

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1725 of 2014

IN

Civil Writ Jurisdiction Case No. 20353 of 2013

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Reena Kumari, wife of Birendra Yadav, resident of village Kasima, P.S. Tekari,
District Gaya. Petitioner/Appellant.

Versus

1. The State of Bihar through Principal Secretary, Ministry of Rural Development,
New Secretariat, Bihar, Patna.
 2. The District Magistrate, Siwan.
 3. The Deputy Development Commissioner-cum-Additional District Programme
Coordinator, Siwan.
 4. The Block Development Officer, Daraunda, Siwan.
 5. The Programme Officer, Manrega, Daraunda, Siwan.
 6. The Senior Accountant Officer, District Rural Development Agency, Siwan.
.... Respondents/Respondents.
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Appearance :

For the Appellant : Mr. Yogesh Chandra Verma, Sr. Adv.
Mrs. Prem Sheela Pandey, Adv.

For the Respondents : Mr. Saroj Kumar Sharma, AC to AAG-5.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 08-03-2016

The present Intra-Court appeal has been preferred by the appellant, being aggrieved by the order dated 10.02.2014 passed in C.W.J.C. No.20353 of 2013 by the learned Single Judge of this Court, by which her writ petition against the order dated 16.09.2013 of the Deputy Development Commissioner-cum-Additional Programme Coordinator, Siwan (Annexure-4 to the writ petition), cancelling her contractual engagement, was dismissed.

Pleadings being complete, with consent of parties, this matter was heard in detail for final disposal at this stage itself.

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The writ petitioner/appellant, who was aged about 18 years as on 01.01.2006, was selected and engaged as consultant under the District Rural Development Agency, Siwan purely on contractual basis with a fixed remuneration of Rs.3000 per month. Let it be noted that it was not an employment under the State on any civil post. The contract of appointment was initially for a period of two years which was further increased by a fresh appointment for two years under a fresh agreement in the year 2009. The important clauses of the agreement is quoted hereunder:-

“4. You will not be entitled to your salary if you willfully neglect or refuse or from other cause or be unable to perform any of the duty under this engagement. The employer may suspend your salary during such neglect, negligence or inability as aforesaid and may further immediately terminate your engagement without giving any such notice or making such payment of salary in advance.

5. This appointment is terminable by DRDA by giving you one month's notice in writing or payment of one month's remunerating in lieu thereof. You may also terminate this appointment by giving one month's notice in writing or payment of one month's remunerating in lieu thereof.

20. You shall conduct yourself at all times with fullest regard for the purposes and principles or DRDA and in a manner

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befitting your relationship with DRDA under the contract. You shall not engage in any activity that is incompatible with those purpose and principles or the proper discharge of your duties with the project. You shall avoid any action and in particular any kind of public announcement which may adversely reflect on that relationship or on integrity, independence and impartiality which are required by the relationship, you shall not accept any favour gift or remuneration from any source external to DRDA with our first obtaining its approval.”

It appears that there were some allegations against the writ petitioner/appellant and, having considered the matter at the highest level, the District Magistrate-cum-Collector terminated the engagement under the contract. This is what brought the petitioner /appellant to this Court.

It was contended with reference to clause-5 of the agreement that there being no notice of one month for termination of contract nor payment for one month remuneration nor any show cause having been issued, the termination was *per se* illegal. The learned Single Judge by the order under appeal held that it was not a contract of service but contract for service and the writ petition was not an appropriate remedy. Accordingly, the writ petition was dismissed.

In appeal, Mr. Yogesh Chandra Verma, learned senior counsel appearing in support of the appeal, submitted and made

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some submissions. We are not impressed. As noted above, the petitioner/appellant does not hold any civil post under the Government. The engagement was purely for a limited period and for specific works, as consultant. Learned senior counsel submitted that clause-5 clearly predicated for before such an agreement could be terminated the District Rural Development Agency had to give one month's notice or one month's remuneration, in absence whereof, the termination was bad. He further submitted that no termination could be effected without prior notice.

Having considered the matter, in our view, the submission is not sustainable, inasmuch as clause-5 deals with rights of either parties to terminate the agreement by giving one month's notice but at the same time clause-4 of the agreement itself provides that if there is any dereliction then, without notice the engagement could be terminated. Thus being the conditions of contract, which the petitioner/appellant had agreed to, on allegations of dereliction, the contract being cancelled, was an action pursuant to the contract and under the terms of the contract itself to which the petitioner had agreed at the time of accepting the contractual appointment. The appointment itself being contractual was precarious in nature. Thus, the action being to disengage and cancel the contract was not beyond the contract. The two clauses, clause-4 & 5, operates in different

fields under different contingencies. Clause-5 has no application to the case in hand. That being so, we are of the opinion that neither the learned Single Judge nor the authorities erred in law in any manner warranting our interference.

Accordingly, this appeal is dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Trivedi/AFR

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