

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17216 of 2019

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Vinay Kumar Son of Jagdish Prasad Singh Resident of Village- Pateliya, P.S.-
Vibhutipur, District-Samastipur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Health and Family Welfare, Govt. of Bihar, Patna
2. The District Magistrate Cum Chairman, District Health Society, Samastipur.
3. The Civil Surgeon Cum Secretary, District Health Society, Samastipur.
4. The Medical Officer In-Charge, PHC Bithan, District-Samastipur.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Satyavrat Verma, Advocate Mr. Shashank Chandra, Advocate
For the Respondents	:	Mr. Aditya Nath Jha, AC to SC-18

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

Date : 20-01-2020

The petitioner was engaged as Block Health Manager, initially in the year 2007, on contractual basis. It is his case that his term of engagement was extended from time to time. It appears that a fresh agreement was entered into on 10.08.2018 between the petitioner and the Civil Surgeon-cum-Secretary, District Health Society, Samastipur, for engaging the petitioner on contractual basis for a further period of three years. Clause 7 of the said agreement dated 10.08.2018 has been brought on record by way of Annexure-7/1 to the counter affidavit filed on behalf of respondent No.1, which is crucial for adjudication of the present controversy and is, therefore, being reproduced hereinbelow :-



“7. इस प्रकार का नियोजन संविदा अवधि (कंट्रैक्ट पीरियड) समाप्ति के पूर्व उभय पक्षों द्वारा एक माह की पूर्व सूचना देकर या एक माह के पारिश्रमिक के समतुल्य राशि देकर समाप्त की जा सकेगी।”

2. Clause 10 of the said agreement provided that after expiry of the term of contract, the engagement shall be treated to have been terminated and no separate order would be required nor any notice would be needed to be issued for the said purpose.

3. In the present writ application, the petitioner has put to challenge a communication dated 25.07.2019 (Annexure-6) issued by the Civil Surgeon-cum-Secretary, District Health Society, Samastipur, whereby his contractual engagement has been terminated and apparently invoking Clause 7 of the agreement, as noted above, he has been paid one month's advance honorarium/salary.

4. It is the petitioner's case that the only role of the petitioner as Block Health Manager of the Primary Health Centre, Bithan, was to maintain a log book regarding day-to-day running of 102 Ambulances (i.e., Ambulances available at Call Center 102) as well as to release funds in order to meet fuel expenses of such ambulances.

5. Be that as it may, the petitioner's performance in discharge of duties was not found to be satisfactory at the level of



the Health Department and the Department had asked the Civil Surgeon-cum-Secretary, District Health Society, Samastipur, to seek his explanation in view of decline in number of trips made by the ambulances under his control, available at Call Center 102. The petitioner did submit his reply to the said show cause. Again, for poor performance in the month of February, 2019, the petitioner was asked to explain as the average trip of ambulances per day was found to be still on decline. Through letter dated 17.04.2019, the petitioner is said to have again submitted his explanation to the said letter.

6. In the month of March, 2019 also, decline in performance of the petitioner's duties was noticed, as the average trip per ambulance per day was still found to be sliding down. It was in the aforementioned background that the impugned letter dated 25.07.2019 came to be issued by the Civil Surgeon-cum-Secretary, District Health Society, Samastipur.

7. A counter affidavit has been filed on behalf of the State of Bihar stating therein that the reasons explained by the petitioner in response to the show cause notice issued to him were not found to be genuine and since he was found to be failing in carrying instructions of his superior authorities, a decision was



taken to terminate his contract. A reply has been filed on behalf of the petitioner to the counter affidavit.

8. Mr. Satyavrat Verma, learned counsel appearing on behalf of the petitioner, has submitted that the respondents have completely failed to take into account the explanation submitted by the petitioner in his reply to the show cause notice. He has submitted that the petitioner had given justification in his reply to the show cause notices as to why the ambulances, available at Call Center 102, could not make as much trips as was expected. He has submitted that the impugned communication dated 25.07.2019 does not at all indicate application of mind on the explanation submitted by the petitioner in his reply to the show cause notices. He has relied on a Supreme Court decision in case of **GRIDCO Ltd. v. Sadananda Doloi**, reported in (2011) 15 SCC 16, referring to paragraphs 38 and 39 thereof, to contend that writ Court can examine validity of order of termination even of contractual engagement passed by a public authority and such action is amenable to judicial review.

9. Learned AC to SC-18, on the other hand, has submitted that it was within the jurisdiction of the employer, in view of express stipulation in Clause 7 of the agreement of contractual appointment, that the same could be terminated by



either of the parties after giving one month's notice or on paying one month's salary/wages. He contends that the respondents had noticed and assessed poor performance of the petitioner as Block Health Manager and he was asked to explain twice, firstly, in the month of January and secondly for the month of February, 2019. As it was noticed that his performance was still on decline for the month of March also, a decision was taken to terminate the contractual engagement by invoking Clause 7 of the agreement. He submits that the action of the respondents in the above background cannot be said to be arbitrary or unreasonable requiring this Court's interference.

10. In my opinion, the answer to the submissions made on behalf of the petitioner with reference to the Supreme Court's decision in case of *GRIDCO Ltd.* (supra) lies in the said judgment itself, wherein the Supreme Court observed as follows in paragraphs 38 and 39 :-

“38. 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.

39. 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 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.”

(Underlining for emphasis)

11. The contractual engagement between the petitioner and the Society was to be governed by the terms of agreement entered into between the two. Clause 7 of the agreement, which has been quoted above, clearly authorizes either of the parties to



terminate the agreement by giving one month's notice and in case the employer intends to terminate the contractual engagement, it can be done by giving one month's salary in advance, in lieu of one month's notice. It is not the petitioner's case that there has been any non-compliance of Clause 7 of the agreement.

12. Considering the performance of the petitioner as a contractual employee, it was open for the competent authority to take appropriate decision in the interest of effective implementation of the schemes relating to public utility service. In view of the nature of communication, which is based on one of the explicit terms of agreement, in my opinion, the decision impugned cannot be said to be violative of the principles of natural justice.

13. Learned counsel appearing on behalf of the petitioner has submitted that the impugned communication is stigmatic and, therefore, the same requires interference by this Court on the ground of breach of principles of natural justice because of non-consideration of the explanation submitted by him in his replies.

14. I am not inclined to interfere with the said decision on the said ground. However, so that the petitioner's future prospects are not jeopardized because of any observation made in



the impugned communication, it is observed that the said order shall not be treated to be stigmatic for any purpose.

15. This application is dismissed with the observation as noted above.

(Chakradhari Sharan Singh, J)

Pawan/-

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