

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18709 of 2010

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1. Kumar Barun S/O Ramashray Prasad Srivastava R/O Mohalla - Rajendra Nagar, Thawe Road, Gopalganj, P.S. + Distt. – Gopalganj.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Director - In - Chief - Health Services, Govt. Of Bihar, Patna
3. The Executive Director, State Health Society, Family Welfare Building, Sheikhpura, Patna - 800004
4. The District Magistrate - Cum - Chairman Of The District Health Society, Gopalganj, District-Gopalganj
5. The Civil Surgeon - Cum - Chief Medical Officer - Cum - Member Secretary Of The District Health Society, Gopalganj, District- Gopalganj
6. The Medical Officer Incharge, Primary Health Centre, Bara P.S. Barauli, Distt.- Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Advocate
Mr. Rajeev Kumar Singh

For the Respondent/s : Mr. M.K. Pathak, S.C.-7

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 28-01-2015

Being aggrieved by the order dated 21.8.2010 (Annexure-

1) passed by the Civil Surgeon-cum-Member Secretary, District Health Society, Gopalganj terminating the engagement of the petitioner on contract basis as Block Health Manager, Primary Health Centre, Barauli with effect from the date of the order and the consequential order as contained in Annexure- 1/A, the present writ petition has been filed.

The District Health Society by advertisement published in February, 2007 invited application(s) for appointment on 10 posts of



Block Health Managers on contract basis. Petitioner became one of the applicant(s) and after appearing in the interview held on 12.03.2007 was appointed as such vide letter dated 21.3.2007 (Annexure-2) on a consolidated pay of Rs. 12,000/- per month for a period of two years. An agreement between the District Health Society and the petitioner was signed on 18.05.2007 (Annexure-4) wherein it was agreed that such engagement shall be for a period of 02 years and in case during the subsistence of the contract period, his service was not found satisfactory, he could be dis-engaged on one month's notice or payment of salary in lieu thereof. It is claimed by the petitioner that after the agreement was signed, he joined the post and was sent for three days training which he completed successfully. Upon expiry of the initial period of contract, he was again considered and re-newed for one year on the similar condition(s) vide order dated 22.05.2009 (Annexure-8). A fresh agreement (Annexure-9) in the same terms was signed between him and the District Health Society. On completion of the contract period, his service was renewed on the same terms for a period of 03 years vide order dated 20.5.2010 (Annexure-13). In due discharge of his duties, the petitioner earned encomiums from the authorities. During his last contract period, the respondents issued a show cause notice dated 19.08.2010 (Annexure-15) to explain his misconduct committed with the Incharge Medical



Officer as also the financial irregularities committed by him in discharge of his duties. He was commanded to submit his explanation within 02 days. No explanation was submitted. The respondents thereafter issued the impugned orders (Annexure-1 and 1/A). Aggrieved thereby, the writ petition has been filed.

Heard Mr. Rajendra Prasad Singh for the petitioner and Mr. M.K. Pathak, S.C.-7 for the State. A counter affidavit on behalf of respondent no. 5 has been filed. The petitioner filed reply thereto. The respondents filed a further counter affidavit on behalf of the Civil Surgeon, Gopalganj.

It has been submitted on behalf of the petitioner that on the face of it, the order dated 21.8.2010 (Annexure-1) is stigmatic. It records that the petitioner was held guilty in the enquiry made into his misconduct resulting in dispensing with his service. It is further contended that as per the terms of agreement between the parties, the services of the petitioner can be dispensed with but after giving one month's notice or salary in lieu thereof. From the diverse materials placed on record including the counter affidavit, it would appear that the service of the petitioner was dispensed with on the ground of misconduct with the officer and for having committed financial irregularity. Although, a regular enquiry as contemplated under the Constitution of India or the statutory rules, in the case of the



petitioner, was not required to be initiated but the respondent was required to give an opportunity of hearing to the petitioner before passing the impugned order. If they go by the terms of the agreement then also a notice was required to be issued and in lieu thereof, payment of wages/salary for one month. This has not been done in the case of the petitioner. To support his contention, he has relied on **2012 (2) PLJR 62 (Praveen Kumar versus The State of Bihar and Ors).**

