

AA-4
-24/13

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil writ Jurisdiction)

C.W.J.C. No. _____ of 2013

Vijay Kumar

....Petitioner.

Vrs.

The State of Bihar & others

....Respondents.

Sub:-

Suspension matter.

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IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil writ Jurisdiction)

C.W.J.C. No. _____ of 2013

Vijay KumarPetitioner.

Vrs.

The State of Bihar & othersRespondents

SYNOPSIS

This writ application is being filed on behalf of the petitioner invoking the writ Jurisdiction of the Hon'ble Court for issuance of a writ in the nature of certiorari for quashing the order contained in memo no.521 dated 16.3.2012 issued under the signature of Deputy Development Commissioner, Madhepura whereby the petitioner has been suspended from service on the ground of an F.I.R. No.53/2011 of Shingeshwar Police Station is registered against the petitioner. It is also directed to the concerned programme officer to stop the payment of salary till further order of a writ in the nature of mandamus directing the respondents to continue the petitioner in service with all consequential benefit including salary the date when similarly situated person like petitioner has been continued in the service.

List of Dates

9.5.2007- That an advertisement has been published for the post of Junior Engineer under "contract appointment" to posts under District Rural Development Agencies-2007. The petitioner is being eligible for the post of Junior Engineer applied for the same. The petitioner was selected on the basis of the written test conducted on 15.4.2007 which is evident from the appointment letter contained in Ref. No.6.3/82/229 dated 9.5.2007 issued under the signature of Deputy Secretary, Rural Development Department, Bihar.

- 27.2.2012 That thereafter an order has been issued under the signature of Deputy Development Commissioner, Madhepura contained in memo no.432 dated 27.2.2012 stated therein that the Programme Officer Smt. Supriya Kumari has been suspended from the work of Manrega under Chausa Block. The ground of suspension is that the name of Programme Officer, Smt. Supriya Kumari posted at Chousa Block is also registered in Shingeshwar P.S. Case No.53/2011.
- 16.3.2012- That thereafter an order contained in memo no./letter no.521 dated 16.3.2012 issued under the signature of Deputy Development Commissioner, Madhepura stated therein that the petitioner has been suspended from the work of Manrega and also directed to stop the salary till further order. The allegation of suspension is that the Shingeshwar P.S. Case No.53/2011 has been registered against him. It is also directed to produce the bail order passed by competent court.
- 21.5.2012- That thereafter the petitioner has filed a petition before Hon'ble High Court at Patna for grant of anticipatory bail bearing Cr. Misc. No.19177/2012 which is heard by Hon'ble Mr. Justice Shivaji Pandey and his Lordships has been pleased to granted anticipatory bail to the petitioner on 21.5.2012.
- 9.6.2012- That thereafter the petitioner has submitted representation along with bail order before the Deputy Development Commissioner, Madhepura on 9.6.2012. The petitioner

has requested to permit me to discharging my duty of Manrega but till date no order has been passed. All the endeavor of the petitioner has become futile.

30.8.2012- That one of the co-accused of Shingeshwar P.S. Case No.53/2011 has been permitted to do their job in Manrega Programme which is evident from the perusal of the transfer order contained in memo no.1754 dated 30.4.2012 passed under the signature of District Officer, Madhepura. All the Programme Officer under Madhepura, District are transferred and posted at appropriate place. One of the Programme Officer namely Smt. Supriya Kumari has been posted at appropriate place under Manrega Programme who is placing at serial no.4 in the particulars of Programme Officers.

Hence this writ application

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GOVERNMENT OF BIHAR
REGISTRATION, STAMPS & PROHIBITION DEPT.
PATNA SCORE PATNA

COURT FEE

Authorization No. 2676



INDIA

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Rs. 0000285

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JUDICIAL

21.3.2013

BIHAR

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IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil writ Jurisdiction)

C.W.J.C. No. _____ of 2013

In the matter of an
application under Article
226 of Constitution of India,

And

In the matter of

Vijay Kumar, S/o Sri Ram Swaroop Singh, R/o New Adarsh
Colony, (Road No.1), East Indira Nagar, P.S.- Kankarbagh,
District-Patna.

