

Md. Alam Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Dec-09-2004

Judge : Chandramauli Kr. Prasad, J.

Acts : Service Law

Appeal No. : CWJC No. 9243 of 1999

Appellant : Md. Alam

Respondent : The State of Bihar and ors.

Advocate for Def. : Jawahar Dhari Singh, GP I

Advocate for Pet/Ap. : Rajendra Prasad Singh, Sr. Adv. and Jay Shankar, Adv.

Disposition : Application allowed

Judgement :

Chandramauli Kr. Prasad, J.

1. This application has been filed for quashing the order dated 9th of August, 1999 passed by the District Education Officer, West Champaran (Annexure-1), whereby the service of the petitioner as Clerk has been terminated.

2. Short facts giving rise to the present application are that by order dated 18th November, 1991 petitioner was appointed as Clerk on a purely temporary basis till

regular appointment and posted at Baidyanath High School, Jagapatti, West Champaran. Petitioner was served with the show cause notice dated 2.12.1998 (Annexure-3) asking him to show cause as to why his services be not terminated. It is the stand of the petitioner that in pursuance of the said show cause notice he submitted his explanation and sent the same to the District Education Officer, West Champaran under certificate of posting on 4.1.1999. Thereafter the petitioner was served with another show cause notice dated 10.4.1999 informing him that in response to the earlier show cause notice he had not filed any reply and in case no reply is received within a week it will be presumed that the petitioner's appointment is invalid and his services shall be terminated. Petitioner asserts that in response to the aforesaid show cause notice he sent his reply under certificate of posting to the District Education Officer on 12.6.1999. The impugned order indicates that the decision to terminate his service has been taken as the petitioner had not produced any document/record to substantiate his case.

3. Counter affidavit has been filed by respondent No. 2 and in paragraph 10 thereof it has been stated that the order impugned has been issued 'after examining the show cause and the documents made available.'

4. Mr. Rajendra Prasad Singh, Senior Advocate appearing on behalf of the petitioner contends that the impugned order has been passed without considering the show cause filed by the petitioner and this itself vitiates the impugned order. He points out that the respondents have not denied in the counter affidavit the filing of the show cause by the petitioner and in fact they had admitted that the impugned order has been passed after examining the show cause and the documents made available. He emphasises that the order impugned shows otherwise. Government Pleader No. 1 however appearing on behalf of the respondents contends that the impugned order only indicates that the petitioner had not filed any document or produced any record but from that it cannot be inferred that petitioner's show cause has not been considered.

5. Having appreciated the rival contention, I find substance in the submission of Mr. Singh, The fact of the petitioner filing the show cause has not been denied. In fact in, the counter affidavit it has been admitted that the impugned order has been

passed after considering the show cause notice. The order impugned does not whisper at all as to how the show cause of the petitioner was considered. This itself vitiates the order.

6. Let District Education Officer, West Champaran consider the show cause (Annexures 5 and 6) within six weeks from today and pass order in accordance with law, within the period aforesaid. Consequential, relief shall abide by the said decision.

7. In the result, the application is allowed, the impugned order dated 9th of August, 1999 (Annexure-1) is quashed with the direction aforesaid. No cost.

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