice to the either party.

b. For first 30 days from starting of this agreement, the second party would be on probation and during this period, the agreement can be terminated by the Corporation with no minimum period of notice.

c. Further, 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 judgement of the Management 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 judgement 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.

22. Thus, Clause 10 (c) clearly states that the

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agreement may be terminated with no minimum period of notice under the following circumstances, *viz*, (ii) On the judgement of the Management Director that the activities and the behaviours 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 judgement 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.

23. In view of the said agreement, the Managing Director was entrusted to terminate the Petitioner even without offering minimum period of notice under the above circumstances. It is also contended by the learned Sr. Advocate that as the Petitioner was a contractual employee, Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 is not applicable before passing an order of termination.

24. It is also submitted by the learned Sr. Advocate for the Respondents that the Vigilance Investigation Bureau conducted investigation into the allegation of having disproportionate assets to the known source of income

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against the Petitioner. On the basis of the allegation of criminal misappropriate, the Enforcement Directorate has also filed a case against the Petitioner under the Prevention of Money Laundering Act. When the Managing Director got the said information from the Officer on Special Duty, Health Department on 30th June, 2022, he immediately directed the petitioner to submit reply to a show-cause and restrained him from performing any official duty. The Petitioner used to work as General Manager (Project and Design). He had exclusive financial power of the Corporation. The Managing Director by serving show-cause notice restrained him from performing financial duties of the Corporation. The petitioner responded to the said show-cause notice on 5th of July, 2022. The Managing Director duly consider the reply and severed the terms of the contract of service. It is also submitted by the learned Counsel for the Respondents that the impugned order of termination is not a punitive order because institution of a criminal case under the Prevention of Corruption Act against the petitioner is not the foundation of punishment of termination. The termination order was issued because the Managing Director of the Corporation found that the continuation of the

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Petitioner's service would be inappropriate against the interests of the Corporation. Thus, it is submitted by the learned Sr. Advocate on behalf of the Respondents that the above-mentioned judgements referred by the Petitioner is not applicable in the instant case.

25. Having heard the learned Advocate on behalf of the parties and on careful perusal of the entire materials on record, it would be apposite to mention at the outset that the decision of the Hon'ble Supreme Court in ***Dr. Vijayakumaran CPV*** (supra) is not applicable under the facts and circumstances of this case because in the said reported decision, the appellant was a Lecturer on probation in Central University, Kerala. A departmental enquiry was initiated against him on the ground that he harassed a girl student sexually. As a result of such allegation, the appellant was removed from service. Under such facts and circumstances, the Hon'ble Supreme Court held that the order of punishment was stigmatic as it was passed without any enquiry. As a result, the allegations against the appellant was made involving his moral turpitude and character which may adversely affect the Petitioner in future.

26. It is not disputed in the instant case that the

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petitioner had been continuing with his service on the basis of service agreement. The service agreement empowers the Managing Director to terminate the service of the petitioner on certain circumstances without even serving any notice or without holding any enquiry. Once the Petitioner has accepted the temporary appointment, purely on contractual basis, though it would be open to him to avail such remedies as are available to enforce any rights under the contract / engagement letter, which have been denied to him, however Article 311 of the Constitution of India will have no application in the present case.

27. In this regard, this Court relies upon the Constitutional Bench judgement, rendered by the Hon'ble Supreme Court in the case of ***Satish Chandra Anand v. The Union Of India***, reported in ***(1953) 1 SCC 420***.

28. As a matter of fact, the services of the employees may be terminated for misconduct, negligence, inefficiency or other disqualifications and those may be the motive or inducing factor which influences the Government to take action under the terms of contract of employment or service rules. If a right exists under the contract or the rule to terminate the services, then the motive operating on the mind

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of the employer is irrelevant and the termination is not a punishment.

29. In this regard, I may refer to the decision of ***Appar Apar Singh v. State of Punjab***, reported in ***(1970) 3 SCC 338***. What is to be looked into is not the motive but the ultimate consequences which flow from the order terminating the service. It is well settled that the temporary government servants or probationers are as much entitled to the protection of Article 311(2) of the Constitution of India as the permanent employees despite the fact that temporary government servants have no right to hold the post, and their services are liable to be terminated at any point of time by giving them a month's notice or even no notice, as in the instant case, without assigning any reason, either in terms of the contract or under relevant statutory rules, regulating the terms of the contract of such service.

30. In ***Parshotam Lal Dhingra v. Union of India***, reported in ***AIR 1958 SC 36***, it is observed by the Hon'ble Supreme Court that inefficiency, negligence or misconduct may have been the factors for inducing the government to terminate the services of a temporary employee under the terms of the contract or under the statutory service rules

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regulating the terms and conditions of service, which may have been the motive for terminating the service, but the motive by itself does not make the order punitive unless the order was founded on those factors or other disqualifications.

31. This is precisely observed also in ***Chandra Prakash Shahi v. State of U.P.***, reported in ***(2000) 5 SCC 152***.

32. Therefore, if the order of termination visits the public servants with any evil consequences or casts aspirations against his character and integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or temporary servants.

33. In the instant case, the fact that the Petitioner was implicated in connection with criminal cases under the Prevention of Corruption Act, 1988 and also under the Prevention of Money Laundering Act, 2002, was the motive or reason for terminating his service, the order of termination does not cast any aspiration against the character and integrity of the petitioner. He was also not barred from joining any other service of similar nature, which may have been passed along with the order of termination, had it been punitive.

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34. It is needless to say that the matter of terminating contract of appointment of the petitioner, in absence of any stigma accompanying the termination order, the procedure provided under Article 311(2) of the Constitution of India is not required to be followed.

35. Having regard to the facts and circumstances of the instant case and for the reasons mentioned hereinabove, this Court finds that the impugned order, dated 11th of July, 2022 does not suffer from any infirmity, casting any stigma on the petitioner and shall not come in his way in seeking any future appointment.

36. Accordingly, the instant writ petition is dismissed, on contest.

37. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	AFR
CAV DATE	12.08.2024
Uploading Date	06.09.2024
Transmission Date	N/A

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