

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17327 of 2024

Prakash Nath Mishra @ Prakash Nath Son of Late Amar Nath Mishra, resident of 49/60 Officers Flat, New Punaichak, Bailey Road, Phulwari, PS Shastri Nagar, District Patna originally resident of (paternal home) Parsadi Tol, PS Jale, District Darbhanga, and at present residing at B/5 (Old), New Punaichak, Electricity Board Colony, Rajwanshi Nagar, PS Shastri Nagar, District-Patna-800023.

... ... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Bihar, Patna.
2. The Chief Secretary to the Government of Bihar, Patna.
3. The Principal Secretary to the Government of Bihar, Department of Energy, New Secretariat, Patna.
4. The Secretary to the Government of Bihar, Department of Energy, New Secretariat, Patna.
5. The Chairman cum Managing Director Bihar State Power Holding Company Limited, Patna.
6. The Secretary, Bihar State Power Holding Company Limited, Patna.
7. The Deputy Secretary, Bihar State Power Holding Company Limited, Patna.
8. The General Manager (Human Resource/Administration) Bihar State Power Holding Company Limited, Patna.
9. The Deputy General Manager (Human Resource/Administration), Bihar State Power Holding Company Limited, Patna.
10. The Under Secretary, Bihar State Power Holding Company Limited, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Krishna Ballabha Sharma, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, Sr. Advocate
		Mr. Vinay Kirti Singh, Sr. Advocate
		Mr. Akhileshwar Singh, Advocate
		Mr. Venkatesh Kirti, Advocate
For the State	:	Mr. Raghwanand, GA 11
		Mr. Rajnish Shadilya, AC to GA 11

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 10-12-2024

Heard Mr. Krishna Ballabha Sharma, learned
counsel appearing on behalf of the petitioner; Mr. Lalit Kishore
and Mr. Vinay Kirti Singh, learned Senior Counsels, Mr.



Akhileshwar Singh and Mr. Venkatesh Kirti, learned counsels for the Bihar State Power Holding Company Limited and Mr. Raghwanand, learned GA 11 along with Rajnish Shandilya, AC to GA 11 for the State.

2. Petitioner has *inter alia* prayed for following reliefs in the paragraphs No.1 of the writ petition:-

"(I) A writ in the nature of Certiorari be issued for quashing the Notification No. 539 dated 23.09.2024, H-II/PF Advisor 1075/2022 dated 23.09.2024 i.e. Annexure - P/7 (with all consequential benefits), issued by the Under Secretary, Bihar State Power Holding Company Limited (BSPHL), said to have been issued on approval of the competent authority i.e. Chairman cum Managing Director, Bihar State Power Holding Company Limited, Patna, whereby the petitioner's Job Engagement Contract (Annexure- P/1) has been terminated with immediate effect by a three line order, without assigning any reason and without any prior notice and in blatant violation of the terms of the petitioner's job engagement contract (Annexure – P/1)."

"(II) A writ in the nature of Certiorari be issued for quashing the Office Order No. 1318 (H-IX vividh (Awash) 4002/2024/Patna dated 08.10.2024, Memo No. 1419 dated 08.10.2024 i.e. Annexure- P/8 (with all consequential benefits), issued by the Deputy General Manager (Human Resource/ Administration, Bihar State Power Holding Company Limited (CMD, BSPHL) said to have been issued on approval of the competent authority i.e. Chairman cum Managing Director, Bihar State Power Holding Company Limited, Patna, whereby the petitioners' quarter allotment order has been cancelled with immediate effect, without assigning any reason."

"(III) A writ in the nature of Certiorari be issued for quashing the Subsequent Letter No. 1074 dated 10.10.2024 (Annexure- P/9) issued by the Executive Engineer (Civil), Civil Dision No. II, Punaichak, Patna, whereby the petitioner has been directed to immediately vacate the petitioner's quarter no. B/5 (old) at New Punaichak, Patna."

"(IV) A writ in the nature of Certiorari be issued for quashing the Subsequent letter to disconnect water supply to petitioner's Quarter No. B/5 (Old) Electricity Board Colony, New Punaichak, Rajwanshi Nagar, Patna on 10.10.2024 i.c. M.O. No. 1419 dated 08.10.2024, sent to



petitioner on 14.10.2024 without assigning any reason.

(V) A writ in the nature of Mandamus or any other writ or writs, order or orders, direction or directions be issued commanding upon the respondents to not to do anything in violation of the specific terms of job engagement contract contained in Annexure- P/I

(VI) A writ in the nature of Mandamus or any other writ or writs, order or orders, direction or directions be issued commanding upon the respondents to not to do anything with prejudiced mindset for causing any kind of unnecessary harm, injury or harassment to the petitioner, with prejudiced mindset for oblique purposes and with malafide intention.

(VII) A writ in the nature of Mandamus or any other writ or writs, order or orders, direction or directions be issued commanding upon the respondents to not to issue any whimsical order for causing any kind of unnecessary harm, injury or harassment to the petitioner, for oblique purposes and with malafide intention.

(VIII) Any other relief or reliefs for which the petitioner is found to be entitled to, be also granted to the petitioner.”

Brief Facts: -

3. The brief facts of the case are that an advertisement for Job Engagement Contract Notice No. 06/2022 dated 07.10.2023 was issued by Bihar State Power Holding Company Limited, Patna (in short BSPHCL), for the post of Advisor, (Energy Accounting & Audit), B.S.P.H.C.L. The petitioner, a retired (I.P.S.) and Former D.I.G. of Police, had joined the Bihar State Power Holding Company Limited, Patna as Advisor, (Energy Accounting & Audit), B.S.P.H.C.L, pursuant to his selection and appointment letter issued to him vide letter no. 384/Patna dated 15.11.2022 in terms of the job engagement contract notice no. 06/2022 to the post after



following the process of advertisement and selection procedure established by the Board on the contract basis on specific terms and conditions duly mentioned in the appointment letter for a period of 3 (three) years, with further condition to be extended up to the age of 67 years as per requirement of the Company, and depending upon the petitioner's performance. Considering the petitioner's work performance and earlier experience in LWE activity in crime-infested Districts like Bhojpur, Sheohar, where the petitioner was posted as SDPO and as S.P. and he had to regularly appear before the Court as prosecution witness or as I.O. in respect of various vigilance cases, the then management, allotted the petitioner Qr. No. B./5 (old), New Punaichak, Electricity Board Colony, Rajvanshi nagar, Patna for the smooth and safe working in special circumstances on 10 times more rent in comparison to a regular staff of the Company where petitioner has been residing since December 2023 on temporary basis.

