

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1764 of 2016

Arbind Kumar Suman, Son of Late Jagannath Prasad, resident of C/O Birendra Kumar Verma, Road No-4, House No- 78, Indra Puri, P.O- Keshri Nagar, P.S. Patliputra, Distrcit- Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar,
2. The Principal Secretary, Department of Energy, Government of Bihar, Patna.
3. The Secretary Cum Chairman, Bihar State Hydro Electric Power Corporation, Patna, Bihar.
4. The Managing Director, Bihar State Hydro Electric Power Corporation, Patna, Bihar.
5. The Manager (P & A), Personnel and Administrative Bihar State Hydro Electric Power Corporation, Patna, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rakesh Kumar Sinha, Adv.
For the Corporation	:	Mr. Awanish Nandan Sinha, Adv.
For the State	:	Mr. Asit Kumar Jha, AC to GP2

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 20-12-2018

Heard learned counsel for the parties.

The petitioner is challenging the order passed by the Secretary, Energy Department, Government of Bihar cum Chairman of Bihar State Hydro Electrical Power Corporation, Patna, Bihar vide order dated 2.1.2015, whereby, as an appellate authority, has rejected the appeal, affirming the order passed by the Manager, Personnel and Administrative, whereby, the services of the petitioner has been disengaged.

The petitioner was engaged on contract basis as Electrical/Mechanical Engineer vide office order no. 409 dated



19.8.2002 for twenty months and, from time to time, the services of the petitioner was extended and it also appears that vide letter dated 29.8.2007, the Manager (P & A), Bihar State Hydro Electric Power Corporation was satisfied with the work performance of the petitioner, was granted the substantive scale of pay of Rs. 9300 - 34800 and total pay pack at the initial stage was fixed at Rs. 17,550/-. The petitioner was transferred vide order dated 27.10.2011 (Annexure-4) to Kataiya Hydro Electric Project. When the petitioner did not reported to the Kataiya Project, again letter dated 8.12.2011 was issued by the Manager (P&A), Personnel and Administrative, Bihar State Hydro Electric Power Corporation whereby the petitioner was given last chance to join the project by 18.12.2011. The petitioner joined the new place of posting on 12.12.2011 i.e. the last date fixed by the authority in letter dated 8.12.2011 but, admittedly, after the date on which he was given for reporting to the Kataiya project, the Manager, Personal and Administration vide letter no. 585 dated 20.3.2012, disengaged the petitioner from service on the ground that he is a habitual absentee and he used to remain absent from the place of posting without any prior permission. It has been mentioned that at the Varun project, he used to remain absent and, on that account, he was transferred from Varun to Kataiya and the letter dated



6.12.2011 and 11.2.2012 of Project in Charge shows that without any permission, the petitioner had remained absent from the place of project and the petitioner failed to give proper reply when telephonic call was given trying to know the reason for his absence and that act is nothing but, an act of misconduct and, on that account, disengagement has been effected on account of act of misconduct. The petitioner filed appeal and the appellate authority, after giving an opportunity of hearing to him, rejected the same.

In the present case, admittedly before disengaging the petitioner, he was not given any show-cause, though the order, which has been effected of disengagement, is not an innocuous order but, the order of disengagement has been passed without an allegation of irresponsibility and indiscipline.

Learned counsel for the respondents has fairly accepted that before passing the order of disengagement, the minimum level of natural justice in the shape of show-cause and asking explanation has not been followed and the plea that the person, who has been appointed, having no fixed term of service or they are on contract basis, the disengagement will not invite the interference from this Court as the petitioner would not come under the purview of Article 311 of the Constitution of India. So before disengaging the person, it is not sine qua non to hold the



enquiry and pass an order of punishment against the employee who has been engaged in service on contract basis. Even if the person who has been appointed on contract basis, if the employer wants to disengage an employee on some imputation, reasonableness would require that he must have a chance to give reply of the imputation which led to his disengagement and otherwise it will lead to a travesty of justice and again will be treated to be arbitrary, violate Article 14 of the Constitution of India. The theory of arbitrariness is not only applicable for the permanent employee but, also applies to a person who has been engaged on contractual basis. Now the law has developed in such a level, it cannot be said the employee on contract basis will not get the protection of Article 14 of the Constitution of India. For that, reliance can be placed to the judgment passed in the case of GRIDCO Limited & Anr. Vs. Sri Sadananda Doloi & Ors. reported in AIR 2012 SC 729 specially paragraph no.26 wherein the Court has said that on account of notable shift from the Stated legal position settled in earlier decision, the termination of contractual employee in accordance with the terms of contract was permissible and employee could claim no protection against the termination even when one of the contracting parties happened to be the State. Remedy for breach of 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 the judicial review and writ court is entitled to judicial 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 but, the judicial review cannot extend to the Court acting as an appellate authority sitting in the judgment over the decision. It will be relevant to quote paragraph no.26 of the aforesaid judgment which reads as follows:-

“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 said 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 arm chair 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.”

The aforesaid judgment reflects that even in the contractual matter, the authority cannot claim immunity for following the minimum level of natural justice with termination has been made on account of imputation and, in that circumstances, the termination, without following the minimum level of natural justice, can be derived as the action is perverse and arbitrary.

In that view of the matter, the order dated 20.3.2012 passed by the Manager, Personnel and Administrative, Bihar State Hydro Electric Power Corporation, Patna, Bihar, is set aside and in consequence the order of the appellate authority dated 2.1.2015 is



also set aside and the matter is remanded back to the Manager, Personal and Administration who will give a fresh notice upon the petitioner and, after taking explanation, will decide the course of action within a period of three months from the date of receipt/production of a copy of this order.

This Court is not giving any opinion on the merit of the case.

This writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.01.2019
Transmission Date	