Counsel for the State supporting the impugned order contended that in discharge of his duties, the petitioner committed serious financial irregularities and misconducted himself resulting in filing of an F.I.R. vide Barauli P.S. Case No. 133 of 2010 (Annexure-A). After his dis-engagement from the post, another person namely Manoj Kumar Ram has been appointed. The Counsel has relied on **2013(4) PLJR 801 (Vindu Singh Kumari vs. Bihar State Electricity Board)** as also on an unreported order passed by this Court in L.P.A. No. 677 of 2011. Counsel for the petitioner has, however, differentiated his case on the strength of factual position obtaining in the present case. Further countering the submission, it has been pointed out that although the period of contract for which the petitioner was entitled to continue on the post in question has expired but the scheme under which he was engaged continues to be funded

inasmuch some other persons who were similarly engaged have been allowed to continue on the post by granting further extension. He has relied in this regard on Annexure-18.

In ***Praveen Kumar (supra)***, the petitioner was similarly engaged as Block Health Manager on contract basis on fixed honourarium whereafter he was put on a show cause notice indicating therein that in the surprise inspection of the Primary Health Centre, it was found that he was absent for certain number of days without any authorization by the Authority and information by the petitioner. He was called upon to submit his show cause as to why he be not removed and 20 % of his salary be deducted. Later, the Society resolved to dispense with the service of the petitioner and to effect recovery of 20 % of his salary. Such decision was taken prior to expiry of date by which he supposed to subject his explanation. The Court held that considering the status the petitioner enjoys, he would not get the protection of Article 311(2) of the Constitution of India. However, he will be entitled to compliance of fundamental principles of natural justice and fair play. The Court noticed that although the petitioner was granted time to file explanation but before the explanation could be filed, the District Health Society resolved to take the action as noticed above. Accordingly, this Court interfered with the order and set aside the same.



In *Vindu Singh Kumari (supra)*, the appellant before the Writ Court was appointed/engaged on contract basis. Her services were dispensed with. The same was challenged as being stigmatic. The Writ Court refused to interfere with the order on amongst the grounds that her contract period had already come to an end and there was no order of renewal. A writ appeal thereagainst was filed contending that the appellant was entitled to a show cause notice with an opportunity to file a reply which was not done. It was pointed out that while renewing her contract period of service, it was decided to continue with the service till further orders. Subsequent thereto, all contractual appointments were extended. The Writ Appeal Court, in those factual background, held that a person in regular government service and the one appointed on contract constitute two separate classes. While the former has security of tenure under the relevant service rules, the latter is governed by the terms of contract. The persons appointed on contract basis will be governed by the terms of the contract. The Court in a dispute raised before it should see as to whether the action of the respondents was arbitrary without reason which no reasonable person could have done. The appellant was found guilty of commission of corrupt practices by demanding gratification. Having found that the rules of natural justice in the case was complied with as noticed in paragraph 8 thereof, the appeal was

dismissed. The contention with regard to continuance in service and by demonstrating that those who were engaged by the appellant were subsequently renewed was negated as is evident from the observations made in paragraph 11 thereof which is extracted hereinbelow:

“On the own showing of the appellant, there was no subsisting contract on the date of termination i.e. 17.01.2013 as the contract of others was renewed subsequently on 25.04.2013 with retrospective effect. If the appellant stood terminated in the meantime, it is difficult to accept the submission that she should first be reinstated by virtue of the retrospective renewal as given to others before any further issues could be considered. Furthermore, we find from the order dated 25.04.2013 that the contract has been renewed of those, whose services were found satisfactory. We have already discussed that the respondents were not satisfied with the discharge of duties by the appellant as a contract employee.”

