

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13263 of 2016

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Pramod Kumar S/o Late Ramlakhan Prasad R/o C/o Sri Surendra Prasad, Mamta Electronics, Bajaj Gali, Bakarganj, PS- Pirbahor, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Bihar.
2. The Principal Secretary, Health Department, Bihar, Patna.
3. The Executive Director, State Health Society, Bihar, Patna.
4. The Director in Chief, Health Services, Bihar, Patna. null null
5. The Director, Tuberculosis Demonstration and Training Centre, RNTCP Agamkuan, Patna.
6. The In charge Tuberculosis Division, State Health Society, Bihar, Patna.
7. The Regional Deputy Director Health Services Purnea.
8. The District Magistrate Kishanganj cum Chairman, District Health Society, Kishanganj.
9. The Civil Surgeon cum Chief Medical Officer, Kishanganj.
10. Civil Surgeon cum Member Secretary, District Health Society Kishanganj.
11. The District Tuberculosis Officer, Kishanganj.
12. In-charge Medical Officer, Primary Health Centre, Kochadhaman, Kishanganj.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Jha, Sr.Adv.
Mr. Sanat Kumar Mishra, Adv.
For the Respondent/s : Mr. Mritunjay Kumar, AC to GP12
For the State Health Society: Mr. K.K.Sinha, Adv.
Mr. Shashi Shekhar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-12-2016

Heard Mr. Anil Kumar Jha, learned Senior counsel appearing for the petitioner, Mr. Mritunjay Kumar, AC to GP12 for the State, and Mr. K.K.Sinha, learned counsel for the State Health Society.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission itself.

Some undisputed facts of the case are that the petitioner was appointed on contract basis vide contract of appointment which forms



part of Annexure 1 at Page-12. The period of contract is 15.7.2006 to 14.6.2007. The period has been extended and which is confirmed from Annexure 5, which is a proceeding of the State Health Society under the Chairmanship of the District Magistrate. Agenda No.10 relates to the case of the petitioner and whose name appears at Item No.5, whereby his contract period has been extended for the period 25.3.2016 to 24.2.2017.

A First Information Report was instituted against the petitioner charging him of demanding illegal gratification from a patient giving rise to Kochadhaman P.S. Case No. 122/2016, a copy of which is enclosed at Annexure 7. It is proceeding simplicitor on the allegation which forms the basis of the F.I.R., that termination order has been passed by the Civil Surgeon cum Chief Medical Officer, Kishanganj bearing Memo No. 1663 dated 15.6.2016, which simply relies on the police case. A copy of the order of termination is impugned at Annexure 8 and the petitioner feeling aggrieved is before this Court.

Mr. Anil Kumar Jha, learned Senior counsel appearing for the petitioner, while accepting that the nature of appointment is contractual and which is accompanied with certain limitations, submits that it is simply accepting the allegation that termination order has been passed without an opportunity of hearing to the



petitioner to clarify his stand. He relies upon a judgment of the Supreme Court reported in AIR 2012 SC 729 (**Gridco Ltd. & Anr. v. Sadananda Doloi & ors.**), Paragraph nos. 16 and 18.

It is taking note of the submission aforesaid that the learned State Counsel was directed to seek instruction and file counter affidavit which has since been filed and is on record. All that is stated in the counter affidavit is that the petitioner has been granted one month termination notice as per Clause- 9 of the Terms of Contract, present at Page-12 of Annexure 1.

Similar is the argument advanced by Mr. Sinha, learned counsel appearing for the State Health Society, to submit that since the appointment of the petitioner was contractual, hence the decision of the appointing authority to terminate his appointment in the background of the criminal case, suffers no infirmity nor any enforceable right exists in the petitioner to maintain a writ petition.

I have heard the learned counsel for the parties and have perused the records.

True it is that the service contract of the petitioner is to be governed by the terms of contract and which vests right in the appointing authority to terminate the contract at one month notice. Be it a case of termination simplicitor, there would be no reason to interfere with the decision but the issues take a different colour, if the



termination is stigmatic in character as in the present case. The moment a stigma accompanies a termination, the delinquent becomes entitled to an opportunity to clarify his stand. He certainly cannot be punished simply on the allegations and without an opportunity of explanation, even if the appointment is contractual in nature. In the present case, the contract stands extended until 24.2.2017. In between the contract period that the police case in question has been instituted but which yet remains an allegation until confirmed by a competent court of law. It is not a case where the petitioner is apprehended red-handed seeking illegal gratification or accepting any part thereof. The allegation of demand of bribe money, is yet to be established in the judicial proceedings.

In the circumstances discussed, the termination order passed, resting entirely on the police case, is in clear violation of the principles of natural justice, inasmuch as the petitioner certainly was entitled to an explanation. Though learned counsel for the State and the State Health Society have relied upon Clause-9 of the Terms of Contract which enables the appointing authority to terminate the appointment by payment of one month advance salary but in the present case even the said condition has not been satisfied because the sanction of salary is after the termination as confirmed from Annexure 'C', which is an order of the Civil Surgeon cum Chief Medical Officer,



Kishanganj bearing Memo No. 2970 dated 4.12.2016.

For the reasons aforementioned, the order of termination bearing Memo No. 1663 dated 15.6.2016 passed by the Civil Surgeon cum Chief Medical Officer, Kishanganj, impugned at Annexure 8, is neither sustainable on violation of principles of natural justice nor on the adherence of the terms of contract and is accordingly quashed and set aside. The writ petition is allowed.

The petitioner stands restored to his post.

This order, however, would not preclude the authority concerned to proceed against the petitioner in accordance with law.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.12.2016
Transmission Date	NA