....Petitioner.

Vrs.

1. The State of Bihar.
2. The Secretary, Rural Development Department, Govt. of Bihar, Patna.
3. The Deputy Secretary, Rural Development Department, Govt. of Bihar, Patna.

4. The District Magistrate, Madhepur.
 5. The Deputy Development Commissioner, Madhepura.
-Respondents.

To,

The Hon'ble Ms. Justice Rekha M. Doshit, the Chief Justice of the High Court of Judicature at Patna and her companion Justices of the said Hon'ble Court.

The humble petition on behalf of above named petitioner;

Most respectfully sheweth:-

1. That, this writ application is being filed on behalf of the petitioner invoking the writ Jurisdiction of the Hon'ble Court for the following relief(s):-
 - (I) For issuance of a writ in the nature of certiorari for quashing the order contained in memo no.521 dated 16.3.2012 issued under the signature of Deputy Development Commissioner, Madhepura whereby the petitioner has been suspended from

service on the ground of an F.I.R. No.53/2011 of Shingeshwar Police Station is registered against the petitioner. It is also directed to the concerned programme officer to stop the payment of salary till further order.

(II) For issuance of a writ in the nature of mandamus directing the respondents to continue the petitioner in service with all consequential benefit including salary the date when similarly situated person like petitioner has been continued in the service.

(III) For issuance of any other appropriate writ order or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.

2. That the substantial questions of law involved in this writ application to be determined by this Hon'ble Court are as follows:-

- (i) Whether or not, the petitioner is entitled to continue in service, when the similarly situated persons like petitioner has been reinstated.
- (ii) Whether or not, not reinstate the petitioner in service whereas reinstatement in service to the other similarly situated employee is per se, arbitrary, capricious, as well as violative of Article 14 and 16 of the Constitution of India.
- (iii) Whether or not, the respondents have adopted the method of pick and choose in the matter of revocation of suspension in service in highly discriminatory manner.
- (iv) Whether or not, a legitimate expectation has arisen to the petitioner to continue in service.
- (v) Whether or not, the respondents are under legal obligation to reinstate the petitioner in service.
- (vi) Whether or not, the petitioner has accrued a vested legal right to be continued on his respective post and this settled Principal cannot

be divested by adopting arbitrary procedure whatsoever.

(vii) Whether or not, deprived from service to the petitioner has adversely effected the life and livelihood and has caused irreparable loss and financial crisis to the petitioner as well as other family members and the same is violative of Article 21 of the Constitution of India.

(viii) Whether or not, without given opportunity to the petitioner suspension order is not sustained in the eye of law as well as against the settled Principal of natural Justice.

3. That the petitioner is a citizen of India residing within the territorial Jurisdiction of this Hon'ble Court and cause of action arisen within the territorial Jurisdiction of this Hon'ble Court.
4. That an advertisement has been published for the post of Junior Engineer under "contract appointment" to posts under District Rural Development Agencies-

2007. The petitioner is being eligible for the post of Junior Engineer applied for the same. The petitioner was selected on the basis of the written test conducted on 15.4.2007 which is evident from the appointment letter contained in Ref. No.6.3/82/229 dated 9.5.2007 issued under the signature of Deputy Secretary, Rural Development Department, Bihar.

A photo copy of the aforesaid appointment letter dated 9.5.07 is being annexed herewith and marked as Annexure-1 to the petition.

5. That thereafter the petitioner joined his service in the Department of Rural Development Department, Govt. of Bihar on the post of Junior Engineer in the District of Madhepura and posted at Shankarpur Block and thereafter accepted the extra charge of Shingeshwar Block.