In L.P.A. No. 677 of 2011, the appellant was temporarily engaged for one year by the Bihar Education Project Council on a consolidated pay terminable at any time before the expiry period of engagement by giving notice of one month or by paying the wages of one month in lieu of notice. The said temporary appointment was subsequently continued up to May, 2009. On account of commission of financial irregularities, the appellant was suspended and a first information report was lodged. A disciplinary proceeding was also initiated since the appellant was covered by the service regulation of the Council. The appellant challenged the order of suspension in a



writ proceeding wherein a direction was issued to revoke the suspension in the event decision was not taken in the proceeding within the time specified. Subsequently, the suspension was revoked until passing of the order dated 12th April, 2010 effective from 21st May, 2010 terminating the service. The order was considered as an order of discharge under the relevant regulation which was challenged before the Writ Court. The writ petition having been dismissed, a writ appeal was preferred thereagainst. While declining interference with the writ order, the writ appeal Court held as under :

“We may note here that the ordinary law of service jurisprudence of punitive discharge would not apply to the facts of the present case. First; the appointment of the appellant was made up to 21st May 2009. There was no renewal of her appointment since 21st May 2009. In that view of the matter her service stood terminated by efflux of time. She could not have continued in service after 21st May 2009. Second; the appellant, not being a civil servant of the State, is not protected by Article 311 of the Constitution. The order of her discharge from service is inconsonance with the terms and conditions of her service”

Adverting to the facts of the present case, it appears the petitioner was put on notice to explain before passing of the impugned order. He was required to file his response thereto which he failed to do so. He was alleged to have abused senior officer and had allegedly committed misappropriation of government fund in sum of Rs.



2,15,000/- by fraudulently withdrawing the same from the bank account of the Health Society. Indisputably, as has also been admitted by the petitioner considering the status of the petitioner, he was not entitled to constitutional safeguards inasmuch as no statutory rule was applicable governing such disengagement. In that context, the terms of agreement signed between the parties become relevant since both the parties would be governed by those terms. Copy of the agreement signed between the parties has been enclosed as Annexure-9. Clause (7) and (8) provide that the service of the petitioner can be disengaged even during the subsistency of the contract period on giving one month's notice or salary of one month in lieu thereof. The facts of the present case cannot be compared with the facts of the case noticed in ***Praveen Kumar (supra)*** wherein while dispensing with the service, an order for deduction of 20 % salary was also imposed. The petitioner of the said case was issued notice and to submit show cause within a specified date but before expiration thereof, the respondent resolved to terminate/disengage his service. This is not the case here. Indisputably, he was put on notice and considering the allegations so made, two days time was given to file reply which the petitioner did not avail. The financial irregularity committed by the petitioner was of such a magnitude that an F.I.R. was also directed to be lodged. In the setting of facts noticed above, it would not be appropriate for this



Court to interfere with the orders impugned and thereby imposing the petitioner on the respondents particularly when the period for which he was engaged has already elapsed. The contention of the petitioner that those who were engaged along with the petitioner have subsequently been re-inducted by renewal of their contract does not impress the Court. Such submission was considered and negated by this Court in the case of *Vindu Singh Kumari (supra)*.

One of the contentions of the petitioner is that one month notice as required under the terms of contract was not given to the petitioner. The show cause notice was issued on 19.8.2010 (Annexure-15) and the impugned order has been passed on 21.8.2010. On going through the terms of the contract, it appears that in the event of non-grant of one month notice, the incumbent is entitled to consolidated pay of one month. There is nothing on record to decipher that the said requirement was complied with. In that view of the matter, this Court directs the respondents to pay salary of one month to the petitioner, if not already paid, within four weeks from the date of receipt of this order by the respondent no. 5.

Before consigning the records, another aspect of the matter which has been dealt with at some length by the petitioner requires consideration. It has been stated that the order records proving of some charges against the petitioner. The same was, therefore,

stigmatic. Considering the nature of engagement and the view taken hereinabove, it is observed that the order impugned shall not debar the petitioner from being considered for future appointment/engagement.

The writ application is disposed of with the aforesaid observations/directions.

No costs.

(Kishore Kumar Mandal, J)

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