

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.72 of 2017

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Ajay Kumar, S/o Ghanshayam Vara Singh @ Ghanshayam Prasad Singh, R/o
Village & P.O.- Damgarhi, P.S. Sourbajar District- Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Rural Development Department Bihar, Patna.
2. Secretary Rural Development Department Bihar, Patna.
3. District Magistrate cum District Programme Coordinator Madhepura.
4. Deputy Development Commissioner cum Additional District-Programme Coordinator Madhepura.
5. Executive Engineer (Mahatma Gandhi National Rural Development Society), Madhepura.
6. Assistant Engineer (Mahatma Gandhi National Rural Development Society), Madhepura.
7. Programme Officer (Mahatma Gandhi National Rural Development Society), Shankar Pur District- Madhepura.
8. Junior Engineer (Mahatma Gandhi National Rural Development Society), Shankar Pur District Madhepura.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Diwakar Prasad Singh, Advocate
Mr. Kunal Tiwary, Advocate
For the State : Mr. VINAY KRITI SINGH, GA-2
Mr. Sumant Kumar Singh, A.C. to GA-2
For D.R.D.A. : Ms. Sunita Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 07-04-2017

Heard Mr. Diwakar Prasad Singh, learned counsel
appearing on behalf of the petitioner, Mr. Kunal Tiwary, Assisting
Counsel to G.A.-2 and Ms. Sunita Kumari for the District Rural
Development Agencies who is represented through the Deputy
Development Commissioner.

With the consent of the parties, the writ petition has been



heard with a view to its final disposal at the stage of admission itself.

The petitioner is aggrieved by the order of removal from contractual employment passed by the Deputy Development Commissioner impugned at Annexure-10 bearing Memo No. 840 dated 20.5.2016 which has been affirmed by the Collector-cum-District Magistrate, Madhepura while dismissing the appeal preferred by the petitioner vide order passed on 30.1.2015/ 02.2.2015 in Miscellaneous (MNREGA) Case No. 5 of 2014 impugned at Annexure-12 as well as by the Secretary who vide order dated 28.9.2016 has dismissed the revision passed by the petitioner impugned at Annexure-15. Apparently and conformingly the petitioner has been removed from his contractual employment on two grounds; namely:

- (a) An attempt to commit forgery in recording the measurement in the measurement book in connection with Scheme No. 1 of 2012-13, Scheme No. 2 of 2012-13 and Scheme No. 3 of 2012-13 while the petitioner was posted as Panchayat Technical Assistant at Block-Chausa in the District of Madhepura; and
- (b) His alleged abusive behaviour with the Programme Officer after his posting in Block-Shankarpur within the same District.

It is taking note of the allegation facing the petitioner as



also the fact that the show cause was principally in relation to the alleged act of the petitioner while he was posted at Block-Chausa and whether the petitioner continues to maintain such conduct even after his transfer from the said place and whether the proceeding had the sanction of the District Magistrate, Madhepura, that the respondent Deputy Development Commissioner was required to clarify the position and when a supplementary counter affidavit has been filed on 03.4.2017. Ms. Sunita Kumari, learned counsel for the D.R.D.A. has invited the attention of this Court to the transfer order of the petitioner dated 10.4.2013 at Annexure-A to the supplementary counter affidavit to submit that the petitioner was transferred from Block-Chausa to Block-Shankarpur on grounds that he shall not commit any default in future. She submits in reference to Annexure-B that the petitioner did not mend his ways and continued to be absent from his work place repeatedly and on being confronted by the Superior Officer, he abused him and when the Block Programme Officer, Shankarpur made complaint to the Deputy Development Commissioner on 26.9.2013 vide Annexure-B. In reference to Annexure-C, she submits that it is taking note of the continued insubordination and indisciplined attitude of the petitioner that he was show caused on 17.10.2013 and since the response of the petitioner was not found satisfactory and in the meanwhile, even the



Executive Engineer had reiterated about the inefficient functioning of the petitioner vide Annexure-E, that the order of termination of contractual employment was passed by the Deputy Development Commissioner at Annexure-10 and it has been affirmed by the District Magistrate as well as by the Secretary vide Annexure-12 and 15 respectively.

Mr. Diwakar Prasad Singh, learned counsel responding to the allegations and reiterating the events has submitted that the allegations are not capable of being upheld because there is no evidence of forgery on the part of the petitioner and although the measurement was recorded by the petitioner during his posting which according to his estimation was correct but then it was subject to verification by the Engineer concerned thus even if there would be an error of judgment, there was no evidence of forgery by the petitioner. He further submits in reference to Annexure-19 of the supplementary affidavit which is the report of the Sub-Divisional Officer to submit that although serious allegations was made by the Sub-Divisional Officer against the petitioner but the District Magistrate, Madhepura did not pass any order for drawing proceedings rather the petitioner was simply transferred from Chausa Block to Shankarpur which apparently confirms that the allegations did not hold substance for inviting a penalty.