6. That thereafter the petitioner started to do his job efficiently, diligently and in accordance with his superior authority.
7. That thereafter Shingeshwar Police Station Case No.53/2011 registered on 18.6.2011 against the Chandeshwari Pandit and others the alleged offences under sections 406, 409, 419, 420, 467, 468, 120 (B)/34 of the I.P.C. The Investigating Officer has submitted charge-sheet against the Chandeshwari Pandit and nine other co-accused persons. The petitioner and concerned Programme Officer namely Smt. Supriya Kumari are also co-accused in the aforesaid case. The allegation is general and omnibus against both the accused persons.
8. That thereafter an order has been issued under the signature of Deputy Development Commissioner, Madhepura contained in memo no.432 dated 27.2.2012 stated therein that the Programme Officer Smt. Supriya Kumari has been suspended from the work of Manrega under Chausa Block. The ground of

suspension is that the name of Programme Officer, Smt. Supriya Kumari posted at Chousa Block is also registered in Shingeshwar P.S. Case No.53/2011.

A photo copy of the aforesaid order contained in memo no.432 dated 27.2.2012 is being annexed herewith and marked as Annexure-2 to the petition.

9. That thereafter an order contained in memo no./letter no.521 dated 16.3.2012 issued under the signature of Deputy Development Commissioner, Madhepura stated therein that the petitioner has been suspended from the work of Manrega and also directed to stop the salary till further order. The allegation of suspension is that the Shingeshwar P.S. Case No.53/2011 has been registered against him. It is also directed to produce the bail order passed by competent court.

A photo copy of the aforesaid order dated 16.3.2012 is being

annexed herewith and marked as
Annexure-3 to the petition.

10. That thereafter the petitioner has filed a petition before Hon'ble High Court at Patna for grant of anticipatory bail bearing Cr. Misc. No.19177/2012 which is heard by Hon'ble Mr. Justice Shivaji Pandey and his Lordships has been pleased to granted anticipatory bail to the petitioner on 21.5.2012.

A photo copy of the aforesaid order dated 21.5.2012 is being annexed herewith and marked as Annexure-4 to the petition.

11. That thereafter the petitioner has submitted representation along with bail order before the Deputy Development Commissioner, Madhepura on 9.6.2012. The petitioner has requested to permit me to discharging my duty of Manrega but till date no order has been passed. All the endeavor of the petitioner has become futile.

A photo copy of the aforesaid representation dated 9.6.2012 is being annexed herewith and marked as Annexure-5 to the petition.

12. That one of the co-accused of Shingeshwar P.S. Case No.53/2011 has been permitted to do their job in Manrega Programme which is evident from the perusal of the transfer order contained in memo no.1754 dated 30.4.2012 passed under the signature of District Officer, Madhepura. All the Programme Officer under Madhepura, District are transferred and posted at appropriate place. One of the Programme Officer namely Smt. Supriya Kumari has been posted at appropriate place under Manrega Programme who is placing at serial no.4 in the particulars of Programme Officers.

A photo copy of the aforesaid memo no.1754 dated 30.8.2012 is being annexed herewith and

marked as Annexure-6 to the
petition.

13. That it is submitted that one of the similarly situated persons has been transferred and posted at appropriate place which is transpired that the act of the respondents is highly discriminatory in the matter of petitioner.
14. That it is submitted that the petitioner is entitled to continue in service when the similarly situated person like petitioner has been permitted to do his job under Manrega programme.
15. That it is submitted that not permitted the petitioner to do the job in service whereas permitted to do the job in service to the other similarly situated employee is per se, arbitrary, capricious as well as violative of Article 14 & 16 of the Constitution of India.
16. That it is submitted that the respondents have adopted the method of pick and choose in the matter of revocation of suspension.

17. That it is submitted that the petitioner has accrued a vested legal right to be continue on his respective post and the settled principal cannot be divested by adopting arbitrary procedure.
18. That it is submitted that without giving opportunity to the petitioner suspension order is against settled Principal of law.
19. That the petitioner being left with no remedy is invoking the writ Jurisdiction of this Hon'ble Court for redressal of his grievances.
20. That the petitioner has not filed any writ application earlier in this matter before this Hon'ble Court.

It is, therefore, prayed that Your Lordships may graciously be pleased to issue Rule NISI calling upon the respondents as to why the reliefs sought for in this writ application be not granted and upon return of the rule and cause

shown if any be pleased to make
the rule absolute.

