

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13153 of 2012

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Shweta Kumari Wife Of Yogendra Prasad Verma Resident Of Ghughri Tand,
Dandibagh Road, P.S Civil Lines, District Gaya, Bihar, Formerly Posted As
Project Economist at District Rural Development Agency Head Quarters,
Gaya

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Rural Development, Govt. of Bihar, Patna.
2. The District Officer Gaya
3. The Deputy Development Commissioner Cum Chief Executive Officer, Cum Programme Co-Ordinator, District Rural Development Agency, Gaya.
4. The Director, National Employment Scheme, Gaya
5. The Director, Accounts Administration and Self Employment, DRDA, Gaya
6. The In-charge, Establishment DRDA, Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amarnath Singh, Advocate Mr. Binay Kumar, Advocate
For the State	:	Mr. Sanjay Kumar Ghosarvey, A.C. to AAG-3

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 21-12-2019

Heard learned counsel for the parties.

2. An order dated 01.03.2012 passed by the Deputy Development Commissioner-cum-Chief Executive Officer-cum-Programme Coordinator, District Rural Development Agency, Gaya, has been challenged in the present writ application whereby, the petitioner's engagement on contractual basis has been terminated after having found the petitioner's service not satisfactory.

3. The facts are not at all in dispute.



4. A counter affidavit has been filed on behalf of the Respondents State of Bihar to which a reply has been filed on behalf of the petitioner.

5. The petitioner was selected for the appointment on contractual basis pursuant to an advertisement and subsequent written test against the post of Project Economist, DRDA, Gaya, by an order dated 13.09.2007. It transpires from the impugned order dated 01.03.2012 that she had remained absent from 19.10.2011 to 17.01.2012. An explanation was sought from her when she had intended to submit her joining by a letter dated 18.01.2012 by the Deputy Development Commissioner, Gaya. The Deputy Development Commissioner has recorded his finding in the impugned order that she did not hand over the keys of the Almirah which was under her charge for the period of her absence from 19.10.2011 to 17.01.2012. The Deputy Development Commissioner has further recorded in the impugned order that it had become difficult to execute the work under SGSY in the District because of the conduct of the petitioner. Keeping into account, the petitioner's reluctance, irresponsible and uncooperative attitude and her unauthorized absence, the Deputy Development Commissioner decided to terminate the service of the petitioner.

6. Mr. A.N. Singh, learned counsel appearing on behalf of the petitioner has submitted that in response to the notice issued by the Deputy Development Commissioner, she had given a detailed



representation explaining the circumstance why she could not perform her duties for the aforesaid period. According to her, she was suffering from health issues. The petitioner had also taken a plea that while she was under treatment, she had met with an accident leading to fracture injuries, and since her mobile phone had got damaged and the SIM card was missing, she could not make any contact with the authorities, about her continued absence.

7. In response to a query from this Court regarding the nature of agreement on contractual appointment, Mr. Singh has drawn my attention to Annexure-6, which is proforma agreement and contends that the same agreement was entered into between the petitioner and the competent authority.

8. Learned counsel representing the State of Bihar justifying the impugned decision has contended that the petitioner's engagement could have been terminated even without putting her on any kind of notice in view of clear language of Clauses-4 and 11 of the Agreement on contractual appointment and has relied on a Division Bench decision of this Court dated 12.08.2011 in ***LPA No. 772 of 2011 (Neetu Kumari Vrs. State of Bihar and Ors.)***. He has submitted that the engagement being contractual in nature, the petitioner cannot be said to have established his legal right to continue.

9. There should not be any doubt that terms and conditions of a contractual engagement will be governed by the nature of



Agreement entered into between the parties. Clauses-4 and 11 of the Agreement which has been relied on by the petitioner herself read thus:-

“4. You will not be entitled to your salary if you willfully neglect or refuse or from other cause or be unable to perform any of the duty under this engagement. The employer may suspend your salary during such neglect, negligence or inability as aforesaid and may further immediately terminate your engagement without giving any such notice or making such payment of salary in advance.

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xxx

xxx

11. The employer may terminate your engagement without giving any notice in the event of 7 days or more continuous absence from duty without taking permission from the competent authority”.

10. The petitioner’s absence for the period in question is not at all in dispute. There is a finding by the Deputy Development Commissioner in the impugned order that the petitioner had not handed over even the keys of the Almirah, which was under her charge.

11. I find substance in submission made on behalf of the State of Bihar that by virtue of Clause-4 read with Clause-11 of the Agreement, it was open for the Deputy Development Commissioner, to take appropriate action if in his opinion, the petitioner had remained absent, unauthorizedly.

12. The submission made on behalf of the petitioner by Mr. Singh, that the impugned action is in violation of principle of natural justice and is stigmatic in nature, cannot be accepted for the simple



reason that a full fledged departmental enquiry was not required to be conducted in the present case in the background of the nature of agreement itself.

13. In any view of the matter, before taking the impugned decision, a show cause notice was given to the petitioner and the Deputy Development Commissioner, after considering her explanation, has passed an impugned order.

14. I do not find that the petitioner has been able to make out breach of any legal right which can be said to be a ground for this Court to interfere in the present proceeding under Article 226 of the Constitution of India.

15. This writ application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	
CAV DATE	N.A.
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