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

The foundation for the charge of an attempted forgery is present in the notice dated 17.10.2013 of the Deputy Development Commissioner enclosed at Annexure-7 to the writ petition and which in turn refers to the report of the Sub-Divisional Officer dated 22.8.2012 present at Annexure-19 and is in respect of a measurement recorded by the petitioner in respect of Scheme Nos. 1, 2 and 3 of 2012-13 while he was posted at Chausa in the District of Madhepura. Although a serious allegation was made by the Sub-Divisional Officer in his report dated 22.8.2012 addressed to the District Magistrate complaining of attempted financial irregularity by the petitioner but this was never reduced to any proceeding nor even the petitioner was show caused on this issue. The petitioner thereafter was transferred out from Chausa to Shankarpur and the only advise to him as manifest from the letter of the Deputy Development Commissioner dated 10.4.2013 annexed at Annexure-A to the supplementary counter affidavit filed on 03.4.2017 is that he should not repeat his mistakes. There is no dispute that since after the transfer of the petitioner on 10.4.2013 from Chausa to Shankarpur, there is no allegation of any misconduct or attempted financial irregularity by the petitioner. In fact the complaint against the petitioner as manifest from the letter of the



Programme Officer dated 26.9.2013 addressed to Deputy Development Commissioner, Madhepura present at Annexure-B to the supplementary counter affidavit filed on 03.4.2017 is in respect of the absence of the petitioner from office and of using derogatory words against the Programme Officer. The complaint made by the Programme Officer on 26.9.2013 to the Deputy Development Commissioner was translated in a show cause dated 17.10.2013 which though takes notice of the complaint of abusive conduct of the petitioner but enlarges the scope of the enquiry by including even the past conduct relating to alleged measurement recorded by the petitioner in respect of Scheme Nos. 1, 2 and 3 of 2012-13 while during his posting at Chausa.

As I have already indicated, the allegation against the petitioner was that he had made a wrong recording in the measurement book which reflected attempted forgery. The stand of the petitioner is that the measurement was recorded correctly and even if there be any error of judgment, it was always open to scrutiny by the superiors. It is not in dispute that the recordings did not result in any financial defalcation.

The strange part of the exercise is that though the report was submitted by the Sub-Divisional Officer before the District Magistrate, Madhubani which forms basis for the present



proceedings in 2012 but it was never acted upon nor any proceeding was drawn at that time.

In my opinion, even if there be any complaint against the petitioner at his present posting at Shankarpur in respect of his alleged abusive behaviour, the proceeding, if any, has to be restricted to the said charge exclusively and his past conduct cannot be a subject matter of an enquiry especially where no proceeding as such was initiated against the petitioner during his posting at Chausa.

Reference in this regard is made to a judgment reported in *(2010) 11 SCC 278 (Indu Bhushan Divedi vs. State of Jharkhand)* where the Supreme Court at paragraph-22, 23 and 28 has dealt with the issue to record that a past conduct cannot be a reason to influence a decision unless the delinquent concerned is confronted with the materials supporting the charge.

The show cause at Annexure-7 of the writ petition does not refer to any material except that a sweeping allegation is made of an attempted forgery. There is again no evidence as regarding the alleged abusive behaviour of the petitioner except the complaint of the Programme Officer to the Deputy Development Commissioner and which allegation was refuted by the petitioner.

The other issue raised by Ms. Sunita Kumari is that the appointment is contractual and thus the petitioner has no enforceable



right to continue rather the relationship continues only until the existence of the contract. Learned counsel is very right and a contract employee cannot, as a matter of right, pray for an extension of the contract. In fact where the dispute arises from the condition of contract, may be, what learned counsel for the Agency submits, is correct, but the issue herein is not relating to expiry of contract rather the issue is that the contract is sought to be cancelled on a stigma.

A similar issue came up for consideration before the Apex Court in the case of **Ratnesh Kumar Choudhry vs. IGIMS** reported in **2016(1) PLJR (SC) 135** and the Supreme Court while upholding the right of the employer in terminating a contract employment where the termination lies on a motive meaning thereby it is founded on the utility of the employee concerned, has kept a termination based on stigma in a separate category, requiring a regular proceeding in this regard.

In view of the opinion expressed by the Apex Court referred to above and even while reserving the right in the employer to terminate a contractual employment on the expiry of the contract or where it is founded on a motive, I am persuaded to hold that where the termination is resting on a stigma, then the exercise would be distinct and in the present case in view of the sequence of events so present, there is a complete absence for the material to uphold the



allegations levelled against the petitioner.

For the reasons so discussed, the order impugned at Annexure-10, 12 and 15 cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

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