And

Be pleased to allow this writ
application by granting prayer
made at Para-1 of the writ
application

And/or

Pass such other order/orders or
direction which your Lordships
may deem fit and proper in the
facts and circumstances of the
case.

And for this the petitioner shall ever pray.

AFFIDAVIT

I, Vijay Kumar, aged about 43 years, S/o Sri Ram Swaroop Singh, R/o New Adarsh Colony, (Road No.1), East Indira Nagar, P.S.- Kankarbagh, District-Patna, do hereby solemnly affirm and state as follows:-

1. That I am petitioner in this case and as such am well acquainted with the facts and circumstances of the case.
2. That the contents of this petition have been read over and explained to me in Hindi which I have been fully understood.
3. That the statements made in paragraph nos. 5, 6, 7 _____ are true to my knowledge and those statements made in paragraph nos. 4, 8, 9, 10, 11 and 12 are true to my information and derived from the records of the case and rest are by way of submission to this Hon'ble Court.
4. That the annexures are true/photo copies of their respective originals.

Vijay Kumar

ANNEX - 1

15

GOVERNMENT OF BIHAR
RURAL DEVELOPMENT DEPARTMENT
Main Secretariat, Patna-800015

Contract Appointment to Posts under District Rural Development Agencies-2007

Ref. No.- 6.3/82/229

Dated: 09/05/2007

To,

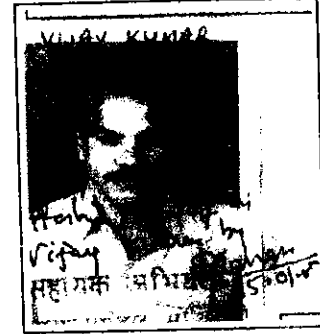
Roll no. **601418**

Category : **GENERAL**

Rank : **GEN- 263**

Mr. / Ms. **VIJAY KUMAR**

VIJAY KUMAR	
S/o SRI RAMSWAROOP SINGH	
A+Po - JAIPUR	
Vio - BARHIYA	
LAKHISARAI	
Pin Code	811702




On the basis of the written test conducted on 15.04.2007, you are offered appointment on contract basis for the post of **JUNIOR ENGINEER**..... This offer is subject to verification of the original documents specified below.

In case of your acceptance of the offer you are directed to report to the Deputy Development Commissioner (DDC), **MADHEPURA**....., on or before **29/05/2007**.....

If you fail to report on the date specified this offer is liable to be withdrawn.


While reporting to the D.D.C. **MADHEPURA**....., you are required to present the following documents in original.

1. Educational Certificate of all qualifications mentioned in your Application Form.
2. Matriculation Certificate as proof of date of birth.
3. Caste certificate duly issued by SDO/DM of the concerned District in case Candidates of reserved category.
4. Admit Card issued from Rural Development Department.
5. Recent Disability Certificate from the Medical Board of concerned district, if applicable.
6. Certificate of employer in proof of work experience, if applicable.


Deputy Secretary,

Rural Development Department, Bihar

Copy to : Deputy Development Commissioner, **MADHEPURA**..... for information and necessary action. The original documents and the identity of the candidate along with his/her handwriting should be verified after which the enclosed contract agreement may be executed.


Deputy Secretary,

Rural Development Department, Bihar

12/02

जिला ग्रामीण विकास अभिकरण, मधेपुरा
:- आदेश :-

सिंहेश्वर थाना कांड संख्या 53/11 के प्राथमिकी में चौसा प्रखंड में पदस्थापित कार्यक्रम पदाधिकारी, सुश्री सुप्रिया कुमारी का भी नाम दर्ज है। जिला पदाधिकारी, मधेपुरा के आदेशानुसार प्रशासनिक एवं कार्यहित को देखते हुए चौसा प्रखंड का अतिरिक्त प्रभार, ग्वालपाड़ा प्रखंड में पदस्थापित कार्यक्रम पदाधिकारी श्री विरेन्द्र कुमार को सौंपा जाता है। कार्यक्रम पदाधिकारी, सुश्री सुप्रिया कुमारी को चौसा प्रखंड के मनरेगा कार्य से कार्यमुक्त किया जाता है। कार्यक्रम पदाधिकारी, ग्वालपाड़ा को निदेश दिया जाता है कि पत्र प्राप्ति के 24 घंटे के अंदर चौसा प्रखंड का अतिरिक्त प्रभार लेते हुए अध्याहस्ताक्षरी को प्रतिवेदित करना सुनिश्चित करें।

