

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8119 of 2018

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1. Sanjay Kumar Sinha @ Sanjay Sinha, son of Sri Satyanaraian Singh, Resident of in front of Lane No. 2, Vikas Colony, Sandalpur Road, P.O. Mahendru, P.S. Sultanganj, District- Patna.
 2. Firoz Ashraf Khan, son of Late Nasim Akhta, Resident of House of Janab S.M. Alam, Opposite Garibnawaz Manzil, Samanpura, Raja Bazar, P.S. D.V. College, Patna.
 3. Khusbu Kumari, wife of Sri Kunwar Pratap, D/o Sri Virendra Singh, Resident of Jalpura House, Block Road, N.C.C. Office, District- Ara.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Public Health & Engineering Department, Government of Bihar, Patna.
2. Development Commissioner-cum- Chairman, Apex Committee, Old Secretariat, Government of Bihar, Patna.
3. The Secretary, Public Health & Engineering Department-cum- Chairman, Executive Committee, Bihar State Water and Sanitation Mission, Government of Bihar, Patna.
4. The Director, State Training-cum- Research Centre, Bihar State Water and Sanitation Mission, Public Health Engineering Department (PRANJAL), Government of Bihar, Patna.
5. Engineer-in- Chief-cum- Member Secretary, Executive Committee, Bihar State Water and Sanitation Mission, Public Health Engineering Department, Visheshwariaya Bhawan Parisar, Government of Bihar, Patna.
6. The Administrative Officer, Bihar State Water and Sanitation Mission, Government of Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Devendra Kumar Sinha, Sr. Advocate Mr. Yashraj Bardhan, Advocate Mr. Pankaj Kumar Sinha, Advocate
For the Respondent/s	:	Mr. S.Raza Ahmad -AAG-5 Mr. Vishwambhar Prasad, A.C. to AAG-5

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 21-08-2018

Heard learned counsel for the petitioners and
learned counsel for the State.



2. In this case, the petitioners were appointed on contract basis on different posts. Petitioner no.1 was appointed as Team Leader, CAP Cell, “PRANJAL”, petitioner no.2 and 3 were appointed as Trainer, Social and Institution Development, CAP Cell, “PRANJAL” on contract basis. The terms of the contract was for three months and time to time the period of contract was extended. For petitioner no. 1 the period of contract was extended upto 30.11.2019, for petitioner no.2 the contract was extended up on 30.12.019 and for petitioner no.3 the period of contract was extended upto 12.02.2020, but before its completion, the contract has been terminated by the respondents taking help of Clause-7 of the agreement, which prescribes as follows:-

“Clause-7. This Appointment can be terminated by PRANJAL-BSWSM by giving the employee one month’s notice in writing or payment of one month’s remuneration in lieu thereof. The employee may also terminate this appointment by giving one month’s notice to PRANJAL-BSWSM in writing or payment of one more month remuneration in lieu thereof. PRANJAL-BSWSM may also terminate this agreement in the event of 7 days or more continuous absence from duty.”.

3. There is no denial of the fact that at initial stage the



petitioners were appointed for a period of three months and time to time the period of contract was extended and ultimately, by letter dated 12.12.2017, the period of contract has been extended as stated hereinabove, but before completion of the period the contract has been terminated.

4. Learned counsel for the petitioners submits that the respondents have terminated the contract without following Clause-7 of the agreement.

5. Counter affidavit has been filed by the State, wherein it has specifically been stated that remuneration of 15 days has been paid to the petitioner and respondents are ready to pay remaining 15 days' remuneration in terms of Clause-7 of the agreement. So, it is very much clear that the respondents have not paid one month's remuneration to the petitioners in terms of Clause-7 of the agreement.

6. Learned counsel for the State has taken a plea that present petition is not maintainable as the status of the petitioners will not be as that of the permanent employees, but the Hon'ble Supreme Court in the case of ***Gridco Ltd. & Anr. v. Sadananda Doloi & Ors.*** reported in ***AIR 2012 SC 729***, where the Hon'ble Supreme Court has held that in past few decades



earlier the Courts were not inclined to interfere in the matter of termination of contractual employment if it has been effected in terms of the contract and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, the writ Court can now examine the validity of a termination order passed by the Public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. But, the Court has said that exercise of power of judicial review cannot be extended to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the armchair of the administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the Writ Court would do well to respect the decision under challenge.



7. It will be relevant to quote paragraph no.26 of the said judgment, which reads as under:-

“26. A conspectus of the pronouncements of this court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. A writ Court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot



sit in the armchair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ Court would do well to respect the decision under challenge.”

8. So, the Hon’ble Supreme Court has held that under the power of judicial Review, the Court can look into the order, but cannot examine the order as an appellate Court, but the scrutiny will be microscopic examination under the judicial review, if the action is not outrageous defiance to the logic or it is unreasonable, the Court would prefer to intervene in the matter.

9. He also place reliance on the decision rendered in the case of ***Arnesh Kumar vs. State of Bihar*** reported in ***2014(3) P.L.J.R. 314 (SC)***, where also the Court has taken a view that in the event the order violates Article 14 of the Constitution of India then the Court can interfere in the matter.

10. In the present case, only issue has been raised by the petitioners that termination has not been effected in terms of Clause-7 of the contract



11. In such view of the matter, the impugned dated 13.03.2018, by which the services of the petitioners have been terminated, is quashed. The matter is remanded back to the respondents, if they so like, may take action in terms of Clause-7 of the terms of the agreement. It is also made clear that the petitioners will not have a right to claim the arrears of salary for the period they have not done the work. This Court is not giving any opinion on the merit of the case.

12. With the aforesaid observations and directions, this writ petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
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