4. The petitioner is aggrieved by the action of the competent authority of the B.S.P.H.C.L., who issued the Notification No. 539 dated 23.09.2024 with Memo. No. 540 dated 23.09.2024 (Annexure- P/7) terminating the petitioner's contract with immediate effect. Aggrieved by the said order,



petitioner had represented on 14.10.2024. However, no action was taken on the representation of the petitioner and in the meantime, another person was appointed.

Submissions on behalf of the parties: -

5. The learned counsel appearing on behalf of the petitioner submitted that the impugned notification, the order of termination of petitioner's job engagement contract (Annexure- P/7) and subsequently issued letters (Annexure- P/8 and Annexure- P/9) are self-generated terms and conditions mentioned in job engagement contract (Annexure- P/1) which is whimsical and one sided with prejudiced mindset. He further submitted that the petitioner was never ever asked for or called for or received any letter before the aforesaid three lines notification, terminating his engagement with immediate effect. No evaluation or examination of the performance of work discharged by the petitioner has been taken and also the fact that the contract of the petitioner was renewed and after its renewal same was to expire in November 2025 and the same could have been extended till attaining the age of 67 as per the terms and conditions of the contract. Aggrieved by the arbitrary action, the petitioner submitted written representation dated 14.10.2024 through E-mail to the Chairman- cum- Managing Director



CMD, BSPHCL, against the aforesaid impugned orders of termination of petitioner's job engagement contract and subsequent letters and also a copy of representation was forwarded to the Chief Secretary, Government of Bihar and also to the Secretary, Department of Energy for taking appropriate action. He submitted that no action was taken on the part of the respondents, forcing the petitioner to file the present writ petition. The petitioner is also aggrieved by the subsequent Letter No. 1074 dated 10.10.2024 (Annexure- P/9) issued by the Executive Engineer (Civil), Civil Division No. II, Punaichak, Patna, by which the petitioner has been directed to immediately vacate his quarter no. B/5 (old) at New Punaichak, Patna, failing which the water connection would be disconnected, and without service of its copy to the petitioner, in violation of rules, on 14.10.2024, they forcibly disconnected the electricity and the water supply of the petitioner's quarter.

6. Learned counsel submitted that in paragraphs no. 81, 82, 83 and 84 of his written argument, the petitioner submitted that the order of termination can only be held to be punitive, considering the intention of the respondents contained in internal communication dated 21.11.2024 (Annexure-R/6 and R/7), Memo 540 dated 23.09.2024, as well as, the direction



contained in letter no.1074 dated 10.10.2024, by which he has been asked to vacate the quarter and as such the same are fit to be set aside and quashed.

7. *Per Contra*, the learned counsel appearing on behalf of the respondents submitted that admittedly the appointment of the petitioner on the afore-noted post was on contractual basis and he was engaged on the said post for a period of three years, with certain terms and conditions stipulated in the offer of engagement contained in letter No 384/ Patna dated 15.11.2022. The learned counsel further contended that the petitioner's contention that no one month prior notice was provided to him before the termination of his contractual appointment, a lump sum amount equivalent to one month salary of the petitioner will be provided to the petitioner in order to comply with the provisions and conditions as mentioned in the appointment letter of the petitioner.

8. He further submitted that report was submitted by the General Manager (Revenue), South Bihar Power Distribution Company Limited vide letter no. 1494 dated 21.11.2024 to the Deputy General Manager (Human Resource/Administration), Bihar State Power Holding Company Limited (BSPHCL) with respect to the work/responsibilities of



the Petitioner which are as follows:

i. No action plan related to consumer billing was provided to the Revenue Department.

ii. No action plan was provided to the Revenue Department for rectifying errors in billing data by reviewing the data.

iii. No action plan was provided for billing new consumers after reviewing their details.

iv. No action plan was provided to the Revenue Department for analyzing the daily consumption of Smart Meter consumers, non-communicating consumers and disconnected consumers, and ensuring they are billed every month.

V. No plan was provided to the Revenue Department for preventing possible theft by reviewing billing data.

vi. No action plan has been prepared and provided to the Revenue Department for inspecting the premises of temporarily disconnected consumers with large pending energy dues. Illegal consumption of energy by temporarily disconnected consumers is possible, which could result in revenue loss.

vii. No action plan was provided to the Revenue Department to increase collections by reviewing billed consumers.

viii. Additionally, no action plan was prepared for the recovery of dues and provided to the Revenue Department.

ix. Neither any work was done by them for the payment of electricity dues by government departments, nor was any action plan prepared and submitted to the Revenue Department.

Due to laches on the part of the Petitioner, continuous supervision and monitoring of the aforementioned activities are being carried out by the Revenue Department through suo-motu action, resulting in a gradual decrease in AT & C losses.

9. He next submitted that a report was submitted



by the Chief Engineer (Special Task Force), North Bihar Power Distribution Company Limited vide letter no. 638 dated 21.11.2024 to the Deputy General Manager (Human Resource/Administration), Bihar State Power Holding Company Limited (BSPHCL) with respect to the work of the petitioner which was found not satisfactory and the same was communicated in detail, which are as follows:

I. The Advisor (Energy Accounting & Auditing), Bihar State Power (Holding) Company Limited did not adequately monitor the non- registration of FIRs by the police officers, despite applications being submitted at the concerned police stations by the Junior Electrical Engineer of the Electricity Supply Branch / Assistant Electrical Engineer of the Electricity Supply Sub-Division regarding electrical theft in several cases. As a result, even now, there are many cases where, after the detection of electrical energy theft, FIRs have not been registered, despite applications being submitted at the police station by the concerned officials,

ii. No action plan was presented by the Advisor (Energy Accounting & Auditing), Bihar State Power (Holding) Company Limited in the meeting regarding STF and Energy Accounting, chaired by the Chairman-cum-Managing Director of BSPHCL, for the speedy disposal of pending cases in various courts related to FIRS registered against electricity theft.

iii. In many cases of electricity theft under North Bihar Power Distribution Company Limited, the recovery of the final assessment amount was zero. If the Advisor (Energy Accounting and Auditing), Bihar State Power (Holding) Company Limited had coordinated and monitored this with the concerned police officers, the recovery of the final assessment amount would have increased.

iv. During his tenure, the



Advisor (Energy Accounting and Auditing), Bihar State Power (Holding) Company Limited did not take any initiative to hold a separate review meeting with the Managing Director, North Bihar Power Distribution Company Limited (NBPDCL) to review the work of STF periodically and provide guidelines to the distribution companies for specific tasks.

v. In the meeting of the Special Task Force, Energy Accounting held on 19.09.2023, the Chairman-cum-Managing Director, Bihar State Power (Holding) Company Limited (BSPHCL) emphasized the strong need for collective and meaningful efforts to identify and significantly reduce the various factors contributing to losses in non-technical items from April 2023 to August 2023, such as energy theft, billing at the wrong tariff, faulty or missing meters, and mistakes by billers.