इसकी सूचना सभी संबंधितों को दी जाय।
यह आदेश तत्काल प्रभात से लागू समझा जाय।

Sd/-
उप विकास आयुक्त,
मधेपुरा।

आपंक 432 / दिनांक 29/02/2012

- प्रतिज्ञिति :- संबंधित कार्यक्रम पदाधिकारी को सूचनार्थ एवं अनुपलनार्थ प्रेषित।
- प्रतिलिपि :- कार्यपालक/सहायक अभियंता, मनरेगा को सूचनार्थ प्रेषित।
- प्रतिलिपि :- अनुमंडल पदाधिकारी, मधेपुरा/उदाकिशुनगंज को सूचनार्थ प्रेषित।
- प्रतिलिपि :- जिला पदाधिकारी, मधेपुरा को सादर सूचनार्थ प्रेषित।

29.2.12
उप विकास आयुक्त,
मधेपुरा।

कार्यालय, जिला ग्रामीण विकास अभिकरण, मधेपुरा

पत्रांक..... 521

प्रेषित,

विजय कुमार

मनरेगा - विभागीय

विषय :- मनरेगा के कार्यों का सम्पादन नहीं करने के संबंध में। मधेपुरा, दिनांक :- 16/03/2012

उपरोक्त विषयक संबंध में पाया गया कि आप अभी भी मनरेगा के कार्यों का सम्पादन कर रहे हैं। जो वैधानिक रूप से गलत है। आपके विरुद्ध प्राथमिकी संख्या... 53/14... धारा... 24... में धाव दर्ज है।

अतः आप मनरेगा के कार्यों के कागजातों पर हस्ताक्षर करना बन्द करें। सक्षम न्यायालय से प्राप्त जमानत के कागजातों को प्रस्तुत करें। कार्यक्रम पदाधिकारी को निदेश दिया जाता है कि अगले आदेश तक इनका वेतन स्थगित रखें।

विश्वरामभाजन

16/3/12
उप विकास आयुक्त,
मधेपुरा।

दिनांक 16/03/2012

यानिमा - कार्यक्रम पदाधिकारी, विभागीय, मधेपुरा

16/3/12
उप विकास आयुक्त,
मधेपुरा।

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19177 of 2012

1. Vijay Kumar S/O Sri Ram Swaroop Singh Resident Of Village- Jaitpur,
P.S.- Barbhiya, District- Lakhisarai

..... Petitioner/s

Versus

1. The State Of Bihar

..... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Praveen Kumar Agarwal, Advocate.
For the Opposite Party/s : Mr. Ajit Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

2 21-05-2012 Heard learned counsel for the petitioner and
learned counsel for the State.

The petitioner apprehends arrest in connection with Singheshwar P.S. Case No.53 of 2011 for the offences punishable under Sections 406, 409, 419, 420, 467, 468 and 120B/34 of the Indian Penal Code.

According to the First Information Report it appears that the Government money of Manrega scheme has been misappropriated by Chandeshwari Padait and his associates.

Learned counsel for the petitioner submits that there is nothing against the petitioner whereas the named co-accused Chandeshwar Pandit has been granted bail by this Court vide Cr. Misc. No.29725 of 2011 and co-accused Vibha Kumari has

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been granted bail by this Court vide Cr. Misc. No.10113 of 2012. He further submits that the case of the petitioner is identical to the other co-accused persons.

Under the circumstances, in the event of arrest or surrender within four weeks from toady the abovenamed petitioner is directed to be released on anticipatory bail on their furnishing bail bond of Rs.10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the Chief Judicial Magistrate, Madhepura in connection with Singheshwar P.S. Case No.53 of 2011 subject to the conditions as laid down under section 438(2) of the Code of Criminal Procedure.

