IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13562 of 2017

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Sunita Kumari, Wife of Nandlal Sharma, resident of Village- Tulapur, P.O.- Naro Murar, Block + P.S.- Warsaliganj, District- Nawadah.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Social Welfare, Govt. of Bihar, Patna.
2. The Director, I.C.D.S., Department of Social Welfare, Government of Bihar, Patna.
3. The Divisional Commissioner, Magadh Division, Gaya.
4. The District Magistrate, Nawadah.
5. The District Programme Officer (Welfare), Nawadah.
6. The Child Development Project Officer (C.D.P.O.), Kauakole, District- Nawadah.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Arun Kumar
For the Respondent/s : Mr. Md. Rousul Haque- SC10
Mr. Binay Kumar, AC to SC 10

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 25-08-2018

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

In the present writ petition, the petitioner is challenging the order dated 28.7.2017 (Annexure 12) passed in Case No.90(M) of 2014 by the District Magistrate, Nawada by which his services has been terminated on certain grounds which can be said to be imputation against him.

The petitioner was appointed as Anganwari Supervisor on 3.8.2011 but she has been terminated on 5.3.2012 as per terms of

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the contract.

Against that the petitioner has filed an appeal before the Commissioner, Magadh Division, Gaya and the Commissioner has set aside the order of the Collector and remanded back the same for a fresh consideration and whereafter final order has been passed against the petitioner as aforesaid.

It has been submitted by learned counsel for the petitioner that a complaint was received from a Anganwari Sevika Kaua Kol making an allegation against the petitioner, had demanded Rs.500/- per mont for verification and certification of “Ration Purchase Register”, the said complaint was received on 8.11.2011 but before that said Anganwari Sevika was dismissed from service on 4.11.2011. So the question of demand of money of Rs.500/- by the petitioner does not arise.

The said complaint was enquired into by the Additional Collector authorized by the District Magistrate who had given clean chit to the petitioner, whereafter the said Anganwari Sevika approached the Minister, Social Welfare Department who referred the matter to the District Magistrate, Nawada, again the matter was referred to Additional Collector for enquiry who submitted detailed enquiry report and on that basis the action was taken without following the proper procedure of termination from

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service.

The petitioner has raised a grievance that action of the Collector is completely illegal as he has passed the order without giving any notice when the matter was remanded back for fresh consideration and fresh order has been passed.

Learned counsel for the petitioner submits that even in the contract matter this Court can exercise the power under judicial review in certain ground, and one of the ground is violation of natural justice has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Gridco Limited and another v. Sri Sadananda Doloi*** and others, reported in ***2012(1) PLJR (SC) 321*** where the Hon'ble Supreme Court has considered previous judgments and has held that earlier the courts were reluctant to interfere in the contract matter and parties were asked to approach civil court for breach of contract and claim for damages/compensation but on account of development of law relating to judicial review of administrative actions, a writ Court can 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,

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unreasonableness, unfairness or irrationality that would vitiate the action, no matter that action is in the realm of contract. But the Court has also held that power of judicial review cannot be extended to the Court to act as an appellate authority sitting over the judgment and decision of administrative body. 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 outrageous of logic, the writ Court would do well to respect the decision under challenge. It will be relevant to quote paragraph no.26 of the aforesaid judgment:

> *"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*

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administrative actions, a writ Court can not 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 that 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 extent 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 of logic, the writ Court would do well to respect the decision under challenge."

So the power has been circumvented by message given in the said paragraph. In the present case specifically appointment was made for one year which was to come automatically by way of efflux of contractual period. This Court could have examined all submissions made by the petitioner subject to the condition that contract would have been subsisting. The period of contract has already lapsed much earlier the action has been taken on the basis

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of the enquiry report of Officer of a rank of Additional Collector, that too petitioner was given enquiry report whereafter the order has been passed and it is also well settled that the person who has been appointed on contract basis cannot claim the protection as like permanent employee as provided under Article 311 of the Constitution of India, only it has to be seen that authority has taken fair action while passing the order with respect to the contract matter.

In such view of the matter, this Court does not find any merit in this writ petition. It is accordingly dismissed but this order will not come in any way of concerned authority for refusal of the order.

(Shivaji Pandey, J)

Vinay/-

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

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