In the above context, no meaningful initiative was taken by the advisor (Energy Accounting and Auditing), Bihar State Power (Holding) Company Limited to identify and certainly reduce the billing at wrong tariff, faulty or missing meters or mistakes of billers.”

10. Learned counsel submitted that in the light of the recorded evidence, the present writ petition is fit to be dismissed.

Analysis and Conclusion:-

11. At the outset, I must record that the manner in which learned counsel has proceeded to argue the case and certain allegations made without any foundation against the respondents can be said to be necessarily diminished the majesty of this Court, however, the counsel in open court has tendered his apology. I can only record unwanted conduct was not expected from the counsel. I find it is worth to reproduce



some of the paragraphs of the written argument as under:-

"81. In the facts and circumstances of the case, the respondents including the deponent of the counter affidavit under reply are fit to be criminally prosecuted under respective sections of Bharatiya Nyaya Sanhita for deliberately making false statements before this Hon'ble Court and for manufacturing totally false and baseless reports contained in Annexure-R/6 and R/7 to the counter affidavit under reply.

82. That it is stated and submitted that in the facts and circumstances of the case, the following judgments of the Hon'ble Supreme Court of India are most relevant and applicable in the facts and circumstances of this case as follows:

(1) Kumari Shrilekha Vidyarthi Vs. State of UP= 1991 AIR 537-1991 (1) SCC 212= 1990 SCR Suppl. (1) 625In this case, it was held by the Hon'ble Supreme Court of India that even in the contractual realm, the Government must act fairly, reasonably, and in a non-arbitrary manner. The termination order was deemed arbitrary, violating Article 14 of the Constitution of India, and was quashed.

In this Case, well settled law has been explained and it has been held by the Hon'ble Supreme Court of India as follows:-

(15) There is a presumption of validity of the State action and the burden is on the person who alleges violation of Article 14 to prove the assertion. However, where no plausible reason or principle is indicated nor is it discernible and the State action, therefore, appears to be ex facie arbitrary, the initial burden to prove the arbitrariness is discharged shifting onus on the State to justify its action as fair and reasonable.

It is now too well-settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does



not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you'. This is what men in power must remember, always.

Almost a quarter century back, this Court in *S.G. Jais- inghani v. Union of India and Ors.*, [1967] 2 SCR 703, at p. 7 18-19, indicated the test of arbitrariness and the pitfalls to be avoided in all State actions to prevent that vice, in a passage as under:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the position at the time of issuance of the circular, must continue in office and be dealt with in accordance with the procedure laid down in the L.R. Manual. Those Government Counsel, whose term had then expired or was to expire thereafter, would be considered for renewal of their tenure in the manner prescribed and steps for preparation of a fresh panel to replace them would be taken only if they are found unsuitable for renewal of their term as a result of an informed decision in the manner prescribed. The power of termination of any appointment during the subsistence of the term available to the State Government shall also be available for exercise only in the manner indicated, wherever considered necessary. In short, the status quo ante as on 28.2. 1990, on which date the impugned circular dated 6.2. 1990 was made effective, will be restored and be maintained till change in any appointment is found necessary and is made in the manner prescribed. The fresh appointments, if any, made by the State Government in implementation of the impugned circular dated 6.2. 1990, being subject to the validity of the circular and the result of these matters, would stand superseded in this manner. The State Government will implement this direction within two weeks of the date of this order. In our view, bringing the State activity in contractual matters also within the purview of judicial review is inevitable and is a logical corollary to the stage already reached in the decisions of this Court so far.

There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts



indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes failing within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also fails within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto.

An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

Thus, in a case like the present, if it is shown that the impugned State action is arbitrary and, therefore, violative of Article 14 of the Constitution, there can be no impediment in striking down the impugned act irrespective of the question whether an additional right, contractual or statutory, if any, is also available to the aggrieved persons.

The State cannot be attributed the spirit personality of Dr. Jekyll and Mr. Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must characterize all its actions, in what ever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act.

The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even



in the sphere of contractual matters for regulating the conduct of the State activity.

In Wade's Administrative Law, 6th Ed., after indicating that 'the powers of public authorities are essentially different from those of private persons', it has been succinctly stated at p. 400-401 as under:

... The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good.

There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed. Not is this principle an oddity of British or American law: it is equally prominent in French law. Nor is it a special restriction which fetters only local authorities: it applies no less to ministers of the Crown. Nor is it confined to the sphere of administration: it operates wherever discretion is given for some public purpose, for example where a judge has a discretion to order jury trial. It is only where powers are given for the personal benefit of the person empowered that the discretion is absolute. Plainly this can have no application in public law. For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of abuse, and that legal limits to every power are to be found somewhere. (emphasis supplied) The view, we are taking is, therefore, in consonance with the current thought in this field. We have no doubt that the scope of judicial review may vary with reference to the type of matter involved, but the fact that the action is reviewable, irrespective of the sphere in which it is exercised, cannot be doubted.

A useful treatment of the subject is to be found in (1990) 106 L.Q.R. at pages 277 to 292 in an article 'Judicial Review and Contractual Powers of Public Authorities'. The conclusion drawn in the article on the basis of recent English decisions is that public law principles designed to protect the citizens should apply because of the public nature of the body, and they may have some role in protecting the public interest'. The trend now is towards judicial review of contractual powers and the other activities of the Government.

*Reference is made also to the recent decision of the Court of Appeal in *Jones v. Swansea City Council*, [1990] 1 W.L.R. 54, where the Court's clear inclination to the view that contractual powers should generally be reviewable is indicated, even though the Court of Appeal faltered at the last step and refrained from saying so. It is significant to note that emphasis now is on reviewability of every State action because it stems not from the nature of function, but from the public*



nature of the body exercising that function; and all powers possessed by a public authority, howsoever conferred, are possessed solely in order that it may use them for the public good'. The only exception limiting the same is to be found in specific cases where such exclusion may be desirable for strong reasons of public policy. This, however, does not justify exclusion of reviewability in the contractual field involving the State since it is no longer a mere private activity to be excluded from public view or scrutiny.

Unlike a private party whose acts uninformed by reason and influenced by personal predilections in contractual matters may result in adverse consequences to it alone without affecting the public interest, any such act of the State or a public body even in this field would adversely affect the public interest. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good. With the diversification of State activity in a Welfare State requiring the State to discharge its wide-ranging functions even through its several instrumentalities, which requires entering into contracts also, it would be unreal and not pragmatic, apart from being unjustified to exclude contractual matters from the sphere of State actions required to be non-arbitrary and justified on the touchstone of Article 14.

Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14.

It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

Ramana Dayaram Shetty v. The International Airport Authority of India and Ors., [1979] 3 SCR 1014 and Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir & Anr., [1980] 3 SCR 1338. In Col. A.S. Sangwan v. Union of India and Ors., [1980] Supp.



SCC 559, while the discretion to change the policy in exercise of the executive power, when not trammelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touch-stone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose.

Having fortunately reached this point, we should not now turn back or take a turn in a different direction or merely stop there. In our opinion, two recent decisions in M/s Dwarkadas Marfatia and Sons, (supra) and Mahabir Auto Stores & Ors., (supra) also lead in the same direction without saying so in clear terms. This appears to be also the trend of the recent English decisions. It is in consonance with our commitment to openness which implies scrutiny of every State action to provide an effective check against arbitrariness and abuse of power. We would much rather be wrong in saying so rather than be wrong in not saying so. Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary, in whatever sphere, must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of allpower must be for public good instead of being an abuse of the power.

In view of the conclusion reached by us and the above direction restoring status quo ante as on 28.2.1990, we have not gone into individual matters brought before us. Some argument was advanced from both sides in W.P. No. 706 of 1990 (Km. Shrilekha Vidyarthi v. State of U.P. & Ors.), wherein the fact of renewal of petitioner's tenure is disputed. It is unnecessary for us to go into that question also since the order, we are making, governs the case of all Government Counsel in the districts throughout the State of U.P. including that of the petitioner in this writ petition. The subsequent rights of this petitioner also would be governed in the manner indicated above. If and when such a situation arises, it would be open to the parties to have the dispute, if any, adjudicated wherein the question of renewal of tenure, claimed by the petitioner, can also be gone into.

Consequently, these appeals and writ petitions are allowed. The impugned circular G.O. No. D-284-Seven-Law-ministry dated 6.2. 1990, issued by the Government of State of U.P., is quashed resulting in restoration of status quo ante as on 28.2. 1990, the date from which this circular was made effective. No costs.

(II) Shiv Sagar Tiwary Vs. Union of



India (1997)- AIR 1997 SUPREME COURT 1483, 1996 (6) SCC 558 The Hon'ble Supreme Court of India passed order for taking punitive measures against public servants for their arbitrary misuse of power.

(III) State of Kerala Vs. M. Padmanabhan Nair (1985)= The Hon'ble Supreme Court of India held that personal liability could be imposed on officials who failed to discharge their duties properly in time.

(IV) Vineet Narain Vs. Union of India (1996) AIR 1998 SUPREME COURT 889, 1998 AIR SCW 645, 1997 (7) SCALE 656, (1997) 10 JT 247 (SC), 1998 (1) SCC 226,

In this case Hon'ble Supreme Court of India emphasized the need for accountability of public servants to prevent abuse of power.

These cases collectively emphasize the role of judiciary in upholding accountability and ensuring the public servants exercise their power responsibly, without burdening the public treasury for their personal mistakes or arbitrary actions.

83. The respondents are repeatedly and deliberately taking illegal arbitrary action against the petitioner with malafide intention with ulterior motives, and further illegality is being committed to justify their previous illegality, which proved by their own action and statements made in the counter affidavit under reply.

84. It is humbly submitted that in the facts and circumstances of the case, the impugned orders passed by the respondents contained in Annexure- P/7, P/8 and P/9 to the writ petition are fit to be quashed with all consequential benefits and the petitioner is entitled to the reliefs sought for in Para 1 of the writ petition. The petitioner has come to this Hon'ble Court for Justice. By sitting on the Throne of Justice in this Great Temple of Justice, this is the Bounden Duty of Your Lordship do do Justice to the petitioner, for which proper fees has been paid by way of Court Fee to the State.

न्यायस्थ अर्थः सम्पूर्ण स्वरूपेण धर्मस्य विजयः अस्ति । न्याय का अर्थ सम्पूर्ण स्वरूप में धर्म की विजय है।

Justice means Victory of Dharma in all its features.

यतो धर्मस्ततो जयः । जहां धर्म है वहां विजय है । सनातन सत्य ही धर्म है । जहां धर्म है वहां कृष्ण है । जहां कृष्ण है वहां विजय है ।"

12. I find the background in which the service of the petitioner was assessed have been dealt in the counter affidavit and in this regard, I find it apt to reproduce paragraphs



no.7, 8, 9, 10, 11, 12, 15, 16, which are reproduced hereinafter:-

“7. That it is humbly submitted that Petitioner was engaged on contract basis on the post of advisor (Energy Accounting & Audit) for the period of 3 (three) years. In this regard, job engagement contract offer vide letter no. 384/Patna dated 15.11.2022 was issued by the Respondent No. 8 ic. General Manager, (Human Resource/Administration), Bihar State Power Holding Company Limited (BSPHCL). It is pertinent to mention here that performance of satisfactory work is an essential requirement of the said job engagement contract mentioned in clause 1 & 10 and the Petitioner has violated the said terms & conditions relating to work performance due to this reason he has been removed from the contractual work with immediate effect vide notification no. 539 dated 23.09.2024 and subsequently allotment of quarter situated at New Punaichak, Patna quarter no. B/05 (old) has been cancelled and notice in this regard was issued vide office order no. 1318 dated 08.10.2024 and letter no. 1074 dated 10.10.2024 respectively to the Petitioner.

8. That it is pertinent to mention that the water connection quarter which has been allotted to the Petitioner has never been disconnected, in this regard, a report was submitted by the Executive Engineer (Civil), Bihar State Power (Holding) Company Limited, Patna vide Letter no. 1232 dated 19.11.2024 to the Deputy General Manager (Human Resource/Administration), Bihar State Power Holding Company Limited (BSPHL) Patna.

9. That it is humbly submitted that there are several complaints were reported against the Petitioner regarding his work performance and lack of interest in performing duties which was against the interest of the Company i.e. Bihar State Power Holding Company Limited (BSPHCL), therefore, his job contract was cancelled vide notification no. 539 dated 23.09.2024 by the Bihar State Power Holding Company Limited (BSPHCL) and allotment of quarter has been cancelled.

10. That it is humbly submitted that report was submitted by the General Manager (Revenue), South Bihar Power Distribution Company Limited vide letter no. 1494 dated 21.11.2024 to the Deputy General Manager (Human Resource/Administration), Bihar State Power Holding Company Limited (BSPHCL) with respect to the work/responsibilities of the Petitioner which are as follows:



i. No action plan related to consumer billing was provided to the Revenue Department.

ii. No action plan was provided to the Revenue Department for rectifying errors in billing data by reviewing the data.

iii. No action plan was provided for billing new consumers after reviewing their details.

iv. No action plan was provided to the Revenue Department for analyzing the daily consumption of Smart Meter consumers, non-communicating consumers and disconnected consumers, and ensuring they are billed every month.