Vinay/-

(Shivaji Pandey, J)

Wr
NO

सेवा में

उप विकास अधिकारी, मधेपुरा
जिला - मधेपुरा

6
97

विषय :- लक्ष्मण न्यायालय के धाए जमानत का कार्रवाई
समर्पित करने के संबंध में,

पुस्तक :- कार्यालय, जि. आ. वि. आ. मधेपुरा पत्रांक-521
दिनांक 16-03-2012 के संबंध में,

Ar
9.6.12

प्रदायाप

उपरोक्त विषय में संज्ञा है कि
उच्च न्यायालय, पटना के धाए जमानत दिनांक 21-05-2012
को एक मुख्य न्यायिक मजिस्ट्रेट, मधेपुरा के धाए
जमानत दिनांक 07-06-2012 को धाए हुआ। जिसका
कार्रवाई संलग्न कर रहा है।

अतः श्री मार के नए विवेदन
हैं कि मधेपुरा के कार्रवाई का सम्पादन करने की अनुमति
एवं बेरन मुजतान की अनुमति प्रदान करने की कृपा की
जाए। इस कार्रवाई के लिए श्री मार का लफा आभारी बनना
रहेंगा।

- अनुसूचक :-
- ① उच्च न्यायालय जमानत कार्रवाई
 - ② ए. ज. मकरंद जमानत कार्रवाई

बिश्वास भाजन
विजय कुमार
मनीष अभिषेक, मधेपुरा
प्रमुख - विद्यार्थी संघ
दिनांक = 08-06-2012

जिला ग्रामीण विकास अभिकरण, मधेपुरा

-: आदेश :-

कार्यहित एवं प्रशासनिक दृष्टिकोण से मनरेगा योजना के कुशल संचालन हेतु निम्नलिखित विवरणी के अनुसार कार्यक्रम पदाधिकारियों का स्थानान्तरण किया जाता है :-

क्र०	कार्यक्रम पदाधिकारी का नाम	वर्तमान पदस्थापित प्रखण्ड	स्थान्तरित प्रखण्ड	अभ्युक्ति
1	2	3	4	5
1	श्री सुधांशू शेखर	शंकरपुर	आलमनगर	
2	मो० रेजा इकबाल	उदाकिशुनगंज	शंकरपुर	
3	श्री रजनी कांत	पुरैनी	पुरैनी तथा उदाकिशुनगंज (अतिरिक्त)	
4	सुश्री सुप्रिया कुमारी	गम्हरिया	चौसा	
5	श्री राकेश कुमार	घैलाढ़	घैलाढ़ तथा गम्हरिया (अतिरिक्त)	
6	श्री धीरेन्द्र कुमार	ग्वालपाड़ा	मुरलीगंज	
7	श्री नीरज कुमार	मुरलीगंज	ग्वालपाड़ा	

सभी संबंधित कार्यक्रम पदाधिकारी को निदेश दिया जाता है कि 24 घंटा के अन्दर अपना प्रभार आदान-प्रदान कर अधोहस्ताक्षरी को सूचित करना सुनिश्चित करेंगे।

यह आदेश तत्कालिक प्रभार से लागू समझा जाय।

इसकी सूचना सभी संबंधितों को दी जाय।

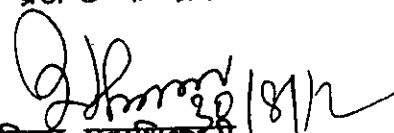
२०/-
जिला पदाधिकारी,
मधेपुरा।

ज्ञापांक.....1754...../ मधेपुरा, दिनांक.....30/08/12.....

प्रतिलिपि :- सभी संबंधित कार्यक्रम पदाधिकारी को सूचनार्थ एवं अनुपालनार्थ प्रेषित।

प्रतिलिपि :- कार्यपालक अभियंता/ सहायक अभियंता को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

प्रतिलिपि :- अनुमंडल पदाधिकारी, मधेपुरा/ उदाकिशुनगंज/ संबंधित प्रखण्ड के प्रखण्ड विकास पदाधिकारी को सूचनार्थ प्रेषित।


 जिला पदाधिकारी,
 मधेपुरा।