

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2316 of 2019

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Rajeev Kumar Nirala aged about 37 years (Male) son of Shree Janardan Prasad resident of Village- Salempur, P.S- Karai Parsurai, District Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar through principal Secretary, Education Department, Government of Bihar, Patna
2. The State project Director, Bihar Education Project Council. Shiksha Bhawan, Rastra Bhasa Parishad Saidpur, rajendra Nagar, Patna
3. Development commissioner cum Chairman, State Working Committee, Sarva Shiksha Abhiyan, Patna Bihar
4. The Staw programme Officer (M.I.S) Bihar Education Project Council, Patna Bihar
5. The District Magistrate Katihar Bihar
6. The District Programme Officer Cum District Programme Co-ordinator (Elementary Education and Sarv Shiksha Abhiyan), Bihar Education Project, Katihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar
Advocate

For the Respondent/s : Smt. Shilpa Singh
GA-12

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 15-02-2019

A supplementary affidavit has been during the course of arguments. Let it be kept on record.

The petitioner has challenged the order dated 09.01.2019 issued by the State Project Director, Bihar Education Project Council, Patna, whereby under the provisions of Rule 16 of Chapter-IV and Rule 51 of Chapter-XI of the



Service Regulation, the contractual appointment of the petitioner has been terminated w.e.f. 09.01.2019.

It has been submitted on behalf of the petitioner that the reasons assigned in the order of termination of contract are non-existent and its does not take into account the explanation which was submitted by the petitioner in response to the show-cause notice. The order of termination has further been challenged on the ground that it has been passed in complete derogation of the Rules of the Project which enjoined upon the appointing authority / disciplinary authority to give a hearing to the petitioner, if it was found in enquiry that his conduct was not befitting the position on which he was appointed on contract.

It has further been submitted that merely by issuing a show-cause notice, the principles of natural justice has not been followed and from the order of termination, it would appear that only a formality has been made of not accepting the explanation offered by him. The order impugned does not state the reason for disagreeing with the explanation offered by the petitioner. It was therefore, it is urged, necessary for the



disciplinary authority to have held a detailed enquiry and afforded the petitioner a hearing in the matter.

As opposed to the aforesaid contention, Mr. Girijesh Kumar, for the respondents submits that the petitioner is only a contractual employee and does not enjoy the status of a civil servant. He admits that even if a contractual employee has to be removed from his employment or his contract has to be terminated, he has to be given a notice for the same and explanation has to be called for to seek his reply on the grounds on which his appointment / engagement in the office is not required by the employer. Nonetheless, even with reference to the rules made for controlling the service condition of such contractual employee or employees on deputation, the petitioner does not have a wholesome right of a full fledged domestic enquiry, as is done in cases of civil servants, who are governed by the Civil Service (Classification, Control and Appeal) Rules, and at all times a personal hearing can be demanded.

It has further been submitted on behalf of the respondent / State that the conduct of the petitioner has not



been satisfactory and otherwise also his contract could have been terminated by giving him one month's notice. He therefore submits that the petitioner was afforded an extra privilege by seeking his response to the grounds on which the the State Project Director, Bihar Education Project Council, Patna (Respondent No. 2) contemplated to remove him or terminate the contract of appointment.

Mr. Indu Bhushan, learned advocate for the petitioner however submits that the aforesaid contention of the respondent is not worth acceptance. The petitioner would not have had any cause to come to this Court if his terms of appointment would have been terminated by one month's notice. The order clearly reflects that he was served with a punishment of termination of his contract in terms of the Rules framed by the Project, which is applicable not only to a deputationist but also to a contractual employee. The Rules have been framed by the Project and must be respected and followed while terminating the contract of the petitioner.

A perusal of the order impugned reflects that the termination of contract was not simple ending of the



engagement of the petitioner but only after casting a stigma on his conduct of being indisciplined and rude to the fellow employees. The petitioner would therefore have every right to contest the aforesaid findings of respondent no. 2 or else it would be an aspersion on him till the time he seeks any additional / other engagement. It is the discretion of the employer to continue or terminate the engagement of a particular contractual employee; nonetheless only because he has complete / authoritative control over his employees, it cannot be postulated that any order, even hurting such employee in future, would be passed without any objection / assail.

Learned counsel for the petitioner has submitted that in the show-cause notice, the petitioner was subjected to such questions which did not have any bearing on his effective functioning as an Assistant Computer Programmer. As an indice of the aforesaid indiscretion on the part of the Project Director, he was asked to reply on his disturbed marital life, which according to the petitioner, a Project Director has no authority to ask from him. With respect to the other charges, it



has been submitted that reasonable explanation was given in his show-cause reply but none of them have been addressed to while passing the order impugned. The petitioner is sanguine that the aforesaid order has been passed only because he protested against his not being given bonus / incentive to which he was entitled.

Under the aforesaid circumstances, it has been urged on behalf of the petitioner, that the order is not fit to be sustained in the eyes of law.

Considering the aforesaid grounds, this Court deems it appropriate that the petitioner be given a further opportunity of explaining his cause before the the State Project Director, Bihar Education Project Council, Patna (Respondent No. 2) for him to revisit his order of termination of the contract of the petitioner.

The petitioner in the aforesaid circumstances is directed to make a representation before Respondent No. 2 within a period of three weeks from today, on receipt of which, the Respondent No. 2 shall consider whether a fresh show-cause notice be given to the petitioner and if not, revisit



the decision after going through the response of the petitioner which was earlier submitted by him. The representation which is permitted to be filed by the petitioner within a period of three weeks would serve as a reminder to Respondent No. 2 to take a fresh call over the issue and pass necessary orders in accordance with law.

With the aforesaid observation / direction, this writ petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	19.02.2019
Transmission Date	