V. No plan was provided to the Revenue Department for preventing possible theft by reviewing billing data.

vi. No action plan has been prepared and provided to the Revenue Department for inspecting the premises of temporarily disconnected consumers with large pending energy dues. Illegal consumption of energy by temporarily disconnected consumers is possible, which could result in revenue loss.

vii. No action plan was provided to the Revenue Department to increase collections by reviewing billed consumers.

viii. Additionally, no action plan was prepared for the recovery of dues and provided to the Revenue Department.

ix. Neither any work was done by them for the payment of electricity dues by government departments, nor was any action plan prepared and submitted to the Revenue Department.

Due to laches on the part of the Petitioner, continuous supervision and monitoring of the aforementioned activities are being carried out by the Revenue Department through suo-motu action, resulting in a gradual decrease in AT & C losses.

11. That it is humbly submitted that report was submitted by the Chief Engineer



(Special Task Force), North Bihar Power Distribution Company Limited vide letter no. 638 dated 21.11.2024 to the Deputy General Manager (Human Resource/Administration), Bihar State Power Holding Company Limited (BSPHCL) with respect to the work of the Petitioner which was found not satisfactory which are as follows:

i. The Advisor (Energy Accounting & Auditing), Bihar State Power (Holding) Company Limited did not adequately monitor the non- registration of FIRs by the police officers, despite applications being submitted at the concerned police stations by the Junior Electrical Engineer of the Electricity Supply Branch / Assistant Electrical Engineer of the Electricity Supply Sub-Division regarding electrical theft in several cases. As a result, even now, there are many cases where, after the detection of electrical energy theft, FIRs have not been registered, despite applications being submitted at the police station by the concerned officials,

ii. No action plan was presented by the Advisor (Energy Accounting & Auditing), Bihar State Power (Holding) Company Limited in the meeting regarding STF and Energy Accounting, chaired by the Chairman-cum-Managing Director of BSPHCL, for the speedy disposal of pending cases in various courts related to FIRS registered against electricity theft.

iii. In many cases of electricity theft under North Bihar Power Distribution Company Limited, the recovery of the final assessment amount was zero. If the Advisor (Energy Accounting and Auditing), Bihar State Power (Holding) Company Limited had coordinated and monitored this with the concerned police officers, the recovery of the final assessment amount would have increased.

iv. During his tenure, the Advisor (Energy Accounting and Auditing), Bihar State Power (Holding) Company Limited did not take any initiative to hold a separate review meeting with the Managing Director, North Bihar Power Distribution Company Limited (NBPDCCL) to review the work of STF periodically and provide guidelines to the distribution companies for specific tasks.

v. In the meeting of the Special



Task Force, Energy Accounting held on 19.09.2023, the Chairman-cum-Managing Director, Bihar State Power (Holding) Company Limited (BSPHCL) emphasized the strong need for collective and meaningful efforts to identify and significantly reduce the various factors contributing to losses in non-technical items from April 2023 to August 2023, such as energy theft, billing at the wrong tariff, faulty or missing meters, and mistakes by billers.

In the above context, no meaningful initiative was taken by the advisor (Energy Accounting and Auditing), Bihar State Power (Holding) Company Limited to identify and certainly reduce the billing at wrong tariff, faulty or missing meters or mistakes of billers.”

15. That it is humbly submitted that the Petitioner was engaged purely on temporary basis. It is reflected from clause 7 of the job contract notice itself that the contractual engagement may be terminated by the either side after giving one month prior notice. At best the Petitioner is entitled to one month salary in lieu of one month notice. The service of the Petitioner was not found to be in the interest of the Company as the Petitioner after being engaged has not taken effective steps with respect to the theft of energy, wrong tariff, billing and completely lacked interest in presentation of work planning relating to S.T.F. and energy auditing resulting enumeration substantial financial loss etc.

16. That it is humbly submitted that the without giving time to decide the representation dated 13.10.2024 (Annexure P10 of the writ application) hurriedly filed Writ Petition on 22.10.2024.

13. The question which arises for determination by this Court, is, as to whether, the order of termination contained in Notification No.539 dated 23.09.2024 and communicated to the petitioner *vide* Memo No.540 dated 23.09.2024 can be held to be punitive in light of the internal communication dated 21.11.2024 brought on record by way of counter affidavit as contained in Annexure- R/6 and R/7?



14. The law is well settled in so far as the termination of contract, if held to be punitive in nature, proper course would be to follow the mandate of Article 311(2) of the Constitution of India. It is also submitted that the Bihar State Power (Holding) Company Limited, Patna falls within the meaning of State as per the mandate of Article 12 of the Constitution of India and this Court has jurisdiction to exercise power to review the action of the respondents.

15. Now I proceed to take notice of the law laid down by the Apex Court but before that, I must record the theory of "*nature of inquiry*" evolved into a new "*motive and foundation*" test, which performs a similar role of discovering the nature of termination. In ***Ravindra Kumar Misra vs. U.P. State Handloom Corporation Ltd.*** reported in ***AIR 1987 SC 2408***, the Hon'ble Supreme Court has held that if the delinquency of a probationer is only taken as the operating motive, then the order is not punitive, but when such delinquency forms the foundation of the termination order then it is punitive. Thus, it needs to be proved that the delinquency is not a mere '*motive*' but has transformed to become '*foundation*' for termination to avail the protection of Article-311(2) of the Constitution of India.



16. Before deriving any conclusion on above principle, I find it proper to deal with the internal communication dated 21.11.2024 (Annexure R/6 and R/7 of the counter affidavit) which is based on the service records of the petitioner and same find reference in paragraphs no.10 and 11 of the counter affidavit, which are reproduced hereinafter:

"10. That it is humbly submitted that report was submitted by the General Manager (Revenue), South Bihar Power Distribution Company Limited vide letter no. 1494 dated 21.11.2024 to the Deputy General Manager (Human Resource/Administration), Bihar State Power Holding Company Limited (BSPHCL) with respect to the work/responsibilities of the Petitioner which are as follows:

i. No action plan related to consumer billing was provided to the Revenue Department.

ii. No action plan was provided to the Revenue Department for rectifying errors in billing data by reviewing the data.

iii. No action plan was provided for billing new consumers after reviewing their details.

iv. No action plan was provided to the Revenue Department for analyzing the daily consumption of Smart Meter consumers, non-communicating consumers and disconnected consumers, and ensuring they are billed every month.

V. No plan was provided to the Revenue Department for preventing possible theft by reviewing billing data.

vi. No action plan has been prepared and provided to the Revenue Department for inspecting the premises of temporarily disconnected consumers with large pending energy dues. Illegal consumption of energy by temporarily disconnected consumers is possible, which could result in revenue loss.

vii. No action plan was provided to the Revenue Department to increase collections by reviewing



billed consumers.

viii. Additionally, no action plan was prepared for the recovery of dues and provided to the Revenue Department.

ix. Neither any work was done by them for the payment of electricity dues by government departments, nor was any action plan prepared and submitted to the Revenue Department.

Due to laches on the part of the Petitioner, continuous supervision and monitoring of the aforementioned activities are being carried out by the Revenue Department through suo-motu action, resulting in a gradual decrease in AT & C losses.

11. That it is humbly submitted that report was submitted by the Chief Engineer (Special Task Force), North Bihar Power Distribution Company Limited vide letter no. 638 dated 21.11.2024 to the Deputy General Manager (Human Resource/Administration), Bihar State Power Holding Company Limited (BSPHCL) with respect to the work of the Petitioner which was found not satisfactory which are as follows:

i. The Advisor (Energy Accounting & Auditing), Bihar State Power (Holding) Company Limited did not adequately monitor the non- registration of FIRs by the police officers, despite applications being submitted at the concerned police stations by the Junior Electrical Engineer of the Electricity Supply Branch / Assistant Electrical Engineer of the Electricity Supply Sub-Division regarding electrical theft in several cases. As a result, even now, there are many cases where, after the detection of electrical energy theft, FIRs have not been registered, despite applications being submitted at the police station by the concerned officials,

ii. No action plan was presented by the Advisor (Energy Accounting & Auditing), Bihar State Power (Holding) Company Limited in the meeting regarding STF and Energy Accounting, chaired by the Chairman-cum-Managing Director of BSPHCL, for the speedy disposal of pending cases in various courts related to FIRS registered against electricity theft.

iii. In many cases of electricity theft under North Bihar Power Distribution Company Limited, the recovery of the final assessment amount was zero. If the Advisor (Energy Accounting and Auditing), Bihar State Power (Holding) Company Limited had coordinated and monitored this with the concerned police officers, the recovery of the final assessment



amount would have increased.

iv. During his tenure, the Advisor (Energy Accounting and Auditing), Bihar State Power (Holding) Company Limited did not take any initiative to hold a separate review meeting with the Managing Director, North Bihar Power Distribution Company Limited (NBPCL) to review the work of STF periodically and provide guidelines to the distribution companies for specific tasks.

v. In the meeting of the Special Task Force, Energy Accounting held on 19.09.2023, the Chairman-cum-Managing Director, Bihar State Power (Holding) Company Limited (BSPHCL) emphasized the strong need for collective and meaningful efforts to identify and significantly reduce the various factors contributing to losses in non-technical items from April 2023 to August 2023, such as energy theft, billing at the wrong tariff, faulty or missing meters, and mistakes by billers.”

In the above context, no meaningful initiative was taken by the advisor (Energy Accounting and Auditing), Bihar State Power (Holding) Company Limited to identify and certainly reduce the billing at wrong tariff, faulty or missing meters or mistakes of billers.”

17. In this regard, I find it profitable to refer to the law laid down by the Apex Court in ***Purushottam Lal Dhingra vs. Union of India*** reported in ***1957 SCC Online SC 5***. It would be apt to reproduce paragraph no. 28 of the said judgment:

“28. The position may, therefore, be summed up as follows : Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not *per se* dismissal or removal, as has been held by this Court in *Satish Chander Anand v. Union of India* [(1953) 1 SCC 420 : (1953) SCR 655] . Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2), as has also been held by this Court in *Shyam Lal v. State of Uttar Pradesh* [(1955) 1 SCR 26] . In either of the two abovementioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under Rule 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be



*the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C.J., has said in *Shrinivas Ganesh v. Union of India* [LR 58 Bom 673 : AIR (1956) Bom 455] wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then, *prima facie*, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. As already stated if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Article 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of*



employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant."

18. The Hon'ble Supreme Court had gone into to determine, as to whether, the service of a person claiming continuation was satisfactory then it cannot be held to be as a result of any evil consequences calling for any disciplinary action and in this regard, I find it proper to refer the Apex Court judgment rendered in the case of ***State of U.P. & Ors. Vs. Ram Bachan Tripathi*** reported in ***(2005) 6 SCC 496*** and in case of ***Rajesh Kumar Srivastava vs. the State of Jharkhand & Ors.*** reported in ***(2011) 4 SCC 447.***

19. In the present case, the petitioner has not pleaded calling for interference with the termination order on the ground that it is punitive in nature and it does require enquiry to get protection of Article 311(2) of the Constitution of India.



20. The Apex Court in case of *Abhay Jain vs. High Court of Judicature For Rajasthan & Anr.* reported in *(2022) 13 SCC 1*, dealing with termination by holding it to be punitive and require inquiry held in paragraphs no. 40.1, 59, 51, 64.1 and 78 which *inter alia* are as follows:

"40.1. Article 311(2) of the Constitution of India:

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—(1)

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry."

50. *This Court also further observed that : (Gopi Kishore Prasad case [State of Bihar v. Gopi Kishore Prasad, 1959 SCC OnLine SC 40 : AIR 1960 SC*



689] , AIR pp. 691-92, para 5)

"5. ... In our opinion, the controversy raised in this case is completely covered by the decision of the Constitution Bench of this Court in Dhingra case [Parshotam Lal Dhingra v. Union of India, 1957 SCC OnLine SC 5 : AIR 1958 SC 36] . The main question for decision in that case was whether the appellant Dhingra had been reduced in rank by way of punishment as a result of the order of the General Manager of the Railway. Though, in that case, this Court decided that the order impugned had not that effect, this Court went elaborately into all the implications of the service conditions, with particular reference to the Railway Service Rules and the constitutional provisions contained in Section 240 of the Government of India Act, 1935 and Article 311 of the Constitution. The elaborate discussion in that judgment has reference to all stages of employment in the public services including temporary posts, probationers, as also confirmed officers. Insofar as those observations have a bearing on the termination of service or discharge of a probationary public servant, they may be summarised as follows:

1. Appointment to a post on probation gives to the person so appointed no right to the post and his service may be terminated, without taking recourse to the proceedings laid down in the relevant rules for dismissing a public servant, or removing him from service.

2. The termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him of any right to a post and is, therefore, no punishment.

3. But, if instead of terminating such a person's service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency, or for some similar reason, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case, he is entitled to the protection of Article 311(2) of the Constitution.

4. In the last mentioned case, if the probationer is discharged on any one of those grounds without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge, it will amount to a removal from service within the meaning of Article 311(2) of the Constitution and will, therefore, be liable to be struck down.

5. But, if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing



cause against his removal from service, the probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily holding, on account of his misconduct, or inefficiency, or some such cause."

(emphasis supplied)

51. *A seven-Judge Bench of this Court in Samsher Singh v. State of Punjab [Samsher Singh v. State of Punjab, (1974) 2 SCC 831 : 1974 SCC (L&S) 550] has held that : (SCC pp. 851-52 & 856-57, paras 64-66 & 86)*

"64. ... The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311(2) he can claim protection. ...

65. The fact of holding an enquiry is not always conclusive. What is decisive is whether the order is really by way of punishment (see State of Orissa v. Ram Narayan Das [State of Orissa v. Ram Narayan Das, 1960 SCC OnLine SC 36 : AIR 1961 SC 177 : (1961) 1 SCR 606]). If there is an enquiry the facts and circumstances of the case will be looked into in order to find out whether the order is one of dismissal in substance (see Madan Gopal v. State of Punjab [Madan Gopal v. State of Punjab, 1962 SCC OnLine SC 43 : AIR 1963 SC 531 : (1963) 3 SCR 716]). In R.C. Lacy v. State of Bihar [R.C. Lacy v. State of Bihar, 1963 SCC OnLine SC 1] it was held that an order of reversion passed following an enquiry into the conduct of the probationer in the circumstances of that case was in the nature of preliminary inquiry to enable the Government to decide whether disciplinary action should be taken. A probationer whose terms of service provided that it could be terminated without any notice and without any cause being assigned could not claim the protection of Article 311(2)....

66. If the facts and circumstances of the case indicate that the substance of the order is that the termination is by way of punishment then a probationer is entitled to attract Article 311. The substance of the order and not the form would be decisive (see K.H. Phadnis v. State of Maharashtra [K.H. Phadnis v. State



of Maharashtra, (1971) 1 SCC 790]).

86. ... In the facts and circumstances of this case it is clear that the order of termination of the appellant Shamsher Singh was one of punishment. The authorities were to find out the suitability of the appellant. They however concerned themselves with matters which were really trifles. The appellant rightly corrected the records in the case of Prem Sagar. The appellant did so with his own hand. The order of termination is in infraction of Rule 9. The order of termination is therefore set aside.” (emphasis supplied)

64.1. *In fact, this Court in the aforesaid itself has held that : (Ved Priya case [Rajasthan High Court v. Ved Priya, (2021) 13 SCC 151] , SCC pp. 158-59, paras 21 & 24)*

“21. True it is that the form of an order is not crucial to determine whether it is simpliciter or punitive in nature. An order of termination of service though innocuously worded may, in the facts and circumstances of a peculiar case, also be aimed at punishing the official on probation and in that case it would undoubtedly be an infraction of Article 311 of the Constitution. The Court in the process of judicial review of such order can always lift the veil to find out as to whether or not the order was meant to visit the probationer with penal consequences. ...

24. ... If the genesis of the order of termination of service lies in a specific act of misconduct, regardless of over all satisfactory performance of duties during the probation period, the Court will be well within its reach to unmask the hidden cause and hold that the simpliciter order of termination, in fact, intends to punish the probationer without establishing the charge(s) by way of an enquiry. However, when the employer does not pick-up a specific instance and forms his opinion on the basis of overall performance during the period of probation, the theory of action being punitive in nature, will not be attracted.” (emphasis supplied)

78. *Accordingly, the appeal is allowed and the impugned order of the High Court dated 21-10-2019 [Abhay Jain v. High Court of Rajasthan, 2019 SCC OnLine Raj 7837] is set aside and the discharge order dated 27-1-2016 is quashed. Keeping in view that the appellant has not worked as judicial officer after he was discharged, we direct that while the appellant be reinstated with all consequential benefits including continuity of service and seniority, but will be entitled to be paid only 50% back wages, which may be paid within*



a period of four months from today."

21. In respect of the character of termination which resulted into taking of disciplinary action on account of misconduct involving stigma has now recently been crystallized in the case of ***Swati Priyadarshini vs. the State of Madhya Pradesh & Ors. (Civil Appeal No.9758 of 2024 arising out of Special Leave Petition (C) No.11685 of 2021)***, wherein the Hon'ble Supreme court has held that even in the case of contractual employee before the order which is punitive in nature is passed, the minimum requirement is to provide opportunity of hearing after holding the inquiry and giving reason for the same.

22. Now I proceed to discuss in the fact of the present case, as to whether, the termination order as contained in Notification No.539 dated 23.09.2024 can be held to be punitive on account of alleged misconduct contained in subsequent communication dated 21.11.2024 made to the petitioner modifying the order after the petitioner had filed his representation. In this regard, I find it apt to reproduce the operative part of the order contained in notification No.539 dated 23.09.2024 hereinafter:

श्री प्रकाश नाथ मिश्र, Advisor (Energy



Accounting & Audit), बिहार स्टेट पावर होल्डिंग्स कम्पनी लिमिटेड, पटना की संविदा नियोजन अवधि को तत्क्षण प्रभाव से समाप्त किया जाता है।

2. उक्त पर सक्षम प्राधिकार का अनुमोदन प्राप्त है।

23. Now the question arises after the modification whether the order will amount to termination simplicitor or it will amount to be punitive in nature, affecting the future employment, calling for interference by this Court in view of the law laid down by the Apex Court referred hereinabove. From the communication dated 21.11.2024, I gather that the respondents have lost trust and confidence in the petitioner and under the circumstances mentioned therein, the question arises whether the reported deficiency found in the petitioner leading to his termination will amount to a *simplicitor termination* or the order amounts to be a *punitive* one. I find that the Bihar State Power Holding Company found it unsafe to retain the petitioner in the present position of trust and responsibility causing loss to the Company and on any other account.

24. The Hon'ble Supreme Court has dealt with the aforesaid issue in case of **The Workmen of Sudder Office, Cinnamara Vs. Management of Sudder Office and Anr.** reported in (1972) 4 SCC 746, in which also, the facts of the



case were similar and in this regard, I find it proper to quote paragraph no.18 of the said judgment which is reproduced hereinafter:-

“18. On the other hand, Mr Chagla, learned counsel for the management has urged that in the various proceedings right from the letter dated March 20, 1960, though called a charge-sheet, the management has consistently taken up the position that it has lost its trust and confidence in the employee who was holding a very responsible post in the Company. Even according to the Union, the workman was in charge of the Company's goods of nearly six lacs of rupees and the conduct of the workman in attempting to send away the pulleys which belonged to the Company was really a betrayal of the trust and confidence that was absolutely necessary in the case of a person holding such a responsible post. The counsel further pointed out that when once there has been no finding by the Labour Court of any victimisation, unfair labour practice or mala fides, and when the finding regarding the order being a camouflage recorded by the Labour Court was given up by the counsel for the workman, the High Court was justified in considering the question which was a simple one, namely, whether the order is one of termination simpliciter or by way of punishment. If all other circumstances are eliminated, it was quite clear, according to the High Court, that the management was justified in passing the order under clause 9 of the Standing Orders of the Company. The workman as the order dated April 19, 1960, itself shows was being paid all the amounts mentioned therein which will not be available to him if he was being dismissed by way of punishment for misconduct. The counsel further urged that even assuming that the order is one of dismissal, in the particular circumstances of this case, when the employer has lost his trust and confidence in the workman concerned, reinstatement should not be ordered and relief, if any, could be given to the workman by way of award of compensation. The counsel referred us in this connection to the decision of this Court reported in *Assam Oil Company v. Workmen* [(1960) 3 SCR 457 : AIR 1960 SC 1264 : (1960) 1 Lab LJ 587] , Ruby General Insurance Company



Ltd., v. Chopra (P.P.) [(1969) 3 SCC 653 : (1970) 1 LLJ 63] and Hindustan Steels Ltd. Rourkela v. Roy (A.K.) [(1969) 3 SCC 513 : (1970) 1 LLJ 228], in support of his propositions that on an examination of all the circumstances of this case, if the apprehension of the employer that he has lost trust and confidence in the employee and as such it is not in the interest of the Company to retain the workman in its service is accepted as genuine and honest, a case should be considered to have been properly made out by the employer against reinstatement and that it is a case when compensation would meet the ends of justice."

25. The Apex Court dealt with the circumstances and the communication which call for termination of the service of the employee and holding the order of termination to be simplicitor and not punitive calling for any disciplinary action which affects the future prospect of the petitioner. In the fact of the present case, I find it proper to hold that having regard to the terms and conditions of the offer of appointment provided to the petitioner by the respondents, the petitioner don't derive any legal right who has continued as a contractual employee on specific terms and conditions agreed by him. Reliance in this regard can be placed upon paragraph no. 10 of the judgment of the Apex Court passed in the case of ***State of U.P. and Anr. v/s Kaushal Kishore Shukla***, reported in, ***(1991) 1 SCC 691*** which is, *inter alia*, reproduced hereinafter:

"10. In Jagdish Mitter case [AIR 1964 SC 449 : (1964) 1 LLJ 418 : 1964 Cur LJ (SC) 66] a Constitution Bench of this Court held that every order terminating the services of a temporary public servant does not amount to dismissal or removal from service merely because an



inquiry was held before the order of termination was passed. The court observed that the appropriate authority has power to terminate a temporary public servant either by discharging him under the terms of contract or the relevant rules or by holding departmental disciplinary inquiry and dismissing him from service. Before passing order of termination the competent authority may hold inquiry in fairness to ascertain whether the temporary servant should be continued in service or not. While discussing the nature of preliminary inquiry the court observed as under: (AIR p. 453, para 11)

"There is no element of punitive proceedings in such an enquiry; the idea in holding such an enquiry is not to punish the temporary servant but just to decide whether he deserves to be continued in service or not. If as a result of such an enquiry, the authority comes to the conclusion that the temporary servant is not suitable to be continued, it may pass a simple order of discharge by virtue of the powers conferred on it by the contract or the relevant rule; in such a case, it would not be open to the temporary servant to invoke the protection of Article 311 for the simple reason that the enquiry which ultimately led to his discharge was held only for the purpose of deciding whether the power under the contract or the relevant rule should be exercised and the temporary servant discharged."

(emphasis supplied)

26. Relying on the said principle laid down in case of *Kaushal Kishore Shukla (supra)*, the Apex Court in case of *Karnataka State Road Transport Corporation & Another vs. S.G. Kotturappa & Anr.* reported in *AIR 2005 Supreme Court 1933*, has also relied upon paragraph no.16 of the law laid down by the Apex Court in case of *Municipal Committee, Sirsa vs Munshi Ram [(2005) 2 SCC 382]* which is reproduced hereinafter:-

"16. From the above, it is clear assuming that there was some sort of misconduct, as noticed in the evidence of the witnesses of the management in the cross-examination, the same could not be used as



evidence by the Labour Court or by the appellate court for coming to the conclusion that an order of termination which is otherwise simpliciter in nature is motivated by any consideration other than the decision of the management as to the satisfactory nature of the workman concerned.

27. The Apex Court further relied on another judgment of ***Registrar, High Court of Gujarat and another Vs. C. G. Sharma***, reported in **(2005) 1 SCC 132**, and in light of the settled principle of law and reiterating the principle laid down in the case of ***Kaushal Kishore Shukla (supra), Munshi Ram (Supra) and C. G. Sharma (Supra)*** refrained from interfering with the order of termination of contract and holding that the same cannot be violative of Articles 14, 16 and 311 of the Constitution of India. In the present case also, the termination which is based on the performance assessment of the petitioner don't require any inquiry being simplicitor termination, calling for any interference on account of violation of Article 14, 16 and 311 of the Constitution of India.

28. I must take note of the fact through which the petitioner has filed written argument but the petitioner has not filed any interlocutory application seeking quashing of internal communication dated 21.11.2024, based on which, the representation of the petitioner has been rejected by a reasoned order.



29. Taking into consideration the above stated facts and circumstances, I don't find any merit in the present writ petition.

30. At this stage, Mr. Prakash Nath Mishra, petitioner himself, submitted that he is a retired police officer and he is living along with his family at B/5 (Old) New Punaichak, Patna and he requires 60 days time to continue with the quarter so that within 20 to 30 days, he can remove all his belongings and in the meantime, he will also seek for some alternative accommodation. Reason has been shown that he has to appear every single day in some of the vigilance cases as the prosecution witness or the investigating officer.

31. I find that such eventuality cannot force the Bihar State Power Holding Company Limited to bind it in any manner, which is a separate entity as I have already discussed in the order that it is the State within the meaning of Article 12 of the Constitution of India. The petitioner may request the State Government or the Vigilance Investigation Bureau by making application before the appropriate authority and the respondents in no manner have any jurisdiction for the said purpose to allow him some extra time to reside in the accommodation which has been provided to him during the currency of the service contract



after the same has been terminated.

32. The writ petition is accordingly dismissed.

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

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.12.2024
Transmission Date	NA

